

(2014) 02 TP CK 0005

In the Tripura High Court

Case No : Writ Petition (C) No. 371 of 2002

M/s. Tripur India Private Limited VsThe State of Tripura

Date of Decision : 05-02-2014

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (2014) 69 VST 252

Hon'ble Judges : Deepak Gupta, C.J;S.C. Das, J

Bench : Division Bench

Advocate : B. Banerjee, for the Appellant; S. Chakraborty, Additional Government Advocate, for the Respondent

Judgement

Deepak Gupta, C.J.—Both these writ petitions are being disposed of by a common judgment since the question of law involved in these petitions is identical. The State of Tripura had notified a scheme for protection and encouragement of industry within the State on 27.10.1990. This scheme was applicable to all new industrial units established after 01.04.1990 and those existing units in which substantial expansion was done after 01.04.1990. In terms of this policy sales tax exemption was granted to eligible units and this exemption was granted for a period of 5 years w.e.f 01.04.1990 up to 31.03.1995. The units of both the petitioners were established prior to 31.03.1995 and the promise held out to them was that they would be eligible for sales tax exemption up to 31.03.1995.

2. In the year 1995, the State of Tripura adopted another scheme known as the Tripura Incentive Scheme, 1995. This was a much more detailed scheme and the benefit under the scheme was also given to those industries which had been set up prior to 01.04.1995 i.e. the date of implementation of the scheme.

We are concerned with sub-clause (d) of Clause 10 of the scheme which reads as follows:

(d) All Industrial units which were eligible for exemption under Revenue Department's Notification No. F.1-4(1)-TAX/86 dated 27.10.90 shall get the

Sales Tax exemption w.e.f 1.4.1995 subject to the following stipulations and conditions:--

- (i) Total exemption including the exemption availed under earlier Notification will not exceed a period of five years.
- (ii) The benefit will be available for a period of five years from the date of first production irrespective of the fact that any unit has closed down between or has manufactured goods after a gap or many gaps in between.
- (iii) Exemption will be available only on the finished product. No exemption will be available on raw materials and packing materials except when exemption for raw materials has been notified under Rule 37 of Sub-Rule 3 of the TST Rules, 1976.
- (iv) If the newly set up Industry is sold or otherwise transferred to a new owner during the said period of five years the benefit of this notification shall be available to such transferee or the new owner only for the un-expired portion of the said period of five years.

The benefit to those units established prior to 01.04.1995 would be available for a period of 5 years and these 5 years were to be calculated from the date of first production. The scheme of 1995 was later replaced by a Scheme of 2002 and as per this scheme, the sales tax exemption was withdrawn and it was replaced by a scheme whereby the industry would pay the sales tax but could claim refund sales tax on fulfilling certain conditions.

3. In the present case, the two petitioners came into commercial production on 21.01.2000 in WP (C) 371 of 2002 and on 28.07.1999 in WP (C) 372 of 2002. The petitioners claim that they are exempted to sales tax for five years from the date when they started commercial production. The stand of the State is that this is not a case of promissory estoppel and that the benefit granted under the scheme of 1995 came to an end when the said scheme was replaced on 01.04.2002. The State in its reply has clearly stated that the benefit of sales tax exemption would be available to the claimants till 31.03.2002 but from that day onwards, they will be governed by the new scheme.

4. It is contended by Mr. B Banerjee, learned counsel for the petitioners that the State cannot withdraw what it has granted and that this is a case where the State is stopped from withdrawing the exemptions in view of the principle of promissory estoppel.

5. The Apex Court in *State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another*, clearly held that government is not precluded from withdrawing any exemption unless it is stopped from doing so on the ground of promissory estoppel. Even with regard to promissory estoppel, the Apex Court held that this is not an indefeasible right and the doctrine of promissory estoppel cannot apply against public interest and here must be equity in favour of the person who relies on the principles of promissory estoppel. We are not concerned with equity or

public interest because that is not a plea raised by the State. The only plea raised by the State is that the doctrine of promissory estoppel is not applicable to the facts of the present case.

6. The exemption granted from payment of tax is a freedom from an obligation which the exemptee would otherwise be liable to discharge. It is a privilege granted to the exemptee and such privilege is not available to others. It is an exception from the general tax law. An exemption or privilege of this nature granted under a fiscal/taxing statute is a concession granted by the State Government and the beneficiaries of such concessions are therefore not required to pay the tax which they otherwise would be liable to pay. The recipient of such a concession has no legally enforceable right against the government except to enjoy the benefits of concession during the period it is granted. This right is a defensible right and can be taken away by the very power under which the exemption was granted. In this behalf reference may be made to the judgments of the Apex Court in *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, ; *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, and *Shrijee Sales Corporation and Another Vs. Union of India (UOI)*,

7. In *State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another*, the Apex Court held as follows:

26. In this case the Scheme being notified under the power in the State Government to grant exemptions both u/s 15 of the RST Act and Section 8(5) of the CST Act in the public interest, the State Government was competent to modify or revoke the grant for the same reason. Thus what is granted can be withdrawn unless the Government is precluded from doing so on the ground of promissory estoppel, which principle is itself subject to considerations of equity and public interest. (See *STO v. Shree Durga Oil Mills.*) The vesting of a defeasible right is therefore, a contradiction in terms. There being no indefeasible right to the continued grant of an exemption (absent the exception of promissory estoppel), the question of the respondent Companies having an indefeasible right to any facet of such exemption such as the rate, period, etc. does not arise.

In *Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others*, the Apex Court after referring to the aforesaid judgment in *J.K. Udaipur Udyog Ltd.* (supra) held as follows:

33. The said decision itself is an authority for the proposition that what is granted can be withdrawn by the Government except in the case where the doctrine of promissory estoppel applies. The said decision is also an authority for the proposition that the promissory estoppel operates on equity and public interest.

It is thus clear that any statutory exemption granted by the State can be withdrawn and the only exception is where the doctrine of promissory estoppel applies. Even the right available under the doctrine of promissory estoppel is not an indefeasible right and both equity and public interest have to be taken into consideration. We are not going into these aspects of the matter since we are

clearly of the view that doctrine of promissory estoppel is not applicable to the facts of the case.

8. The doctrine of promissory estoppel can only apply in those cases where the person, who claims that the State is estopped from withdrawing a benefit/concession granted to him, has to plead and prove that he acted on the promise held out to him and changed his position to his disadvantage which has given rise to equities in his favour and, therefore, the State is estopped from withdrawing the concessions. In the present petitions, when the units were set up the Notification of 1990 was in force. It only granted exemption of tax up to 31.03.1995. There was no promise held out to the petitioners that they would be given any benefit after 1995. Therefore, they set up the industries prior to 31.03.1995 knowing fully well that the benefit would be available to them only till 31.03.1995.

9. True it is, that by the Incentive Scheme, 1995 the State gave benefits to these units set up prior to 01.04.1995 and as per the above quoted Clause of the scheme, the petitioners were entitled to benefit of sales tax exemption for a period of 5 years from the date of first production. Therefore, if the scheme was in force, the petitioners would have been right in claiming that they would be entitled to such exemption for a period of 5 years from the date of first production. However, this scheme has been modified in the year 2002. The concession has been withdrawn and replaced by another concession which also gives benefit of exemption from sales tax up to the level of Rs. 30,00,000/- subject to the condition that the amount is first to be deposited and after fulfilling certain criteria the refund can be claimed. The industries were set up before the Incentive Scheme of 1995 was even published. Therefore, there is no question of the promissory estoppel being applicable in the present case because the petitioners did not set up the industry on the basis of the Incentive Scheme of 1995. Hence this principle is not at all applicable to the facts of the present cases. In view of the law cited above, the State is well within its power to otherwise withdraw all concessions which may have granted to the industries and, therefore, we find no merit in the petitions which are accordingly dismissed.

With these observations the writ petitions stand disposed of.