(1996) 06 BOM CK 0052

In the Bombay High Court

Case No : Writ Petition No. 1987 of 1988

Multifilms Plastics Pvt. Ltd. and another APPELLANT

Vs

State Industrial and Investment Corporation of Maharashtra Limited and others RESPONDENT

Date of Decision : 05-06-1996

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 41

Citation : (1996) 06 BOM CK 0052

Hon'ble Judges : S.M. Jhunjhunwala, J;D.K. Trivedi, J

Bench : Division Bench

Judgement

S. M. Jhunjhunuwala, J.—By this writ petition the petitioners are seeking to quash and set aside the demands made by State Industrial and Investment Corporation of Maharashtra Limited (SICOM) under the letters dated 25th February, 1987 and 15th February, 1988, copies whereof are annexed as exhibits D and Z3 respectively to the petition.

2. The first petitioner is a company duly incorporated and registered under the provisions of the Companies Act, 1956. The second petitioner is a director of the first petitioner-company. The first respondent is an undertaking of the Maharashtra Government formed for helping the industries in the State of Maharashtra. The second respondent is the Commissioner of Sales Tax under the provisions of the Bombay Sales Tax Act, 1959. The third respondent is the State of Maharashtra responsible for administering the sales tax laws in the State of Maharashtra.

3. With a view to achieve development and dispersal of industries outside the Bombay/Thane/Pune Belt, the third respondent by several Government Resolutions evolved schemes to give sales tax incentives for those industries which were then coming up in the backward areas as more particularly described in the various schemes as amended from time to time. One of such schemes evolved was by Government resolution No. IDL/7079/81133(1925)IND8 dated

18th October, 1979 as published by the Government Resolution No. IDL/7079/(2043)IND8 dated 5th January, 1980 (for short, "the 1979 Packages Scheme") for industries established in the backward areas of Maharashtra. The petitioners being desirous of availing of the benefits of the said 1979 Package Scheme, established a factory for manufacturing diverse products at C-11, MIDC, Kherdi, Chiplun, District Ratnagiri, in the backward area of the State of Maharashtra. The petitioners after complying with the formalities and requirements, applied for certificate of eligibility under the 1979 Package Scheme. The first petitioner was issued certificate of eligibility dated 15th March, 1984 along with its amendment dated 23rd February, 1987 and was granted exemption from payment of purchase tax on purchases of raw materials and sales tax on sales of finished goods in terms of the 1979 Package Scheme. An agreement in this respect was also entered into between the first petitioner and the first respondent. Under clause 10 of the said eligibility certificate the first petitioner became entitled to exemption from payment of sales tax for a total sum not exceeding the sales tax liability of Rs. 54,62,100 for the period of eligibility, that is, from the date from which the corresponding certificate of entitlement, was issued by the second respondent till such entitlement was cancelled or revoked or the exemption benefits were exhausted in terms of para 1 of the said eligibility certificate, that is, till the sales tax liability of the first petitioner exceeded Rs. 54,62,100. Pursuant to the said eligibility certificate, the second respondent issued the certificate of entitlement No. N-30-E/136LM/59 dated 16th March, 1984 having the validity for the period from 19th March, 1984 to 18th March, 1991 with the condition that the same was liable to be cancelled with effect from the date of cancellation of the said eligibility certificate issued by the first respondent.

4. In terms of the said entitlement certificate the first petitioner became entitled to claim exemption of payment of sales tax on sales and purchases relating to its factory at Chiplun effected during the period of validity of the said certificate of eligibility. The benefits available under the said entitlement certificate were those as referred to generally therein and more specifically contained in entry No. 136 inserted by Government Notification, Finance Department No. STA-1080/21/Res/8 dated 5th July, 1980 issued under the Bombay Sales Tax Act, 1959. Accordingly, on conjunctive reading of the provisions of the 1979 Package Scheme, the said certificate of entitlement and the provisions of the said entry No. 136, the first petitioner was entitled to exemption from the payment of purchase tax on purchases or sales tax on sales as provided in the said entry for a period of 7 years from 19th March, 1984 to 18th March, 1991 and as such the first petitioner was enjoying the benefit of tax-free purchases and tax-free sales. However, by a letter dated 25th February, 1987, the first respondent informed the first petitioner that the first petitioner had availed of the benefits of entitlement in excess of the limits inasmuch as the entitlement benefits were up to sales tax liability of Rs. 54,62,100 and the first petitioner had availed of the total benefits to the extent of Rs. 62,67,187 up to the period ending 31st December, 1986 and directed the first petitioner to stop availing of the sales tax

benefits with immediate effect and also to make repayment of the sum of Rs. 8,05,087 being the amount of excess benefit allegedly enjoyed by the first petitioner along with interest thereon to be calculated at the rate of 15.5 per cent per annum within the period stipulated therein. The petitioners were threatened that if the said amount would not be paid, it would be recovered from the first petitioner as arrears of land revenue. Correspondence thereafter ensued and representations in the matter were also made by the petitioners. In view of coercive attitude of the first respondent, the first petitioner did pay sums aggregating to Rs. 2,20,000 to the first respondent against the demand made by the first respondent.

5. The Sales Tax Officer, Ratnagiri, having jurisdiction over the factory of the first petitioner addressed a letter dated 20th July, 1987 to the first petitioner to work out the maximum entitlement of sales tax incentives by way of exemption till then availed of by the first petitioner. After verifying the statements furnished by the petitioners for the relevant period as also other requisite records, the Sales Tax Officer quantified the notional sales tax liability of the first petitioner in terms of the 1979 Package Scheme and gave a certificate dated 12th August, 1987 for the entire period from 15th February, 1984 to 31st December, 1986 certifying the notional sales tax liability at Rs. 43,84,880. Despite the said certificate, the first respondent proceeded to make a demand for the said sum of Rs. 8,05,087 and interest from the first petitioner alleging that the first petitioner exceeded the exemption limit by availing the total benefit to the extent of Rs. 62,67,187 though as per the said eligibility certificate the first petitioner was entitled to such benefits to the extent of Rs. 54,62,100 only. In these circumstances, the present petition has been filed to have the demands made by the said letters dated 25th February, 1987 and 15th February, 1988 quashed and set aside and also for refund of the sum of Rs. 2,20,000 paid by the first petitioner pursuant to the said demands made by the first respondent.

6. Though in the petition it is contended that the notional sales tax liability of the first petitioner for the said period was only to the extent of Rs. 32,99,846 and not to the extent of Rs. 43,84,880 as determined by the Sales Tax Officer. Mr. Joshi, the learned counsel appearing for the petitioners, has fairly stated that the petitioners are not challenging the determination of the notional sales tax liability of the first petitioner as made by the Sales Tax Officer for the relevant period at Rs. 43,84,880 in relation to the 1979 Package Scheme.

7. Though the action of the first respondent in making the demand upon the first petitioner has been challenged in this petition and the first respondent is a party in the petition, the first respondent has not chosen either to remain present before this Court or file any affidavit in reply to controvert or deny any of the statements made by the petitioners in the petition or to sustain the demands made by the said letters dated 25th February, 1987 and 15th February, 1988. Since the determination of notional sales tax liability by the Sales Tax Officer at Rs. 43,84,880 is not disputed by the petitioners, the learned Assistant

Government Pleader appearing for respondents 2 and 3 has made no submissions to justify the demands made by the first respondent vide the said letters dated 25th February, 1987 and 15th February, 1988.

8. Though the said certificate of entitlement was valid for the period from 19th March, 1984 to 18th March, 1991, by its said letter dated 25th February, 1987, the first respondent wrongfully called upon the first petitioner to stop availing of sales tax benefits by way of exemption with immediate effect and illegally demanded repayment of the said sum of Rs. 8,05,087 with interest from the first petitioner. In view of the said letter dated 25th February, 1987 received by the first petitioner on 3rd March, 1987, the first petitioner stopped availing of sales tax benefits by way of exemption with immediate effect reserving its right to claim the same to a later date.

9. To avail of benefits of sales tax incentive under Part I by way of exemption, the eligible unit, viz., the first petitioner was entitled to exemption from payment of -

(i) purchase tax/sales tax payable under the Bombay Sales Tax Act, 1959 on the purchases of raw material;

(ii) sales tax payable under the Bombay Sales Tax Act, 1959 on the sales of finished products of the first petitioner; and

(iii) Central sales tax payable under the Central Sales Tax Act, 1956 on the sales of finished products the first petitioner effected in the course of inter-State trade or commerce.

10. The resolution of the Government to grant exemption of sales tax liability has been given effect to by making a necessary statutory provisions in the Bombay Sales Tax Act, 1959 under the powers vested in the State Government u/s 41 of the Bombay Sales Tax Act, 1959. For this purpose, the Government has amended the notification dated 28th December, 1959, issued u/s 41 and inserted entry 136 which provided for exemption of -

(a) Whole of sales tax payable on the sales of finished products by the eligible unit;

(b) whole of CST payable on the sales of finished products by the eligible unit; and

(c) whole of sales tax/purchase tax payable on the purchase of raw material by the eligible unit.

11. For monitoring and quantifying the availment of incentive by way of exemption as sales tax liability with reference to the ceilings provided in the 1979 Package Scheme, the Government provided a procedure through the modality of notional sales tax liability which was defined under clause 2.11 of the Government Resolution to mean -

"(a) Sales tax/general sales tax/purchase tax that would have been payable on the purchases of raw materials and sales tax/general sales tax payable on the sales of finished products of the eligible unit under the local sales tax law but for an exemption at the maximum rates specified under the local sales tax-law; and

(b) Tax payable under the Central Sales Tax Act, 1956 on the sales of finished products of the eligible unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in form "C" on the basis that the said sales are exigible to tax under the said Act."

12. The interpretation of "notional sales tax liability" or "sales tax liability" by the first respondent was based on total misconception and ignorance of the definitions under the 1979 Package Scheme and ignorance of the provisions of the Bombay Sales Tax Act, 1959 and the Rules made thereunder. The sales tax/ purchase tax payable or paid by a manufacturer in respect of his raw material stood effectively reduced to only 4 per cent by virtue of the set-off provisions under rule 41D of the Bombay Sales Tax Rules, 1959 and as such the effective maximum rate of tax borne on the purchase of raw material used in the manufacture of finished goods by the first petitioner was thus only at 4 per cent and not 10 per cent as determined by the first respondent and as such, the notional sales tax liability in respect of purchases of raw material by the first petitioner ought to have been quantified at 4 per cent only as that was the maximum rate of purchase tax payable by the first petitioner under the local sales tax law. The first respondent irrationally and in violation of statutory provisions quantified notional sales tax liability of the first petitioner for the period ended on 31st December, 1986 at Rs. 62,67,187 as mentioned in its said letter dated February 25, 1987.

13. The demand made by the first respondent vide the said letters dated 25th February, 1987 and 15th February, 1988 has been illegally made and as such, are liable to be quashed and set aside. Since the said sum of Rs. 2,20,000 has been wrongfully collected from the first petitioner, the respondents are liable to refund the same to the first petitioner with interest to be calculated at the rate of 15.5 per cent from 7th December, 1987 till payment. Though by reason of wrongful attitude adopted by the first respondent, the period of benefit which the petitioners were entitled to avail of has been curtailed, and Mr. Joshi has submitted that for the balance amount of Rs. 10,77,220 (Rs. 54,62,100 minus Rs. 43,84,800) the first petitioner is still entitled to avail of the benefit and that the respondents should be directed to permit the first petitioner to avail of the said benefit under the 1979 Package Scheme during the current year by making adjustments in sales tax liability of the first petitioner, it is not possible to accede to the request made by Mr. Joshi as the said eligibility certificate dated 16th March, 1984 was issued having the validity for the period from 19th March, 1984 to 18th March, 1991. However, since the petitioner is made to suffer the loss of the benefit due to wrongful and illegal action on the part of the first respondent,

it would be just and fair if the first respondent, by adopting such modality as permissive in law, allows the benefit up to the sum of Rs. 10,77,220 to the petitioner in the current sales tax assessment.

In the result the petition is allowed and the rule is made absolute in terms of prayers (a) and (c) thereof. The first respondent shall pay the costs of the petition to the petitioners.

14. Petition allowed.