
(2012) 01 CAL CK 0006
In the Calcutta High Court
Case No : W.P.T.T. No. 57 of 2010

PCM Tea Processing Private Limited and Another	APPELLANT
Vs	
Assistant Commissioner, Commercial Taxes and Others	RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

West Bengal Value Added Tax Act, 2003 — Section 118, 18

Citation : (2013) 63 VST 288

Hon'ble Judges : Kalyan Jyoti Sengupta, J; Joymalya Bagchi, J

Bench : Division Bench

Advocate : Lakshmi Gupta and Boudhayan Bhattacharyya, for the Appellant;
Seba Roy, for the Respondent

Judgement

1. The instant appeal is taken up for hearing and the same is disposed of by the following judgment and order. The petitioner before us is running a black tea industry and as such, the petitioner applied for registration as a small-scale industry before the appropriate authority and after a great deal of effort, the petitioner could manage provisional registration.
2. Under the West Bengal Sales Tax Act, 1994, there were various incentive schemes offered to the small-scale industries to set up industries in backward areas. One of the incentives was to give remission of tax in respect of the product for a certain period. On the strength of the provisional registration certificate of small-scale industries, the petitioner got the benefit of incentive scheme which is called the West Bengal Incentive Scheme, 1999 and such certificate of eligibility was issued on July 30, 2001 till 2002 initially. Thereafter, from time to time, application for renewal was made for extending the period up to July 29, 2005.
3. It appears from the records that renewal was granted on three occasions but at no point of time legality and validity of any ground, in issuing the certificate was ever questioned until the time as hereinafter mentioned when the petitioner applied for further renewal on and from July 30, 2005 and the authority

concerned found that the initial issuance of certificate to the petitioner was invalid ab initio on the plea that pre-condition for obtaining such certificate was not fulfilled as the petitioner was not permanently registered under the small-scale industries. The petitioner unsuccessfully travelled up to the Commissioner who not only upheld the order but in fact by a subsequent order the Commissioner in exercise of its suo motu power recalled the earlier order of issuing certificate of eligibility with retrospective effect. Thus, the petitioner approached the Tribunal against the two orders with two separate actions.

4. The learned Tribunal, after hearing the counsel for the parties and considering the materials, was of the view that the order passed by the Commissioner suo motu later on cancelling the said eligibility certificate with retrospective effect is not permissible. It is made clear that the order of cancellation cannot be given effect retrospectively but the learned Tribunal was of the view that under the provision of present law, the continuation of such benefit is not permissible.

5. Mr. Gupta, learned counsel appearing for the petitioner, argues that after the certificate was issued his client has altered his position and accordingly, invested huge plant for installing plant and machinery, and on renewal of certificate being granted, his client has altered his position once again infusing further capital and doing other things. Therefore, the application for continuation of the same benefit under the provision of section 18 of the VAT Act, 2003 ought not to have been refused and the same should have been allowed. He also contends that apart from under provision of the 2000 Scheme, there has been savings provision to the effect that if any benefit is derived under the 1990 Scheme, this benefit should be allowed to continue till the unexpired period. We, therefore, in this context reproduce the appropriate clause, i.e., 20.2 of the 2000 Scheme in the following manner:

20.2 the commitments enter into and based on any of the previous incentive scheme shall continue to be governed by the corresponding scheme.

6. Therefore, the right created in favour of the petitioner by the earlier Scheme has to continue till normal period. Accordingly he contends that by virtue of clause (c) of section 118 his client is entitled to get such benefit.

7. Mrs. Seba Roy learned counsel appearing for the State contends that the initial issuance of eligibility certificate is bad in law as the preconditions mentioned in paragraph 6.1.2 of the 1999 Scheme were not fulfilled. Department without taking note of the fact by mistake, the aforesaid certificate was issued. The said clause reads as follows:

6.1.2--Any industrial unit in the small-scale sector shall be eligible for incentives under the scheme subject to the fulfilment of the conditions specified below:

(i) The unit in the small-scale sector as defined under para 3(vii) above, shall be registered with the District Industries Centre concerned finally or permanently. Such permanent or final registration must be valid and remain in force.

However, in respect of subsidy on investment in plant and machinery the undertaking concerned may be provisionally or temporarily registered on or after the April 1, 1998 and valid registration to that effect may be accepted in place of permanent or final registration and the amount of subsidy shall be judged on the quantum of investment in plant and machinery as sanctioned and disbursed by the financial agency concerned.

(ii) Industrial co-operatives undertakings assisted by K.V.I.C. or W.B.K.V.I. Board as well as the undertaking set up under IRDP/SESRU/IUEP/SEEUY and other similar self-employment schemes receiving benefits in respect of any of the items specified under this Schemes shall also be eligible to get the benefit of other items only under this Scheme.

8. She contends that the aforesaid language is mandatory and admittedly on the date of making application or on the date of issuance of certificate the petitioner was provisional registration holder not permanent one, and over and above in 2000 the petitioner ceases to be small-scale industry and by that time a new scheme of 2002 has come into force.

9. It is to be noted that this kind of Scheme is no longer in operation. Hence, the decision taken by all the authorities that certificate being void ab initio, is correct. Hence, question of renewal by operation of section 118 does and cannot arise for continuation of this benefit under the VAT Act, 2003 pre-supposes lawful and valid eligibility certificate under the old Act.

10. We have heard the learned counsels for the parties and have gone through the records. We find it is an admitted position that at the time of issuance of certificate Mr. Gupta's client was not small-scale industry and it has got provisional registration when application was made. It is also admitted position that in spite of this fact, the authority concerned after having examined, issued the said certificate. Not only the certificate was issued but it was renewed from time to time as we have mentioned above, and what should be the appropriate interpretation is not required to be laid down by this court in this matter as the authority concerned understood the character of the aforesaid provision, namely, whether mandatory or directory. We can understand the mistake for one time but how the mistake occurred on three occasions when three renewal was granted.

11. The renewal was granted just on the eve of VAT Act came into force. But effect was given even beyond the date of the commencement of the VAT Act. Therefore, this act and conduct on behalf of the Department was not considered by any of the authority nor even by the learned Tribunal. Even none of the authorities took note of the said clause 20.2 in order to understand whether the aforesaid renewal can be said to be a commitment entered into under the 1999 Scheme or not.

12. Clause (c) of section 118 of the VAT Act provides as follows:

where a registered dealer was enjoying benefit of remission of tax u/s 41 of the

West Bengal Sales Tax Act, 1994 (West Ben. Act XLIX of 1994), for a specified period or a specified amount determined with respect to gross value of the fixed capital assets, immediately before the appointed day and who would have continued to be so eligible on such appointed day under that Act had this Act not come into force, may be allowed remission of output tax under this Act by the Commissioner for the balance unexpired period, or balance eligible amount with respect to gross value of fixed capital assets, whichever expires earlier, in such manner and subject to such terms and conditions as may be prescribed.

13. Factually on the date of commencement of this Act the petitioner has not enjoyed benefit of remission of tax u/s 41 of the West Bengal Sales Tax Act, 1994. Therefore, this point was not decided by any of the authorities. We think though the implication of renewal of the eligibility certificate, as indicated above, in the eye of law has to be examined and this requires reconsideration while taking note of clause 20.2 of the 2000 Scheme.

14. We, therefore, set aside the judgment and order of the learned Tribunal upholding the application for rejection and we request the learned Tribunal to consider afresh in the light of the observations and findings as recorded by us. This should appropriately be dealt with by a Bench wherein the honourable Chairman will be a party. We desire this should be done within a period of three months from the date of communication of this order. This order of setting aside will confine to the subject-matter of RN-114 of 2008 [2011] 43 VST 411 (WBTT). Therefore, this application is restored on file.