
(2000) 02 J&K CK 0010
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 191/90

Metal Field Industry

APPELLANT

Vs

State of Jammu and Kashmir

RESPONDENT

Date of Decision : 11-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14
General Sales Tax Act, 1962 — Section 5

Citation : (2000) SriLJ 240 : (2000) 1 SriLJ 240

Hon'ble Judges : O.P.Sharma, J

Bench : Single Bench

Judgement

1. The only question involved for determination is whether the exemption from payment of sale tax granted in terms of notification No. SLO671, the benefit of which was extended to the additional goods manufactured by the small scale industrial unit in term of SRO87 dated 08031985 could be withdrawn before the expiry of the period during which it could be availed of by the units. The petitioner is partnership firm engaged in the manufacture and sale of aluminum utensils. According to the petitioner vide notification No. SRO671 of 1979 the goods manufactured by it were exempted from payment of sale tax for a period often years. Since the petitioner unit was established in 1977 and went into production in October. 1978. therefore, the exemption from payment of sale tax was available to it upto October. 1988 which it did.avail. However, vide SRO87 of 1985 the additional goods manufactured by small scale industrial units registered with the Department of Industries and Commerce were also granted exemption subject to the condition specified in the aforesaid notification. This exemption was also available in the same manner as granted under

SRO 671 of 1979. The case of the petitioner is that SRO87 of 1985 prompted it to increase production. It. therefore, started manufacture of

aluminum utensils in moulded form w.e.f. Feb.. 1984. Since these goods were manufactured in addition to the capacity and accordingly it applied

for exemption from payment of sale tax under SRO87 of 1985. The respondents, it is admitted accepted the case of the petitioner for exemption

from payment of sale tax under SRO 87 of 1985 upto 31031989. However, vide notification SRO135 dated 29031989. SRO671 of 1979 and

SRO87 of 1985 were superseded and the level of exemption from payment of sale tax reduced only upto 75% of the normal rate of tax. Further

vide SRO136 dated 29031989. the procedure for availing the exemption was notified.

2. The grievance of the petitioners is that having availed of the exemption under SRO87 of 1985 it applied for renewal of the exemption certificate

in May. 1989 but respondent1 informed it that SRO87 having been superseded, no exemption was available. It was thus refused renewal of

exemption certificate but no formal order was passed rejecting the application for renewal of the certificate. The petitioner seeks i) declaration that

SRO136 of 1989 dated 29031989 be held not applicable to the petitioner regarding the additional goods manufactured by it as the exemption will

be available for 10 years and ii) that the respondents be not allowed to withdraw the exemption as they have held out a promise on the basis of

wh'cli the petitioner established the industry. The respondents. It is further pleaded are bound to honour their commitment on the principle of

Promissory Estoppel.

3. The stand of the respondents is that the principal of promissory Estoppel is not attracted because the petitioner did not set up its unit pursuant to

any industrial policy. They have also denied that petitioner had commenced manufacturing of additional goods by acting on the promise made in

SRO87 of 1985. Their further plea is that the power to grant exemption under section 5 of the General Sales Tax Act. includes the power to

withdraw the exemption as and when not found justified. The power to exempt goods from payment of sales tax being legislative in nature, the

notification impugned it is stated cannot be called in question.

4. The contention of Mr. S.Dutt. learner counsel appearing for the petitioner is

that state Government having hold out promise for grant of incentive which included ten years exemption from payment of sales tax cannot be allowed to withdraw from it because the petitioner had acted on the promise and made an investment in cutting up the unit. He further argued that Director of Industries had vide letter dated 21/08/1986 coin eyed the approval for manufacturing of aluminum utensil moulded form (handmade aluminium utensils) and the General Manager had certified that this additional production commenced w.e.f 01/02/1988. The petitioner was thus entitled to exemption till the year 1988.

5. Mr. Raina appearing for the respondents argued that section 5 of the General Sales Tax Act empowers the Government to grant exemption

from payment of sale tax either wholly or in part. The government had vide SRO671 of 1979 exempted the goods manufactured by small scale

industrial units from payment of sale tax. However, this exemption was partly withdrawn vide SRO136 of 1989.since section 5 empowers the

State Government to grant exemption either wholly or partly, the exercise of the power cannot be challenged except when it is not in public

interest. The operative portion of notification SRO671 dated 18/12/1979 reads as undcr:

No units shall be entitled to exemption for a period exceeding 10 years from the dale of commencement of manufacture of goods inclusive of the

period in respect of which exemption was admissible before 1st April, 1977 under Notification SRO 468 dated 1877. or any other Notification in

this behalf.

6. It is not disputed that petitioner is entitled to exemption as its unit falls in one of the categories mentioned in theannexure1. So the exemption was

for a period of 10 years. However, SRO 87 of March, 1985 provided as under

SRO87:In exercise of the powers conferred by section 5 of the Janimu and Kashmir General Sale Tax Act, 1962 (xx of 1962) the Government

hereby exempt from payment of tax. The additional goods manufactured by the Small Scale Industrial units in the state registered with the

Department of Industries and commerce or with the Directorate of Handicrafts and Handlooms which are also registered as dealers with the Sales

Tax Department, under the aid Act.

The 'additional goods' for purpose of this notification shall mean:unit was

previously registered, as are manufactured in excess of previous assessed capacity. Provided such quantity is more than 10% of the original capacity, (ii) Goods for which no registration existed previously and which have been manufactured only as a result of additional line of manufacturing registered with the respective directories.

The exemption shall apply in the same manner as was applicable to the Small Scale industrial unit as per SRO671 dated 18th December, 1979.

The period of the exemption shall be counted from the date of commencement of production of additional goods.

7. Since the period of exemption under SRO671 was 10 years, the claim of the petitioner in that in respect of the additional goods, it was entitled

to a exemption from payment of tax for a period of ten years because this SRO was deemed to have come into force w.e.f. 25061979 i.e. even

prior to the date SRO671 was notified. So the exemption to the additional goods manufactured by the Small Scale Industrial units was to apply in

the same manner as was applicable in terms of SRO671 of 1979. The period of exemption it is further provided was to count from the date of

commence at of production of additional goods. It is this para of the notification on which the entire case of the petitioner rests. SRO671 nodoubt

granted exemption from payment of Sale Tax for 10 years but vide SRO136 the exemption has been reduced to the extent of 75% of the normal

rate. This notification reads as under:

SRO136: In exercise of the points conferred under section 5 of the Jammu and Kashmir General Sales Tax Act, 1962 (XX of 1962) and in

undersession of notification SRO's 671, 118 and 87 dated 18121979. 3131984 and 831984 respectively, the Government hereby, direct that the

goods manufactured by a dealer operating Small Scale Industrial Unit, having his place of business in the State and registered with the Department

of Industries and Commerce, Directorate of Handicrafts of Jammu and Kashmir or with Handloom Development Corporation, shall, subject to the

conditions specific below, be exempt from levy of tax to the extent of 75% of the normal rate of tax applicable as per notification SRO135 dated

2931989:

(1) the dealer furnishes quarterly and annual returns duly supported by regular account books or required by or under the said act;

(2) the dealer is not guilty of an offence specified under sections 15(5). 15A. 17(i) (f) (K) and (1) of the said Act. during the accounting year in

which the concession is available;

Provided that the above exemption shall not apply to the goods specified in the statement forming annexure 'A to this notification.

The provisions of this notification shall also apply mutatis mintantis to a dealer who operate; Large and Medium Scale Industrial Unit manufacturing

Electronic goods and precision instruments in the State. Explanation: For the purpose of this notification the term 'manufacture' means a process by

which raw material is converted into an entirely different commercial commodity.

This notification shall have effect from 141989 and shall remain in force upto 3131990.

By order of the government of Jammu and kashmir.

8. The question is whether the government could withdraw the exemption partly or wholly. It is the admitted case of the petitioner that the Small

Scale Industrial Units which commence production after 01041978. the exemption from the Sale Tax as per government order No. 65Industries of

1984 was 100% for first three years, 75% for next two years. 50% for the 7th and 8th year and 25% for the remaining two years. SRO135 and

136 do not appear to be inviolation of the aforesaid government order because the government never promised total exemption at any given point

of time. Moreover, SRO671 of 1979 does not provided that exemption shall not be for a period exceeding ten years. This means the period of

exemption could be less than ten years also.

9. This apart in order to attract the Principle of Promissory Estoppel, the petitioner has to prove that the State Government had offered exemption

from payment of sale tax for 10 years to the existing Small Scale Industrial Units, in case they (Sic) argument their production. No such proof has

been furnished. The entire case rests on SRO 87 of 1987 which only provided that exemption in terms of SRO671 of 1979 will be available to the

goods manufactured in excess of the previous assessed capacity provided such quantity is more than 10% of the original quantity. Unless the

promise is established the withdrawal of exemption cannot be challenged. In 'Arvind Industries and Others Vs. State of Gujarat and Others',

(1995) 6 SCC 53. it was held that:

9. The appellant has been entirely unable to make out any factual basis for a case of promissory estoppel. The appellant cannot claim that merely

because it has set up its industrial unit at Junagadh at a certain point of time, the fiscal laws of the State must remain unaltered from that date. The

appellant has not been able to show that some definite promise was made by or on behalf of the Government and the appellant has acted upon that

promise to its detriment has thereafter the charges affected by the notification dated 17071971 have caused great prejudice to the appellant.

10. As noticed above the notification SR)87 of 1985 is not preceded by any promise and since the exemption is granted under section 5 of the

General Sales Tax Act, the same cannot be withdrawn or modified by exercising the same power. We may now consider the scope of section 5 of

the General Sales Tax Act which empowers the government to grant exemption from payment of sale tax wholly or partly. A similar power exists

under section 25 of the Customs Act, 1962 in the Government of India. Vide Notification No. 66 dated 15031979 the Government of India

exempted polyvinyl chloride resins from Customs duty. This order was withdrawn by notification No. 205/TNo. 355/1417 80 Cus 1 dated 16101980.

This was challenged by Shrijee Sales Corporation and Another before Delhi High Court. The writ petition was dismissed. The petitioner

challenged the judgment of the High Court in 'Shrijee Sales Corporation and another Vs. Union of India'. 1995 (3) SCC 398. While dismissing the

petition the High Court of Delhi relying on its earlier judgment in the case of 'Bombay Conductors and Electricals Ltd. Vs. Govt. of India. 1 (1986)

23 ELT 87 (DSL) held that estoppel cannot be invoked where the result will be to compel the Government to continue the exemption which a

competent enactment as validly authorised the executive to withdraw in the public interest at any time. The court also held that in public interest

exemption can be granted and in public interest the exemption can be rescinded. The rights of individual according to the Full Bench are

subordinate to the paramount interest of the public good and section 25 of the Customs Act underlines the importance of the common good.

Public interest according to the Bench dominates the economic scene. If in public interest the Central Government finds that it is necessary to

protect its own industry by putting up a Tariff wall, it will be futile to say that it cannot do so because it is bound by its promise to continue the

exemption upto a particular time. ""The traders may feel insensed at the behaviour of the executive at its imposition, exemption, reimposition and resumption of tax and levien but when to exempt and when to impose duties is left to the executive by the Legislature. It will depend on the economic climate. New time require new measures."" This observation appears to have been approvedby their Lordships because the same notification was upheld in 'Kasinka Trading Vs. Union of India', 1995 (1) SCC 274. The decision in case of Kasinka (supra) was followed by the three member Bench in 'Shrijee Sales Corporation & another' case (supra) by observing as under:

5. In Kasinka, the court has actually gone into this aspect. In para 19, the court says: (SCC pp. 28687) 'PVC resins, it is not disputed, is manufactured in India and is also imported from abroad. In the counter to the writ petition filed by the Union of India in the High Court, the justification for the issuance of the Exemption Notification No. 66 of 1979 in the 'public interest' was spelt out by the respondents. It was stated that it was with a view to equalising sale prices of the indigenous and the imported material and to make the commodity available to the consumer at a uniform price, keeping in view the trends in the supply of the material, that the Cabinet had decided to issue the Exemption Notification No. 66 of 1979 under Section 25 (1) of the Act. Subsequently, when it was found and realised tilt the international prices of the produce were falling and consequently the import prices had become lower than the exfactory prices of the indigenous material, the material was examined by the Government of India and it was decided in 'public interest' to withdraw the exemption notification. Thus, the Union of India has disclosed the circumstances under which the exemption was initially granted as well as the change of circumstances which warranted the withdrawal of the exemption notification. The reasons given by Union of India justifying withdrawal of the exemption notification. In our opinion, are not irrelevant to the exercise of the power in 'public interest'"" nor are the same shown to be insufficient to support the exercise of tilt power. From the material on the record it is apparent that the exemption notification issued under section 25(1) of the Act, in 'public interest', was designed to effect the excess price which the local entrepreneurs were required to pay for importing PVC resin at a time when the difference between the indigenous product

and the imported product was substantial. No importer could be expected to import PVC resins after paying duty and incur losses. The exemption

notification, was therefore issued with a view to offset those losses to the extent possible. The exemption notification was not issued as a potential

source of extent profit for the importer. Again, at the time when the notification was withdrawn by the Government there was no scope for any loss

to be suffered by the importers as was clearly stated in the counter filed by the Union of India and which contention has remained un rebutted. From

the counter filed by the Union of India in the High Court it is abundantly clear that the necessity for the continuation of the exemption, in view of the

changed circumstances, was no longer necessary." 6. It can be seen that the High Court in the case of Bombay Conductors had also noticed.

Similar public interest in withdrawing the notification of exemption. The appellants in the present case has not disclosed any facts which could show

the existence of better equity in their favour. All that they have alleged is that they would not have imported the PVC resin without the exemption as

that would have been "unviable" and "uneconomical" and further that many persons took full advantage of the exemption. Moreover, the

exemption accorded preferential treatment to some persons, but not to the appellants. The facts of the economic situation explained in the

judgment of Kasanka have not been controverted. Nor as it alleged by the appellants that public interest did not call for supersession of the

Notification No. 66.

11. SRO136 has been issued in exercise of power conferred under section 5 of the Jammu and Kashmir General Sales Tax Act. It has been

issued in public interest and there is nothing in the petition to hold that it is not in public interest. In view of this there is no merit in this petition which

is liable to be dismissed and this is dismissed accordingly.