(1990) 11 P&H CK 0090

In the Punjab And Haryana At Chandigarh

Case No : Latters Patent Appeal No. 176 of 1983

Mansukh & Co. (Overseas) APPELLANT

Vs

State of Haryana and anr. RESPONDENT

Date of Decision : 26-11-1990

Acts Referred:

Citation : (1991) PLJ 101 : (1991) 1 RRR 581

Hon'ble Judges : J.V.Gupta;CJ., J and R.S.Mongia, J

Advocate : Mr. C.B. Kaushik, Advocate, Mr. Jaivir Yadav, A.A.G. Haryana, Suresh Amba, Advocates., Anil Kheterpal, Mr. V.K. Bali, Senior Advocate,, Advocates for appearing Parties

Judgement

R.S. Mongia, J.—The appellantwrit petitioner is a partnership concern having its place of business at Industrial Site No. 49, Sector 6, Urban Estate, Faridabad (Haryana). It is engaged in the manufacture of Tarpaulm, Tents etc. It started its production with effect from 1.5.1971. At the time of its establishment and production it was outside the municipal limits. General exemption was granted by the State Government under Section 71 of the Punjab Municipal Act, 1911 from the levy of octroi tax. Vide notification dated 14.5.1970, all industrial units which fell outside the municipal limits at the time of their establishment were to be exempted from levy of octroi for a period of five years from the date of their coming into production. As far as new Industrial units located in the municipal limits were concerned these were to be exempted from the levy of octroi for a period of three years. These exemptions were admissible only to Small Scale Units i.e. where the investment in the Plant and Machinery was upto 7.5 lacs in Faridabad Ballabgarh belt. Since the appellant was a Small Scale Unit, a certificate was issued on March 13, 1973 in pursuance of the notification dated 14.5.1970 (which reference has been made above), exempting the appellantfirm from the payment of octroi tax from 1.5.1971 to 30.4.1976. It was further mentioned in the certificate that this exemption would be valid only for one year from the date of issue of the certificate and renewed thereafter for the remaining period from year to year.

2. Faridabad Complex came into being under the Faridabad Complex (Regulation and Development) Act, 1971 and the petitioner''s factory became a part of this complex and came within the municipal limits. This was with effect from 7.4.72. An office order dated 29.10.74 (Annexure P5) was issued by the Chief Administrator of the Faridabad Complex Administration that Haryana Government vide Memo dated 4.10.74 had made clarification that the maximum period for granting the exemption to the Industrial Units which were outside the municipal limits and subsequently included within the municipal limits would be eligible for exemption from payment of octroi in FaridabadBallabgarh belt to the extent of period of three year in case of the Small Scale Units. Since, according to the Administrator, the Unit of the petitioner had come into production on 1.5.1971, the threeyear period expired on 30.4.74 and there could not be any exemption thereafter according to the clarification. It was this order that is impugned in the writ petition. The learned Single Judge dismissed the writ petition. Aggrieved by the judgement of the learned Single Judge, the writ petitioner has come up in appeal.

3. The learned Single Judge had relied on the provisions of Section 21(4) of the Faridabad Complex (Regulation and Development) Act, 1971, to hold that the State Government had the power to revoke exemption granted under subsection (3) by an order published in the official gazette. Section 21(4) of the Act is in the following terms :

"21(4) The State Government may revoke exemption granted under subsection (3) by an order published in the Official Gazette."

4. The learned counsel for the appellant submitted that Section 21(4) of the Act ibid had no application to the facts of the present case inasmuch as neither the exemption was granted under the provisions of the Act, but it had been granted under the Punjab Municipal Act nor the order by which the exemption was sought to be revoked had been published in the Official Gazette. It was only a clarificatory memo on the basis of which the exemption was sought to be withdrawn. We find force in this argument that exemption granted to the petitionerappellant could not have been withdrawn under the provisions of Section 21(4) of the Act. However, we find that the notification dated 14.5.70 gave maximum period of three years exemption to Small State Units which were within the municipal limits. In fact, there was no notification required for exempting the levy of octroi from the Units which were outside the municipal limits. So the appellant was entitled to the exemption for a period of three years from the day the Unit became a part of the Faridabad Complex and came within the municipal limits. The Unit of the appellant came within the municipal limits with effect from 7.4.72 and, therefore, under the notification dated 14.5.70 the appellant was entitled to he exemption from the levy of octroi tax for a period of three years i.e. upto 6.4.75.

5. For the reasons recorded above, the appeal is partly allowed and we hold that the appellant writ petitioner was entitled to the exemption from the levy of octroi

tax not upto 30.4.74 as mentioned in Annexure P5 but the exemption would be upto 6.4.75. To this extent, the impugned order, Annexure P5 will stand modified. The appellant will be entitled to all consequential reliefs. We leave the parties to bear their own costs.

Appeal partly accepted.

