

(2023) 03 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.1251 Of 2008

M/s Ruchira Papers Ltd

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Citation : (2023) 03 SHI CK 0078

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : K.D. Sood, Sanjeev Sood, Mukul Sood, Balram Sharma, Anup Rattan, Rakesh Dhaulta

Final Decision : Disposed Of

Judgement

Satyen Vidya, J

1. By way of instant petition, the petitioner has prayed for following substantive reliefs:-

“(a). Issue writ direction or orders in the nature of mandamus quashing the notification dated 27.06.2008 Annexure PA issued by respondent No.1 and declaring it illegal and bad in law and null and void;

(b). Direct respondents to provide benefit to the petitioner as provided in the office memorandum dated 07.01.2003, Annexure P-1, Annexure P-2, Annexure P-3 and Annexure P-4, respectively;”

2. Ministry of Commerce and Industry, Government of India, vide Office Memorandum dated 07.01.2003 had promised certain fiscal incentives for industries in the States of Uttaranchal (now Uttarakhand) and Himachal Pradesh. According to the said Office Memorandum new industrial units and existing industrial units on their substantial expansion were promised the following incentives :-

(a) 100% out right excise duty exemption for a period of 10 years from the date

of commencement of commercial production;

(b) 100% income tax exemption for initial period of five years and thereafter 30% for companies and 25% for other than companies for a further period of five years for the entire states of Uttaranchal and Himachal Pradesh from the date of commencement of commercial production.

(c) Eligibility for capital investment subsidy @15% of their investment in plant and machinery, subject to a ceiling of Rs.30 lakh.

3. However, the above noted incentives were not available to the industries mentioned in negative list, (Annexure-III) of Office Memorandum dated 07.01.2003. Pertinently, the eligible industrial units as well as the units in negative list had specific reference to their respective excise classification(s).

4. Respondent No.1 issued another Office Memorandum dated 21.06.2005 and thereby amended Annexure-III of Office Memorandum dated 07.01.2003 in respect of paper industry and included excise classifications 4802.90 and 4804.90 under heads "Others". Office Memorandum dated 21.06.2005 was challenged by the petitioner before this Court by way of CWP No. 756 of 2005, which came to be decided by a Division Bench of this Court on 23.04.2008 in following terms:-

"Heard learned counsel for the parties.

The learned counsel for the parties agreed that Office Memorandum can only be enforced when there is notification. It is admitted on behalf of the respondents that there is no notification till date. Accordingly, it is directed that no action be taken only on the basis of the Office Memorandum contained in Annexure P-13 dated 21.06.2005. Once the notification in this regard is issued it would be open for the authorities to act in accordance with the said notification.

With these observations, both the writ petitions are disposed of, so also all other pending applications."

5. Respondent No.1 thereafter issued notification dated 27. 06.2008 incorporating amendments in Annexure -III of Office Memorandum dated 07.01.2003 and included products with excise classifications 4802.90 and 4804.90 in the negative list under the heads "Others". In this background, petitioner has assailed the notification dated 27.06.2008 by way of instant petition.

6. In pursuance to Office Memorandum dated 7. 01.2003, respondent No.1 had issued Notification dated 8. 01.2003 and thereby floated a scheme of central grant or subsidy for industrial units in the States of Uttaranchal and Himachal Pradesh. The scheme was made applicable for a period of 10 years to all industrial units in the growth centers approved for Uttaranchal and Himachal Pradesh and also to the new industrial units or industrial units with substantial expansion in growth centers or industrial infrastructure development centers or

industrial estates set up by States of Uttaranchal and Himachal Pradesh and to new industrial Units or existing units on their substantial expansion in the specified thrust and centers located outside these growth centers and other identified locations. The eligible industries could claim benefit under the scheme for a period of 10 years from the date of commencement of commercial production. The maximum limit of subsidy on capital investment was capped at Rs.30 lakh. Industrial units not entitled for benefit of the capital investment subsidy scheme were detailed in Annexure-III appended to the said scheme.

7. Respondent No.1 further issued notifications Nos. 49 of 2003 and 50 of 2003, dated 10.06.2003, whereby eligible industries were exempted from payment of excise or additional duty of excise for a period of 10 years. The industries which had commenced their commercial production on or after 7. 01.2003 and industrial units existing before 07.01.2003, which had under taken substantial expansion by way of increase in installed capacity by not less than 25% on or after 07.01.2003 were made eligible for the benefit of exemption so granted. In these notifications also negative list having reference to excise classifications was Annexed.

8. Evidently, the above noted notifications dated 8. 1.2003 and 10.6.2003 were independent of O.M. dated 7. 1.2003 and carried their individual efficacy.

9. Initially, the petitioner was engaged in production of kraft paper at its industrial unit in District Sirmour. Subsequently, petitioner installed another unit for production of printing and writing paper also at same place. As regards, first unit of petitioner manufacturing kraft paper, it is the case of the petitioner that substantial expansion had been under taken in terms of Office Memorandum dated 07.01.2003, notification dated 08.01.2003 and notifications dated 10.06.2003, making the petitioner eligible for benefits of subsidy in capital investment and exemptions in payment of excise duty. The second unit of petitioner producing printing and writing paper is stated to have been established in the year 2008 during continuance of aforesaid Office Memorandum and notifications.

10. The grievance of the petitioner is with respect to inclusion of the commodities produced by it i.e. kraft paper (4804.90) and printing and writing paper (4802.90) in negative list vide Notification dated 27.6.2008. As per petitioner, both these products were not included in the negative lists as detailed in Office Memorandum dated 07.01.2003, notification dated 8. 01.2003 and notifications dated 10.06.2003. It was only by way of Office Memorandum dated 21.06.2005 that the paper products having excise classifications No.4802.90 and 4804.90 were included in the negative list under heads "Others" and the same amendment was subsequently incorporated by way of impugned notification dated 27.06.2008. As per petitioner, on the clear representation of respondents to provide fiscal incentives to eligible industries in the State of Himachal Pradesh, petitioner had made huge investment by way of substantial expansion in existing unit and installation of new unit. Office Memorandum dated 21.06.2005 or

notification dated 27.06.2008 could not be applied against the rights of the petitioner for the reasons firstly that petitioner had changed its position substantially on the basis of promise extended by respondents and secondly, the amendment made by way of aforesaid Office Memorandum and notification could not be applied retrospectively.

11. Respondent No.1 has contested the claim of petitioner on the ground that the negative list appended or annexed with Office Memorandum dated 07.01.2003, notification dated 8.01.2003 and notifications dated 10.06.2003, were inclusive of products manufactured by petitioner.

Respondents No.2 and 3 have also raised the same defence. However, on facts it has not been denied that petitioner had undertaken substantial expansion in its first unit and had raised its second unit within the period of continuance of incentive period.

12. We have heard learned counsel for the parties and have also gone through the entire record carefully.

13. In view of the pleadings of the parties, the question that arises for determination is whether the products manufactured by petitioner were included in the negative list right from the inception and if not so, whether the benefits of fiscal incentives could be denied to the petitioner by giving retrospective effect to notification dated 27.06.2008 issued by respondent No.1?

14. It is not in dispute that inclusion and exclusion of eligible or negative industries were made with reference to excise classifications of the product(s). As regards paper industry, the products of kraft paper with excise classification 4804.10 was kept in negative list. Similarly, writing or printing paper with excise classification 4802.10 was one of the subjects in the negative list appended and annexed with the aforesaid Office Memorandum or the notifications. Vide Office Memorandum dated 21.06.2005, products with excise classification 4802.90 and 4804.90 were included. It was after passing of order dated 23.04.2008 by the Division Bench of this Court in CWP No. 756 of 2005, titled M/s Ruchira Papers Ltd. vs. Union of India & Ors that impugned notification dated 27.06.2008 came to be issued in same terms as contained in Office Memorandum dated 21.06.2005.

15. Petitioner has specifically averred in the petition that its product i.e. kraft paper had specific excise classification as 4804.90 and other product manufactured by petitioner i.e. printing and writing paper fell in excise notification 4802.90. The Kraft paper included in the negative list initially had excise notification 4804.10, which was specifically assigned to kraft paper supplied to a braille press against an indent placed by the National Institute for Visually Handicapped, Dehradun. Similarly, product included in negative list against excise classification 4804.20 was kraft paper used in the manufacture of cartons for packing of horticultural produce. In the same manner, printing and writing paper initially included in the negative list related only to products with

excise classifications 4802.10, 4802.20 and 4802.30. As regards excise classification of product 4802.10, it pertained to writing or printing paper used for printing of educational text books. Excise classification 4802.20 included such paper or paper board in the manufacture of which (a) the principal process of lifting the pulp is done by hand; and (b) if power driven sheet forming equipment is used, the Cylinder Mould Vat does not exceed 40 inches. Lastly, the product with excise classification 4802.30 related to Maplitho paper supplied to a braille press against an indent placed by the National Institute for Visually Handicapped Dehradun. According to petitioner, it produced kraft paper used for packing material and further its product of printing and writing paper was other than the products included in excise classifications mentioned in the negative list.

16. The respondents have contested the above-mentioned stand of the petitioner. However, we have not found any substance in such defence. The negative list made specific inclusion of products by their excise classifications. The products of kraft paper and printing and writing paper included in negative list had their particular species, which definitely did not include product as manufactured by the petitioner. This action becomes evident from the fact that respondent No.1 had to include the remaining types of kraft papers as well as printing and writing paper in the category of "Others" under excise classifications 4802.90 and 4804.90 by amending Office Memorandum dated 07.01.2003, firstly by bringing out Office Memorandum dated 21.06.2005 and thereafter by way of impugned notification dated 27.06.2008.

17. Noticeably, what has been amended by way of impugned notification dated 27.06.2008 is Annexure-III of Office Memorandum dated 07.01.2003. As also observed by a Division Bench of this Court while deciding CWP No. 756 of 2005, Office Memorandum can only be enforced when there is a notification.

The fact of the matter is that Office Memorandum dated 07.01.2003 had been followed by notification dated 08.01.2003 extending benefit of subsidy in capital investment and further notifications No.49 and 59 dated 10.06.2003, whereby the benefit of exemption or payment of excise duty was extended. All these notifications had appended or annexed a negative list each with them. These negative lists were in identical terms as Office Memorandum dated 07.01.2003. These notifications were not amended. Similarly, appendice attached to said notifications specifically the negative lists remained the same. Thus, the benefit extended by these notification(s) remained available to all eligible industrial units save and except those mentioned in the negative list. As held above, the products manufactured by the petitioner were not mentioned in the negative list(s) annexed with all these notifications.

18. As a necessary corollary to what we have held above, the first part of questions formulated in paragraph 12 supra needs to be answered in affirmative and second part in negative. However, it is not understandable as to on what cause the petitioner has approached this Court for the reliefs as noted hereinabove. As regards first relief, the same will not have any affect either way

on the rights available to the petitioner under the aforesaid notifications for the simple reason that none of these notifications have seen any amendment. In respect of second relief, we have not found any pleadings in the petition, which may provide cause of action to the petitioner. The entire thrust of attack in the petition is on the amendment carried in the negative list by respondent No.1 by way of amending notification dated 27.06.2008. There is not even a whisper that petitioner had ever made any claim to the respondents under the notifications dated 08.01.2003 and 10.06.2003 and the respondents had denied such claim(s). In the absence of such averments, the petitioner cannot be held to have made out a case for itself to seek indulgence of this Court.

19. Learned Deputy Solicitor General of India placed reliance upon a judgment dated 22.4.2020 passed by Supreme Court in a bunch of matters with lead case titled Union of India and another Versus M/S V.V.F. Limited and another Civil Appeal Nos. 2256-2263 of 2020, to support its contention that the amendment carried vide notification dated 27.6.2008 was mere clarificatory and in public interest, therefore, would have retrospective effect. We, however, do not find applicability of judgment so referred to the facts of instant case for the simple reason that we have already held that there was no amendment either in the notifications dated 8.1.2003 and 10.6.2003 issued by respondent No.1 or their appendices/ annexures, hence determination of question regarding attachment of retrospectivity or retro-activity has not arisen.

20. In the light of above discussion, we dispose of this petition by holding that the petitioner has failed to make out any cause of action for seeking reliefs as prayed by way of instant petition. However, it shall be open to the petitioner, if permitted by law, to approach the respondents for availing necessary benefits under the aforesaid notifications and in such event, respondents shall decide the claim(s) of the petitioner strictly in accordance with law. Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.