(1991) 05 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2422 of 1990

Parasrampuria Synthetics Ltd. APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 29-05-1991

Acts Referred:

Central Sales Tax Act, 1956 — Section 8
Constitution of India, 1950 — Article 14
General Clauses Act, 1897 — Section 21

Citation : (1991) 2 WLN 486

Hon'ble Judges : Inder Sen Israni, J

Bench : Single Bench

Judgement

Inder Sen Israni, J.—This writ petition has been filed with a prayer that it may be declared that the petitioner is entitled to the grant of eligibility certificate for exemption from sales tax-to a limit of Rs. 4 crores in respect of expansion in case of any expansion/diversification made by the petitioner.

2. The petitioner, a public limited company, manufactures polyproplyene spinning filament yarn. It is stated in the petition that the Government of Rajasthan had promulgated Sales Tax Incentive Scheme for Industries, 1987 (for brevity, ''Scheme, 1987) vide notification dated May 23, 1987 (Anx. 1), under the Rajasthan Sales Tax Act and the Central Sales Tax Act, with a view to promote industrial growth in the State of Rajasthan, particularly in the industrially backward areas. This was done with a view to attract entrepreneurs for setting up new industries and expanding the existing unit/diversification in the products. As per Clause (2) of the said Scheme, Units have been divided into three different categories viz. (i) New Industrial Units; (ii) New Industrial Units covered by 1985 dispensation; & (iii) Sick Industrial Units. The different Districts of Rajasthan were also divided into two categories with different ceiling limits to be allowed under the Sales Tax incentive Scheme as per Anx. ''C of the said Scheme (Anx. 1). It is submitted that the petitioner unit is covered by 1985 Dispensation as defined in the Scheme, 1987 (Anx. 1), which came into force retrospectively

from March 5, 1987.

3. It is pointed out by Mr. Mehta, learned Counsel, that in Anx. ''C of the Scheme, 1987, limits have been prescribed for different categories of districts. Note 3 of the said Anx. ''C lays down that "Sales Tax exemption will be subject to an over all limit of Rs. 4 crores in each/any case. The over all limit in case of pioneering industry will be Rs. 6 crores and in case of prestige unit Rs. 8 crores. It is further pointed out that the petitioner commenced its commercial production on April 1, 1986 and exceeded the target as per project report. The petitioner was granted eligibility certificate under the Scheme, 1987 w.e.f. 16.4.88 to 15.4.89, which was renewed from time to time upto April 15, 1991, subject to the provisional limit of Rs. 1 crore and the final demand of the limit was arrived at subsequently. It is also pointed out that under the bona fide and earnest belief concession/ incentive/benefits/exemption will be available to the petitioner under the Scheme, 1987, subject to the limit of Rs. 4 crores in each/every case of expansion/ diversification. The petitioner took active steps for substantial expansion of the Unit. During the first half of the year, 1988, the petitioner spent lacs of rupees for expansion. However, the State Government vide its Notification dated August 6, 1988 (Anx. 2), reduced the original exemption limit from Rs. 4 crores to Rs. 1 crore, for large scale industries by adding note 5 in Anx. ''C of the original notification. It is contended that the promulgation of this Amendment Notification adversely affects the petitioner as under the original Scheme, 1987, the petitioner was entitled to get an exemption of Rs. 4 crores, whereas, by notification, the sale was reduced to Rs. 1 crore only. Thus, the notification of 1988 is arbitrary illegal and the State Government is estopped from going back of the assurances given in the original Scheme, 1987, on the basis of doctrine of promissory estoppel. It is further contended that the petitioner acted on the clear assurance given by the respondents under the Scheme, 1987, for grant of over all exemption of Rs. 4 crores in each/any case of expansion/diversification and acting under the said assurance, the petitioner started expansion/diversification and has already spent Rs. 20 crores, on the same. It is also contended that the petitioner intends to expand further in two phases by investing Rs. 271/2 crores in each phase. Therefore, the Government cannot be permitted to back out its assurance and reduce over all limit exemption to Rs. 1 crore. It is pointed out that the petitioner is entitled to get exemption certificate for a period of seven years to an over all limit of Rs. 24 crores in each/any case of expansion/ diversification and the same cannot be reduced to Rs. 1 crore, which is detrimental to the petitioner. Thus, the notification dated 6.8.88 (Anx. 2) is arbitrary and violative of Article 14 of the Constitution.

4. It is submitted by Mr. G.S.Bapna, learned Counsel, that the commercial production, as pointed out by the petitioner, started from 1.4.86, whereas, the Scheme, 1987 was published on 23.5.87, which came into effect retrospectively from 5.3.87, therefore, the petitioner did nothing to alter its position, after the Scheme, 1987 came into force. The petitioner took only benefit in the industry which was already established earlier. Therefore, the question of application of

doctrine of promissory estoppel does not arise. It is further submitted that this is wrong to say that the petitioner under the bona fide & earnest belief made an effort for expansion/diversification of the project, with a view to get the benefit under the Scheme, 1987 upto the limit of Rs. 4 crores. It is also submitted that the limit of Rs. 4 crores was reduced to Rs. 1 crore vide Anx. 2, which the Government was authorised to reduce. The loan for expansion and diversification, as pointed out by the petitioner, amounting to Rs. 20 crores, was sanctioned by the Industrial Credit & Investment Corporation Limited vide its letter dated May 23, 1989. The limit was reduced to Rs. 1 crore on August 6, 1988 and the loan was sanctioned only on May 23, 1989. Therefore, the petitioner cannot say that it acted on the basis of Scheme, 1987, even after amendment Anx. 2 was issued. It is pointed out that the amendment Anx. 2 has been issued in the public interest. It is further pointed out that it was made clear in clause(lO) of Anx. 1 that incentive scheme was in the nature of concession and will not confer any right on the industrial unit/entrepreneur to claim any benefit under the same. It was made clear in Clause (11) that the State Government reserves the right to review or amend the Scheme as and when needed. Thus in view of the above two clauses, the question of application of doctrine of promissory estoppel does not arise and, even otherwise, no factual foundation has been made for application of the same. It is further pointed out that assurance of notification is a legislative action, which is exercised by the State Government, in exercise of its legislative powers conferred by Section 4 of the Rajasthan Sales Tax Act, 1954 (for short, ''the Act, 1954''). The doctrine of promissory estoppel has no application on the exercise of delegated legislative powers, especially in view of the fact that while framing the Scheme of 1987 itself, it was made clear therein that the State Government will have right to amend or alter the scheme at any time. It is also pointed out that the application of the petitioner is under 1985 dispensation, under which, there is no provision for concession/benefit on account of expansion/diversification. The petitioner is claiming benefit not under Clause (2)(a), but under Clause (2)(b), which applies only to such a new Industrial Unit, which commenced commercial production on or after 1.4.84 and was entitled for interest-free sales tax loan scheme under 1985 dispensation. Therefore, since the petitioner did not take interest-free sales tax loan, it was given benefit/concession of exemption in sales tax as mentioned by the petitioner itself.

5. An application has been filed on behalf of the petitioner during the course of arguments, on March 7, 1991. It is pointed out that the learned Counsel for the respondents brought to the notice of this Court that by notification dated September 10, 1987, which was published in the Rajasthan Gazette, the amendment in Clause (2)(e) has been made to operate. It is submitted that the above amendment was not within the knowledge of the petitioner, at the lime of filing of the petition, since the same was not mentioned in the book written by Mr. Khetan and some of the text books on this subject which have been written by other authors. Therefore, the petitioner could not challenge this amendment,

at the time of filing of the petition. It was prayed that since this is only a legal question, the petitioner may be permitted to do the same by way of filing this application. Since the challenge is only to the legality of a particular provision, the application of the petitioner was allowed. It is contended by the learned Counsel that under Clause 4(2) of the Act, 1954 and Section 8(5) of the Central Sales Tax Act, 1956 (for brevity, ''the Act, 1956''), the State Government has power to grant exemptions/concessions in respect of tax by issuing notifications from time to time under the aforesaid Sections, do not authorise it to withdraw an exemption or concession retrospectively. Therefore, the above notification dated September 10, 1987, making amendment in Clause 2(e) of the Incentive Scheme are illegal and without authority of law & needs to be struck down.

6. I have heard both the learned Counsel and gone through the documents on record. It will be necessary to refer to certain clauses of scheme, 1987, before applying the same to the case put forward by the petitioner. Clause 2 is regarding definitions, Sub-Clause (a) is regarding New Industrial Unit, which is not applicable to the matter under consideration. Sub-clause (b), which is applicable to the contention raised by the petitioner, as given by the petitioner itself, reads as under:

New Industrial Unit covered by 1985 dispensation" means an industrial unit, which commenced commercial production on or after 1.4.85 and was entitled for interest free sales tax loan scheme under the 1985 dispensation.

Sub-clause (e) of Clause 2 is regarding "eligible fixed capital investment". Sub-clause (ii) of Clause 2(e) provides "only those assets, which are acquired and paid for during the operative period of this scheme, but not before 1.4.85 will be eligible for the Sales Tax incentive under this Scheme." Sub-clause (1) reads "Expansion" means increase in the value of fixed capital investment by not less than 25% of the next fixed asset of the existing project, an accompanied by an increase in the production to the. extent of at least 25% of the original licensed/ registered. The Explanation of Sub-clause (f) reads as under:

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

Sub-clause (g) provides "Diversification" means launching of new product line under the same company, firm or partnership provided that the total fixed capital investment in such a diversification exceeds at least 25% or the value of the net fixed assets of the original project. Clause 3 deals with applicability of the Incentive Scheme and provides different categories, which read as under:

This Incentive Scheme will be applicable:

(1) In the areas mentioned in Annexure ''A" of this notification.

(2) To New Industrial Units.

(3) To New Industrial Units covered by 1985 dispensation.

(4) To sick units.

(5) To Expansion and Diversification.

Clause 4 is regarding exemption from tax on sales. It provides (a) an industrial unit, which is granted eligibility certificate under this notification shall be exempted from payment of tax on sales made within the State of the goods manufactured by it. The quantum of sales tax exemption and the period of eligibility of exemption will be as per Annexure ''C. Clause 5 deals with Incentive to new Industrial Units covered by 1985 Dispensation.

It reads as under:

(i) The new industrial units covered by 1985 dispensation as defined in Clause 2(b) which have not availed of any interest free sales tax loan so far, will be eligible for the incentive specified in Clause 4 provided that the total benefit admissible to small, medium and large industrial units shall not exceed 75%, 50% and 25% respectively of their fixed assets in five years, from 5.3.1987. The total period during which this benefit will be available to such units shall be five years.

(ii) The new industrial units covered by 1985 dispensation which have not availed of any interest free sales tax loan upto 31st March, 1987, shall have an option to avail the benefit of the old scheme at the prescribed scales of the old scheme.

Clause 7 referrer to grant of eligibility certificate.

It reads as under:

(a) An industrial unit eligible for sales tax exemption under the Incentive Scheme would be required to make an application in Form ''A'' appended to this notification to the member Secretary of the appropriate ''Screening Committee'' as mentioned in Clause 2(k) within 90 days of the publication of this notification or commencement of commercial production, whichever is later.

Clause 10 mentions that Incentive is a concession.

It reads as under:

The Incentive Scheme is in the nature of a concession and it shall not confer any right to any industrial unit/entrepreneur to claim benefit provided for under it.

Clause 11 is regarding review of the incentive scheme. It reads as under:

The State Government reserves the right to review or amend the Scheme as and when needed.

Anx. ''C to the Scheme, 1987 is regarding quantum of sales tax exemption. Clause 3 of Anx. ''C` provides that sales tax exemption will be subject to an over all limit of Rs. 4 crores in each/any case. The over all limit in case of a pioneering industry will be Rs. 6 crores and in case of a prestigious unit Rs. 8 crores. Pro-forma of Form ''A'' for application for the sanction/renewal of Eligibility Certificate under the Sales Tax Incentive Scheme for Industries, 1987 has also been published. Clause 11 is regarding basis for eligibility. Under this Clause, five categories of sales tax have been mentioned, which read as under:

(a) New Industrial Unit.

(b) Sick Industrial Unit.

(c) New Industrial Unit covered by 1985 dispensation.

(d) Expansion.

(e) Diversification.

The notification dated September 10, 1987 has been issued to make amendments in Notification Anx. ''A'', i.e., Scheme, 1987, after existing Sub-clause (ii) of Clause 2(e) has been substituted and a new Sub-clause (iii) has been inserted. Sub-clause (iii) of Clause 2 reads as under:

(iii) In the case of new industrial units covered by 1985 Dispensation and which have gone into production during the period from 1.4.85 to 4.3.87, only those assets which were acquired and paid for between 1.4.83 and 4.3.87 will be eligible for the sales tax incentive under this scheme.

Clause 6 provides that these amendments will come into force with effect from 5.3.1987.

7. From the provisions extracted above, it is clear that for taking benefit of Incentive Scheme, 1987, the application has to be made in Form ''A'' the pro-forma of which has been published alongwith the Scheme. Clause 11 of Form ''A'' provides five clauses for basis of the eligibility. Any petitioner, who wants to avail the benefit of the Scheme, 1987, is expected to specify any of the five basis for eligibility, as mentioned in Clause 3 of the Scheme, 1987 and enumerated in Clause 11 of the pro-forma of Form ''A''. Therefore, it is necessary for every applicant to show on which basis of the five basis, enumerated in Clause 11, the benefit of Scheme, 1987, is claimed. The petitioner has claimed benefit of this Scheme on the basis of Sub-clause (c) of Clause 11 mentioned in Form ''A'', which is regarding new Industrial Unit covered by 1985 Dispensation. Thus, the petitioner is evidently entitled to receive all benefits under the Scheme, 1987, regarding a new established Industrial Unit which, admittedly, is covered by 1985 Dispensation. Apart from this, the petitioner also claims to be given the benefit for expansion/diversification as provided in Sub-clause (5) of Clause 3 and also in Sub-clauses (d) & (e) of Clause 11 of proforma of Form ''A'' mentioned above. However, as enumerated in Clause 3 of the Scheme as also in Clause 11 of the pro-forma of From ''A'', it is necessary that the petitioner should have made either a separate application specifying to claim the benefits of the Scheme, 1987, on the basis of expansion & diversification or, in any case, this fact should

have been mentioned in the application filed by the petitioner in pro-forma of Form ''A''. It may be pointed out that in Anx. A-1, which is a copy of the minutes of meeting, held on April 2, 1988, a copy of the application filed by the petitioner has been produced, wherein, the petitioner has clearly mentioned that it claims the benefit on the basis of New Industrial Unit covered by 1985 Dispensation. Anx. 2 is a copy of eligibility certificate granted to the petitioner, which also shows that the same has been granted on the basis of having established a new Industrial Unit covered by 1985 Dispensation. It may also be mentioned that if the petitioner had claimed any benefit on the ground of expansion/diversification, the respondents would have scrutinized its claim in this respect, in accordance with the conditions laid down in the Scheme, 1987 and would have granted eligibility certificate on this ground to the petitioner only if they were satisfied with the correctness of the claim. No such scrutiny has been done as yet, since no such application has been filed. I am, therefore, of the considered opinion that when in the application form it has been clearly mentioned the basis of eligibility for establishment of a new Industrial Unit covered by 1985 Dispensation, the petitioner cannot claim further benefits on account of expansion & diversification on the basis of the same application. However, the petitioner can always make a separate application, mentioning therein the benefits on the basis of expansion/diversification and the respondents will have to consider the same on merits. I do not find any force in the contention of the learned Counsel for the respondents that the doctrine of promissory estoppel does not apply to the present matter, as the notification issued by the respondents is a legislative action exercised by the State Government in exercise of its legislative powers conferred by Section 4 of the Act, 1954. This matter was considered in detail in a recent decision of M/s. Modi Alkalies Chemicals Ltd. v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 942/83. In this decision, I have already discussed the present matter as laid down by the Apex Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, that the doctrine of promissory estoppel is an equitable doctrine, where one party has, by his words or conduct, made to the other a clear & unequivocal promise, which is indicated to create legal relations or effect a legal relationship to arise in future and it is, in fact, so acted upon, the promise would be binding on the party making it and would not be entitled to go back upon it. This principle is, therefore, in the facts & circumstances, mentioned above, applicable to the matter under consideration also.

8. It has been further submitted by the learned Counsel for the respondents that the Scheme, 1987 was published on May 23, 1987 and came into effect retrospectively from March 5, 1987, whereas, the petitioner did nothing to alter its position, after the Scheme, 1987 came into force. Therefore, the petitioner cannot be said to have acted on the basis of Scheme, 1987, more so, after issue of Anx. 2.1 do not find any force in this contention also, since the Scheme, 1987 itself provides that such new Industrial Units, which are entitled for benefit under 1985 Dispensation, shall also be entitled to the benefits under the Scheme,

1987. Since the petitioner is covered by 1985 Dispensation, it is entitled to the benefits under the Scheme, 1987.

9. It has been contended by the learned Counsel for the petitioners that the respondents are not entitled to reduce the original limit of exemption from Rs. 4 crores to Rs. 1 crore for large scale industries by adding note 5 in Anx. ''C of the original notification. It has also been contended that the principle of doctrine of promissory estoppel shall be applicable and, therefore, the respondents are estopped from reducing the limit of exemption from Rs. 4 crores to Rs. 1 crore. From the provisions of the Scheme extracted above, it will be seen that Clause 10 of the Scheme provides that the Incentive Scheme, 1987 is in the nature of a concession and shall not confer any right to any Industrial Unit/Entrepreneur, which claims benefit provided under it. Apart from this, in Clause 11 it is provided that the State Government reserves the right to review or amend the Scheme as and when needed. Even if the provisions of Clause 10 are ignored, in Clause 11, it is clearly provided that the State Government has right to review or amend the Scheme as & when a need may arise, in this regard. Therefore, it cannot be said that the respondents have no authority to review/amend the provisions of the Scheme. This is provided in the Scheme itself. When a clause is provided in the Scheme, the question of applicability of doctrine of promissory estoppel docs not arise. The question of its applicability arises only when a particular assurance is given on the basis of which, the petitioner has acted and subsequently, the same is changed to the detriment of the petitioner. However, this is not the position under the present Scheme. In this Scheme, a provision has been clearly mentioned, which indicates to the petitioner that the Scheme, 1987 can be reviewed & amended by the respondents. I, therefore, do not find any force in the contention of the learned Counsel for the petitioner that the respondents could not have reviewed/amended the provisions of the Scheme and reduce the exemption limit from Rs. 4 crores to Rs. 1 crore. There is no question of backing out from the assurances given by the respondents as contended by the learned Counsel, since Clause 11 clearly provides that the Scheme may be reviewed/amended at any time.

10. So far as the legality of Notification dated September 10, 1987, published in the Rajasthan Gazette dated September 14, 1987 is concerned, it may be stated that by this notification, a new sub-clause(3) has been added in Clause 2 of the Scheme, 1987. It is contended by the learned Counsel for the petitioner that u/s 4(2) of the Act, 1954 & u/s 8(5) of the Act, 1956, the State Government has power to grant exemptions/concessions in respect of payment of tax by issuing notifications, but the aforesaid provisions do not authorise the State Government to withdraw reduce exemption or concession retrospectively. Therefore, it is contended that, on this account, the notification dated September 10, 1987 is arbitrary & violative of Article 14 of the Constitution. I find force in this contention of the learned Counsel. When the Scheme, 1987 was issued, certain concessions/benefits were offered to entrepreneurs and those, who established new industries, it can be said that the entrepreneurs, keeping in view the

benefits under the Scheme, 1987, took certain steps and acted accordingly to obtain various kinds of benefits as mentioned in the said Scheme. Therefore, once benefits have been offered, the petitioner has acted on the basis of the same, the respondents cannot be allowed to alter the benefits with retrospective effect. In matters of taxation, it is only expected that amendments/changes in the existing schemes/law/rules, which are detrimental to those whom they are made applicable, shall not be made applicable with retrospective effect. Given concessions cannot be withdrawn retrospectively by way of amendment of the Scheme as has been done under the Notification dated September 10, 1987.1 am fortified in my opinion by a decision of Vijay Dal Milt v. State of M.P. (1982) 51 STC 242 in which it was held that Section 8(5) of the Act, 1956 did not authorise the State Government to withdraw an exemption and concession retrospectively, so as to increase the rate of tax retrospectively. In Mohd. Swallehin and Others Vs. Lt. Governor and Others, , it was held that Section 21 of General Clauses Act gives power to the Government to issue or to rescind the notification which can have effect from the date of it publication in the Gazette. This power does not include a power to rescind the notification with retrospective effect. I am, therefore, of the considered opinion that the notification dated September 10, 1987 cannot be made effective retrospectively from March 5, 1987, but can be made effective only from the date of its publication in the Rajasthan Gazette. Therefore, Clause 6 of notification dated September 10, 1987, which makes the same effective retrospectively from March 5, 1987 is struck down.

11. In the result, the writ petition is partly allowed to the extent of striking down Clause 6 of notification dates September 10, 1987, with no order as to costs.