(1993) 08 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No. 31162 of 1992

Nandi Dall Industries APPELLANT

Vs

State of Karnataka and others RESPONDENT

Date of Decision : 17-08-1993

Acts Referred:

Wealth Tax Act, 1957 — Section 5 (1) (xxi)

Citation : (1993) ILR (Kar) 3148 : (1993) 3 KarLJ 199

Hon'ble Judges : K. Shivashankar Bhat, J

Bench : Single Bench

Advocate : Basavaprabhu Patil for M/s Patil and Associates, for the Appellant; Pradeep Rai, High Court Government Pleader, for the Respondent

Judgement

K. Shivashankar Bhat, J.—When can it be said that an industrial unit is "set up" to attract the beneficial provisions of the Government order dated November 28, 1989, which grants a subsidy at 25 per cent. of the value of fixed assets, is the question to be considered in this writ petition.

2. Relevant part of the order reads as follows :

"Government are pleased to provide the following special package of incentives to Bidar District as envisaged earlier :

(a) In lieu of Central investment subsidy withdrawn from October 1, 1988 the State investment subsidy at 25 per cent. of the value of fixed assets limited to a ceiling of Rs. 25 lakhs per unit be offered to all new units set up on or after October 1, 1988 for a period up to March 31, 1993.

(b) In lieu of the development loan since withdrawn, the ceiling on sales tax exemption offered to medium and large scale industry is enhanced from Rs. 50 lakhs to Rs. 100 lakhs.

(c) All existing and new industries are exempted from power cut up to March 31, 1993.

The above special and additional package of incentives are extended to industrial units other than cement industry but set up on or after October 1, 1988 in Gulbarga District, mutatis mutandis."

3. This order was made, since the Central investment subsidy was discontinued with effect from October 1, 1988, affecting the industries. Though the opening sentence refers to Bidar District, the benefit is applied to the industries set up in Gulbarga District also, by virtue of the last sub-para of the above order.

4. Petitioner constituted a firm to start a dhal industry in Nadwar village of Chittapur taluk, Gulbarga district, under the name and style of "Nandi Dall Industries". The firm sought financial assistance from the financial agencies and obtained a loan of Rs. 8 lakhs from the Karnataka State Financial Corporation on April 18, 1988. Karnataka Electricity Board sanctioned 60 HP power supply as per its order dated February 8, 1989. After obtaining power supply, petitioner obtained registration certificate from the Department of Industries and Commerce. The certificate of registration, certifying "Nandi Dall Industries, Nadwar, Chittapur Taluk", certifies that it is a small-scale industrial unit with the allotted registration number 08/10/05604/PMT/SSI dated April 1, 1989.

5. According to the petitioner, the industry in question set up only on April 1, 1989, the date of its registration. Even to obtain the incentives under the Government order, it is necessary to have the certificate issued by the Department of Industries and Commerce.

6. Petitioner sought the subsidy under the aforesaid Government order. But the 3rd respondent (Director of Industries and Commerce) held that industrial unit was set up prior to October 1, 1988 since the petitioner obtained a loan from the Karnataka State Financial Corporation earlier to the said date; consequently a subsidy of only 15 per cent. was sanctioned in terms of an earlier Government order of the year 1988.

7. In the statement of objections filed by the respondents, it is explained that "the words ''set up'' used in the Government order dated November 28, 1989 means effective steps taken to acquire land or shed and obtain financial sanction from financial institutions". According to the respondents, the contention of the petitioner that the words "set up" should be constituted as "starting commercial production" is liable to be rejected.

8. Mr. Basavaprabhu Patil contended that, an industry cannot be considered as having been set up, only because it obtained a loan from the financial agency of the State. without the industry starting production and that there is a clear distinction between the process of setting up and the actual setting up. The initial stage of organising an industry is part of the process of setting up an industry; it is only on completion of all stages and the industry is ready to function as a productive unit, it can be called as having been "set up"

9. In M/s. The Indian Hume Pipe Co. Ltd. and another Vs. Bangalore Water

Supply and Sewerage Board and others, question was whether eligibility as a small-scale industry is conferred by being registered as such with the department, because, the tender notification referred to "registered small-scale industries". It was held that a mere provisional certificate of registration did not create the eligibility, and a permanent certificate of registration was a pre-requisite (vide pages 1166 to 1172). This decision though has no direct bearing on the point in issue before me, has some relevancy. The importance of being "registered'' as a small-scale industry is highlighted by the Division Bench.

10. The relevant meanings attributed to the term "set up", in Webster''s New Collegiate Dictionary are.

"to come into active operation or use; to begin business; ..... to become firm or consolidated."

11. In Commissioner of Wealth-tax Madras Vs. Ramaraju Surgical Cotton Mills Ltd., ; Commissioner of Wealth-tax Madras Vs. Ramaraju Surgical Cotton Mills Ltd., , the Supreme Court was considering the scope of the same phrase, found in section 5(1)(xxi) of the Wealth-tax Act, the language used in the said provision was :

"..... net wealth of a company ..... on an industrial undertaking ..... as is employed by it in a new and separate unit set up after ....."

12. At page 481 of ITR; 511 of AIR, the Supreme Court held :

"A unit cannot be said to have been set up unless it is ready to discharge the function for which it is being set up. It is only when the unit has been put into such a shape that it can start functioning as a business or a manufacturing organisation that it can be said that the unit has been set up. The expression used in the proviso, under which the period for which the exemption is available is to be determined, is not the same as that used in the principal clause. In the proviso, the period of five successive years of exemption has to commence with the assessment year next following the date on which the company commences operations for the establishment of the unit. Operations for the establishment of a unit, from the very nature of that expression, can only signify steps that have to be taken to establish the unit. The word ''set up'' in the principal clause, in our opinion, is equivalent to the word ''established'', but operations for establishment cannot be equated with the establishment of the unit itself or its setting up."

13. Thereafter, the following observations of the Bombay High Court Western India Vegetable Products Ltd. Vs. Commissioner of Income Tax, Bombay City, were quoted with approval :

"It seems to us that the expression ''setting up'' means, as is defined in the Oxford English Dictionary, ''to place on foot'' or ''to establish'', and in contradistinction to ''commence''. The distinction is this that when a business is established and is ready to commence business, then it can be said of that business that it is set up. But before it is ready to commence business it is not set up."

14. An actual commencement of production is not a condition to call the unit as having been "set up", but, the unit should be ready to be functional. An industrial unit can be considered as having been "set up", immediately, it is ready to go into production, though, actually it has not commenced production. But, the completion of some anterior process, before becoming functional, cannot make it the unit having been "set up"

15. In the instant case, certificate of registration as a small-scale/tiny unit was effective only from April 1, 1989. Electricity was sanctioned only on February 8, 1989. Till at least power was actually supplied, the industrial unit cannot be held to be ready to start its functions. Availability of electricity is one of the several ingredients that go into the setting up of the unit; it is not possible to say that the unit was "set up", without the supply of electricity at all; the unit is not established, until it has the requisite power supply to operate the machinery.

16. Therefore, it can be safely said that at least till the supply of electricity was sanctioned, the unit was an incomplete unit; whether certificate of registration from the department is necessary to complete the process, is unnecessary to be decided here, because, the relevant date is October 1, 1988, on which date there was not even an order sanctioning electricity, which is an important element in making a unit functional.

17. The fact that loan was obtained from the Karnataka State Financial Corporation earlier to October 1, 1988 is entirely irrelevant. Availability of the requisite funds to start the setting up of an industrial unit would not result in establishing the unit on the date of the availability of funds.

18. For the reasons stated above, the petitioner is entitled to succeed. The impugned order dated September 30, 1992 is set aside. Respondents are directed to release the balance of the subsidy under the Government Order No. CCI 223. SPC 89 dated 28/29th November 1989, to the petitioner forthwith.

Rule made absolute.

19. Petition allowed.

