(2011) 11 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No. 700 of 2009

Narpat Steels Pvt. Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2012) 54 VST 336

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon''ble Dr. Justice Vineet Kothari

1. The petitioner - Industry manufacturing steel was given benefit of Sales Tax Incentive Scheme, 1989 by the order of competent Screening Committee dtd.7.8.1999 (AnnEx. 1). The relevant condition in the Sales Tax Incentive Scheme for grant of such benefit of incentive for making eligible investment on the expansion project by the industry as contained in definition of "expansion" as given in clause 2(f) of the Scheme, reads as under:

2(f) Expansion means increase in the value of fixed capital investment by not less than 25% of the net fixed assets of the existing project and accompanied by an increase in the production to the extent of at least 25% of the original licensed/registered capacity.

Explanation : The benefits of Sales Tax incentive for Expansion shall be admissible to the eligible units only after they have achieved at least 85% of their licensed/registered capacity before expansion.

2. The increase in production upon expansion was to be computed to the basis of production made by the assessee industry. The question which cropped up in the matter was whether such production would include ''own manufacture'' only or production done on the basis of third party''s job work also. The petitioner

succeeded before the Tax Board and the High Court and the revision petition filed by the Revenue was dismissed by the High Court vide order dtd.14.8.2002 (AnnEx. 3) passed in SB STR No.457/2002. The said order is reproduced hereunder for ready reference:

S.B. Sales Tax Revision No.457/2002

14.8.2002 Hon''ble Dr. B.S. Chauhan, J.

Mr. Sanjeev Johari, for the petitioner.

Mr. Dinesh Mehta, for the respondents.

In view of the judgment of this Court in C.T.O. vs. M/s Vishnu Metals wherein, while considering the case under the Rajasthan Sales Tax Incentive Scheme, 1989, it has been held that production or manufacture on the basis of job work shall also be taken into consideration, no relief can be granted to the petitioner.

The petition is, therefore, accordingly dismissed.

Sd/-

(Dr.B.S. Chauhan)J.

3. The revenue went up before the Hon''ble Supreme Court in other connected matter and present assessee also and the Hon''ble Supreme Court in Civil Appeal No.4944/2001 - CTO V/s M/s Vishnu Metals allowed the Revenue''s appeals on 7.11.2006 and set aside the orders of the Rajasthan Tax Board and the High Court observing as under:

The question that, therefore, falls for determination in this appeal is whether the job work performed by the assessee in addition to its production for its own purposes can be taken into consideration for the purposes of clause 2(f) of the 1989 Incentive Scheme, as had been held both by the Rajasthan Tax Board and the High Court. Although, the Rajasthan Tax Board was of the view that the job work performed by the assessee would have to be added to the production capacity of the assessee''s unit, there is no reasoning in support thereof. The said lacuna has been addressed by the High Court by holding that the expression used in the statute did not indicate that the manufacture of goods for sale must be by any particular individual and that the entire production in order to make the unit eligible for grant of benefit under the 1989 Incentive Scheme must be on its own account and not by way of doing job work. On such interpretation of clause 2(f) of the 1989 Incentive Scheme, the High Court affirmed the finding of the Rajasthan Tax Board and directed the District Level Screening Committee to issue necessary Eligibility Certificate to the respondent - assessee.

While arriving at a conclusion that job work would also have to be taken into consideration for grant of Eligibility Certificate under Clause 2(f), both the Rajasthan Tax Board and the High Court omitted to take into consideration the nature of job work performed by the respondent - assessee and whether the same would amount to production as contemplated in the said clause. Learned Counsel appearing for the respondent assessee was also unable to specify the nature of job work said to have been undertaken by the respondent assessee. Both the Rajsthan Tax Board and the High Court laboured under the presumption that the job work performed by the respondent assessee involved manufacture of goods which were similar in nature to its own goods for sale. Such an approach, in our view, was erroneous, since the very nature of the incentive given under the aforesaid 1989 Incentive Scheme involves calculation of the actual production of the unit in question. In the absence of any material to indicate the nature of job work undertaken, it would be improper to proceed only on the basis of presumption.

The Department''s appeal must, therefore, succeed and is allowed and the judgment of both the Rajasthan Tax board and the High Court dated 18th January 2000 and 9th February, 1999 respectively are set aside.

There will, however, be no order as to costs.

4. The Hon''ble Apex Court thus observed that since nature of job work undertaken by the assessee during the relevant period was not specified and established before the Revenue Authorities, therefore, whether such production for third parties on the basis of job work could be included within the meaning of term "increase in production" as envisaged in clause 2(f) of the Incentive Scheme, 1989 or not, therefore, the judgments of Rajasthan Tax Board and the High Court were liable to be set aside with fresh proceedings to be undertaken by the Revenue Authorities in this regard. The assessee filed review petition before the Hon''ble Apex Court against the judgment dtd.7.11.2006, which was also however, ultimately rejected on 30.10.2007. In the meanwhile, the Commercial Taxes Officer - assessing officer passed assessment orders against the assessee raising the demand of tax, as if the petitioner - assessee was not entitled to benefit of Incentive Scheme, since the Hon''ble Supreme Court had set asdie the judgment of the High Court and Tax Board.

5. The petitioner - assessee however, applied to the District Level Screening Committee after the aforesaid judgment dtd.7.11.2006 of Hon''ble Apex Court vide application AnnEx. 9 dtd.24.12.2007 for redetermining the question in the light of decision of Hon''ble Supreme Court to arrive at the findings of facts as to the nature of job work undertaken by the assessee during the relevant period, so that it could be included in the total production along with his own manufacturing for the purpose of continuing the benefit of Incentive Scheme, 1989 to the assessee. The said DLSC as well as Commercial Taxes Officer both failed to return any findings of facts in the light of decision of Hon''ble Apex Court which were undoubtedly required to be given. The Hon''ble Apex Court has not laid down that the production done by the assessee on the basis of job work for others as such would not form part of production for the purposes of clause 2(f) of the Incentive Scheme, 1989. Setting aside of judgment of High Court and Rajasthan Tax Board and consequential remand order apparently meant that

competent Revenue Authorities had to give these findings of facts on the basis of evidence adduced by the assessee - petitioner before them. If the job work was found to be of some other items or goods altogether, the same would obviously not be "increase in production" as envisaged in section 2(f) of the Scheme, but if however, production done on the basis of job work of third parties is of similar goods or the same goods, which can be manufactured by the plant and machinery in which investment was made by the assessee industry for such expansion the entire production of own manufacturing plus job work would be taken into account and the assessee would be entitled to the said benefit of Incentive Scheme, having satisfied the criteria of achieving minimum required target of increase in production, consequent to expansion of capacity undertaken by him. In the absence of any such findings and proceedings taken by the Revenue Authorities, the assessment orders raising demand in question obviously cannot hold the field and they were obviously premature.

6. Consequently this Court is of the opinion that the competent assessing authority, namely, CTO, Circle B, Jodhpur - respondent No.3 shall pass fresh appropriate speaking order in this regard in the light of decision of Hon''ble Supreme Court and shall determine the nature of job work undertaken by the assessee during the relevant period and shall return the findings of facts as to whether the job work was of the similar goods or not. It is only after such findings are arrived at that the assessing authority depending upon such findings shall be entitled to undertake necessary assessment proceedings for determining the tax liability of the assessee giving or not giving benefit of Incentive Scheme, 1989.

7. Consequently, this writ petition is allowed and setting aside the impugned assessment order, the respondent No.3 - CTO, Circle B, Jodhpur is directed to pass fresh speaking order giving aforesaid findings of facts after giving an opportunity of hearing to the assessee. The assessee shall appear before the said authority in the first instance on 22.11.2011 along with relevant evidence and record and thereafter the said authority is expected to pass fresh speaking order within a period of 3 months from today. No order as to costs.