

(2006) 09 GAU CK 0064
In the Gauhati High Court
Case No : Writ Petition (Civil) No. 198 of 2000

Megha Assam Coal Mines (India) Ltd.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Citation : (2006) 4 GLT 559

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : R.Dubey, A.K.Saraf, Advocates appearing for Parties

Judgement

Amitava Roy, J.—The challenge is to the validity of the notification dated 5.11.1999, circulating the Assam Industries (Sales Tax Concession) (Amendment), Scheme 1999, inter alia modifying the existing list of industries ineligible for the benefits under the Industry Policy of Assam, 1991. The petitioners' industry having now be included in such list, it being aggrieved is before this Court.

2. I have heard Dr. A. K. Saraf, learned senior counsel, for the petitioners and Mr. R. Dubey, learned Standing counsel, Finance Department.

3. A brief resume of pleaded facts is unavoidable. The petitioner is a limited company incorporated under the Company's Act, 1956. having its registered office at Beltola, Guwahati and is engaged in the business of manufacture of wash coal for which it purchases raw materials from various suppliers within and beyond the State(the Govt. of Assam had announced a package of incentives under the 1986 Industrial Policy notified under notification No. CI386/86, dated 25.12.1986. This was followed by the Industrial Policy 1991, circulated by notification No. CT/154/907 279, dated 6.4.1991 and CT/154/90/242, dated 1.7.1992^Jn partIII thereof, within with the incentives extended, sales tax exemption was accorded to the new industrial units set up or after 1.4.1991 as well as the existing units undertaking expansion, modernization or diversification

at the same location or at any other place in the State. The policy inter alia, clarified that the incentives thereunder, could not be claimed until an eligibility certificate was issued by the implementing agency and the unit concerned satisfied the conditions of eligibility therefor.

4. Subsequent thereto, the Govt. of Assam, in exercise of its powers under Section 9 (4) read with Clause (f) of Section 74 (3) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as the "Act"), framed a scheme known as Assam Industries (Sales Tax Concession) Scheme 1995, dated 16.8.1995) (hereinafter referred to as the "Scheme")), granting relief by way of full exemption of sales tax on purchase of raw materials within the State of Assam by the eligible industrial Units situated within the State and also on the sale of finished products manufactured by such Units in the State or in Course of interState trade and commerceXThe Scheme, which came into force with effect from 1.4.1991, defined the eligible industrial units entitled to the benefits thereunder. It provided a detailed procedure for applying for grant of eligibility certificate as well as the authorization certificate to be issued by the authorities specified therein. The industries excluded from the purview of the scheme were also catalogued.

5. The petitioners have asserted that in terms of this scheme, the petitioner company applied for an eligibility certificate before the appropriate authority and was issued the same on 31.3.1998, certifying sales tax exemption from 5.2.1996 to 4.2.2003} The petitioner company also applied for the authorization certificate before the Superintendent of Taxes, Julukbari Check Post, Guwahati, which eventually was issued on 3.9.1999, indicating it to be valid till 4.2.2003 It was at this juncture that by the impugned notification also issued under Section 9 (4) of the Act that an amendment to the scheme was introduced inter alia, including the following industries in the list, of industries ineligible for the benefits thereunder. The resultant Assam Industries (Sales Tax Concession) (Amendment) Scheme, 1999 (hereinafter referred to as the "Amended Scheme, 1999"), was given effect to from 17.11.1999. The following industries were added.

"15. Coal to Wash coal, sized coal 25. Cpal washing."

No affidavit has been filed by the respondents.

6. Dr. Saraf, has urged that the scheme having been formulated to implement the Industrial Policy 1991, the State Government lacked competence as well as authority to effect any amendment incompatible with the said policy and therefore, the Amended Scheme, 1999, is liable to be adjudged, illegal and non est. in law. The Industrial Policy, 1991, being the yield of a Cabinet decision, the same could not have been tinkered with by any department of the State in the manner enumerated in the impugned scheme of 1999. He urged that the Finance Department of the State being only an authority, empowered to implement the prescripts of the scheme founded on the industrial policy, it lacked jurisdiction to decide on the issue of eligibility and, therefore, the Amended Scheme 1999,

being antithetical to the letter and spirit of the policy, is liable to be adjudged invalid, null and void. Dr. Saraf, argued that the petitioner company having established its new industrial unit at Beltola, Guwahati, by making huge investments, acting on the promises held out in the industrial policy and it having been granted the eligibility certificate assuring full sales tax exemption for a period of seven years upto 4.2.2003, the State respondents were estopped in law from rolling back the said benefit under the cover of the Amended Scheme. The 1995 Scheme, having been framed to effectuate the promises and assurances made in the industrial policy and the petitioner company, having altered its position by acting thereon, the respondents cannot be permitted to resile from its representation and on that count as well in 1999 scheme, is liable to be struck down as ineffectual and inoperative in law. In support of his submissions, the learned Senior counsel pressed into service the decision of this Court in W.A. No. 208 of 2003, Union of India Vs. Shri Ganapati Rolling Mills Pvt. Ltd., (2006 (4) GLT 1). Dr. Saraf, further urged that the ratio of the decision in Sunrise Biscuits Company Ltd. & Anr. Vs. State of Assam & Ors., squarely covers the issue raised in the instant proceeding and to binding on the parties, the determinations therein, have remained unassailed.

Mr. Dubey, as against this, while submitting in principle to the proposition of law laid down in Sunrise Biscuits Company Ltd. (supra), has contended that in absence of any factual foundation in the writ petition to substantiate the plea of promissory estopped, the contention based thereon, is wholly untenable.

7. The pleaded facts as well as the arguments advanced have been duly noted. In absence of any affidavit on behalf of the respondents", the statements made in the writ petition, have remained unrebutted. Some undisputed facts may be briefly noticed before adverting to the legal issues.

The preamble of the Industrial Policy of 1991, demonstrates that the same had been formulated to review the existing industrial policy and the incentive scheme thereunder, being conscious of the necessity of ensuring speedy industrial development of the State and generation of indigenous employment opportunities through selfemployment in the industrial sector. The motivating factor evidently had been to meet the genuine aspirations of the people through economic and industrial development of the State within a time frame. The policy aimed at encoring growth and promotion of industries based on local environment and to the extent possible by utilizing locally available raw materials. The new package of incentives comprehended therein, was to remain in operation for a period of five years commencing from 1.4.1999 or till such time, as the Government would consider it necessary. New units set up on or after 1.4.1991 and the existing units undertaking expansion, modernization or diversification at the same location or at any other place in the State of Assam were the declared to be eligible to avail the incentives under the policy. A new unit was defined to be one that had taken all the initial effective steps on or after 1.4.1991 and an unit in commercial production at any time prior to 1.4.1991,

was to be considered as an existing unit. The policy clarified that no right to claim for any incentive thereunder, was recognized merely by the fact that the unit concerned had fulfilled the conditions unless the Eligibility certificate had been issued by the implementing agency concerned that it had complied with the norms of eligibility) The eligibility certificate was to be issued by the Udyog Sahayak of the Directorate of Industries/ District Industries Centre for the SSI Sector and Assam Industrial Development Corporation for the medium and large sectors. The policy mandated that such certificate was to be issued after ensuring that all the precepts of eligibility had been fulfilled. The package of incentives offered included sales tax exemption on the purchases of raw materials and sale of finished products for a period of seven years.

8. In exercise of powers under Section 9 (4) read with Clause (f) of subsection (3) of Section 74 of the Act, the scheme was framed for granting relief by way of full exemption of sales tax on the purchase of raw materials within the State of Assam by the eligible industrial units situated within the State of Assam and also on the sale of the finished products, manufactured in such units in the State or in course of interState trade or commerce. The Scheme, which came into effect on and from 1.4.1991, defined eligible industrial units under category A, B and C of Clause 2 thereof. Whereas, category A envisaged a new industrial unit having its registered office within the State of Assam, having completed the initial effective steps on and after 1.4.1991, an existing industrial unit having its registered office within the State of Assam and was in production at any time prior to 1.4.1991, undertaking expansion/modernization/diversification to the minimum of 25 per cent at the same location or at other place (s) of the State within an additional employment of 10%, was placed under category B. Category C, contemplated an industrial unit having its registered office within the State of Assam and declared as a relief undertaking by the State Government under the provisions of f the Assam State Industrial Relief Undertaking (Special Provisions), Act, 1984. The scheme specified the categories of industries to be ineligible for any benefit thereunder. The petitioners' industry i.e., Coal Washing, was not included in the said list.

9. The petitioner company in terms of the incentives offered in the industrial policy in the scheme, made substantial investments to set up its new industrial unit at Beltola. On applications being made by it, it was granted the eligibility and authorization certificates under the scheme following necessary enquiries and completion of the essential formalities. Incidentally, the Commissioner of Taxes, Govt. of Assam, was a member of Udyog Sahayak Committee. The eligibility certificate was to remain valid from 5.2.1996 to 4.2.2003. The certificate of authorization issued on 3.9.1999 by the senior Superintendent of Taxes, Jalukbari, Check Post, Guwahati, mentioned its validity to be upto 4.2.2003. By the Amended Scheme 1999, amongst others, Coal Washing Industry was included in the list of industries under the scheme. Consequently, the benefits thereunder, to which the petitioner was entitled in terms of the industrial policy stood withdrawn.

10. In absence of any written response from the respondents, the statements made in the writ petition have remained un rebutted. The chronological course of events as pleaded, however, are not in dispute. As is evident from the arguments advanced on behalf of the respondents the reservation pertains only to the primary facts forming the edifice of the plea of promissory estoppel.

11. In an identical fact situation, this Court in Sunrise Biscuits Company Ltd. (Supra), while dealing with the same contentions, had held that a government perceived under the Constitution of India and the departments thereof, cannot adopt policies inconsistent with each other lest the same reveals an arbitrary manner of governance jeopardizing the rule of law. It held that the Amended Scheme 1999, in the background of the notification circulating the same and published by the department of Finance, Government of Assam, was in conflict with the Industrial Policy announced by the Department of Industries, Government of Assam. It was of the view that the exercise of power under Section 9 (4) read with Clause (f) of subsection (3) of Section 74 of the Act, has to be compatible with the industrial policy. It was thus declared that the Amended Scheme 1999, to the extent, it was repugnant to the Industrial Policy 1991 and had the effect of withdrawing the facilities provided under the scheme was not sustainable. Consequently, the same was quashed. The plea of promissory estoppel was also upheld in the contextual facts following an exhaustive survey of the law on the issue.

12. A Division Bench of this Court, in Union of India Vs. Shri Ganapati Rolling Mills Pvt. Ltd. (Supra), while dwelling on the role of the cabinet in a parliamentary democracy summed up its view in the following terms :

"The Cabinet being a general controlling body is constitutionally entrusted With the duty of formulating national policy whose decisions are binding on all governmental departments. The decisions so taken by the Cabinet are bound to be implemented by each and every wing of the Government as it is not open to any individual department either to modify or act contrary to the decisions so taken by the Cabinet;) every department is bound by the collective decisions taken by the Cabinet. The Cabinet is an integral one which functions through various departments. It is on the basis of the documents submitted, and the result of the discussions amongst its members, the Cabinet comes to a conclusion; thereafter the decision is carried out by all the departments. The department concerned is required to issue appropriate notifications in order to effectuate the policy decision so taken by the Cabinet even if it involves drafting of a legislation or framing of a rules as the case may be. Issuance of notification in exercise of the statutory functions in order to give effect to a broad policy decision of the Cabinet, are considered to be ministerial acts/ft would be futile to contend that the policy decisions taken by the Cabinet would remain dead letter unless the concerned department moves in the matter and issue notification implementing the decisions The argument if accepted may result in disastrous consequences and may cut at the very system of Constitutional Governance

which we have give unto ourselves citizens cannot be made scapegoats in the cross fire between the interdepartmental feuds or deadlocks. "

13. The Industrial policy of 1991, being an upshot of a Cabinet decision to foster growth of industrialization in the State, thus paving the way for opening increased avenue of selfemployment in the industrial sector and utilization of locally available raw materials, it was a conscious step to live up to the genuine societal expectations by ushering in an era of economic and industrial development in the State. I see no compelling or cogent reasons, having regard to the basal principles of Governmental functioning in a democracy governed by the rule of law to take a different view. The assertion that the writ petition lacks in basic facts to sustain the plea of promissory estoppel is not convincing in absence of any repudiation of the available materials to the said effect.

14. In the above premise, the petition succeeds. The Amended Scheme 1999 to the extent it is irreconcilable with the Industrial Policy of 1991, is declared unconstitutional and non est. in law. As a corollary, the respondents are restrained from realizing sales tax from the petitioner company for the period for which it was entitled to the exemption under the Industrial Policy of 1991 and the scheme of 1995. The parties, however, would bear their own costs.