
(1993) 08 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 16570 of 1991, 6052, 6077, 6323, 12109, 15555, 15559, 15573, 15893 and 15896 of 1992 and 575 of 1993

P.P.P. Industries

APPELLANT

Vs

Commissioner of Industries and Another

RESPONDENT

Date of Decision : 13-08-1993

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 9
Constitution of India, 1950 — Article 166(2)
General Clauses Act, 1897 — Section 21

Citation : (1994) 92 STC 110

Hon'ble Judges : V. Sivaraman Nair, J;S.V. Maruthi, J

Bench : Division Bench

Advocate : S.R. Ashok, K.C. Reddy, P.V. Reddy, Suryanarayana Murthy, C.V.B. Ramars, V. Ravi Kiran Rao and P.V.R. Mohana Rao, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

V. Sivaraman Nair, J.—These writ petitions are filed by small-scale industrialists in the State seeking directions to the respondents to provide them sales tax holiday up to the sum of Rs. 35,00,000 in terms of G.O. No. 498, Industries and Commerce (IA) Department, dated October 16, 1989. They also seek a consequential direction that the action of the respondents in restricting the amount of such sales tax incentives/exemption to a sum equal to the capital investment of each of the industrial units as illegal, arbitrary and without jurisdiction.

2. The undisputed facts are only a few. The petitioners established small scale industrial units involving capital investments of less than Rs. 35,00,000 in each case subsequent to October 3, 1989 which was the relevant date according to G.O. Ms. No. 498 dated October 16, 1989. Admittedly, they were entitled to "tax holiday" in terms of clause 3 of the above order, though the Government Pleader for Commercial Taxes has advanced a rather belated plea that most of the petitioners being oil millers, are excluded from the purview of the concessions/

incentives provided in the Government order, since oil mill industry is excluded from the purview of the order under clause 5 thereof. We are of the opinion that this submission cannot be accepted as it is raised much after the District Level Committee set up under clause 7 of the order consisting of representatives of the departments of Industries and Commerce as also Commercial Taxes had treated those industries as eligible and granted them tax holiday limiting the same to the extent of eligibility as found by the Committee. The question with which we are concerned in this batch of writ petitions is not whether the petitioners are eligible for tax holiday, but as to what is the extent of such holiday or the sum in which such concessions/incentives are to be worked out. We hold that it is not necessary for us to consider this novel objection of the respondents which is raised for the first time in these proceedings. We therefore proceed on the basis that the respondents, who had themselves granted the concessions and incentives to a limited extent to the petitioners are not entitled now to contend that oil millers among the petitioners are not eligible for such concessions.

3. We have therefore to consider the extent of "tax holiday" whether it shall amount to a sum of Rs. 35,00,000 within a period of five years from the date of commencement of commercial production or it shall be limited to 100 per cent. of the capital investment of each of the petitioners for the above period of five years as certified by the District/State Level Committees.

If we go by the terms of the Government order - G.O. Ms. No. 498 dated October 16, 1989, there is no scope for the latter submission, because clause 3 of the order provides that small-scale industries are entitled to sales tax holiday in all districts in the State for a period of five years subject to a ceiling of Rs. 35,00,000 on sales tax during the entire holiday period. The effect of this order is sought to be restricted to 100 per cent. of the fixed capital investment by reason of clause 6-B(ii) of the "Manual of Guidelines for Implementation for New package of Incentive/Liberalised State and Central Scheme, 1989". That provision is in the following terms :

"Small-scale industries - sales tax exemption :

Small-scale industries are exempted from payment of sales tax for a period of five years from the date of commercial production limited to 100 per cent. of fixed capital investment or Rs. 35 lakhs whichever is less. The units have option to avail the exemption in less than five years, also and shall pay the sales tax after exhausting the eligibility."

4. The "Manual of Guidelines" was issued by the Industries and Commerce (IA) Department in Memo No. 2125/IA/89-I dated September 15, 1990, i.e., 11 months after the G.O. No. 498 dated October 16, 1989. Petitioners have asserted that the above memo was not gazetted, nor was it published in any manner, even though the respondents have pointed out that the petitioners have applied for "tax holiday" in the forms prescribed by the above "Manual of Guidelines". It is agreed on all hands that these guidelines were issued in furtherance of clause

4 of the G.O. in respect of the deferment of sales tax to "medium and large industries" and clause 10 in respect of "sales tax holiday for small-scale industries". The latter provision, which is relevant, provides that - "instructions would be issued separately prescribing forms, time-limits, etc., for claiming the concessions". There has been considerable argument as to whether the "Manual of Guidelines" which contains clause 6B(ii) as extracted above could have been issued in exercise of the power under the above provision of clause 10 enabling the Government to issue instructions prescribing forms, time-limits, etc.

5. After perusing the Government order with reference to the submissions raised by counsel on both sides, we are satisfied that the instructions which the Government has enabled itself to issue did not empower the State Government to restrict or forge fetters into the amplitude of the concession provided under clause 3 of sales tax concession/holiday/exemption provided in the Government order. It enabled prescription of forms and provision of time-limit and such other related procedural details and did not, expressly or by necessary implication, enable restriction of the concessions or incentives to any extent.

6. We were referred to a decision of the Supreme Court in *State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others*, to the effect that statutory provisions cannot be restricted in their scope by executive instructions issued thereunder. The court held that executive instructions can only supplement and cannot curtail a provision in a statute or whittle down its effect. We have no such situation in the present case, because it is nobody's case that G.O. No. 498 is a statute or that the guidelines were executive instructions. Both were issued in exercise of executive power and may probably be efficacious to amend, alter or cancel each other. We need not consider that aspect in this writ petition.

7. We have yet to consider whether persons who acted to their detriment or altered their positions on the faith of the representation contained in G.O. No. 498 dated October 16, 1989 could be denied the full amplitude of the concession/incentive/exemption/tax holiday provided for in clause 3 of the above Government order. Though some attempt was made to urge before us that the petitioners have not proved that they fulfilled all the conditions to claim eligibility under the G.O. we do not countenance any such submission, since the respondents themselves have, admittedly, granted the benefits to the petitioners to a limited extent - the extent of eligibility as recommended by the committee in terms of clause 6B(ii) of the guidelines. They cannot be heard to contest eligibility of the petitioners to the concessions altogether. In any case, we do not propose to permit them to raise this plea which is contrary to their conduct.

8. The substantial question which arises for consideration is only whether the respondents are right in cutting down the exemption/tax concession/incentives from the amount promised by clause 3 of the G.O. to the limit provided for by clause 6B(ii) of the "Manual of Guidelines issued by the State Government".

9. It is too late in the day now to urge that the petitioners are not entitled to claim relief on the basis of equitable estoppel. A catena of decisions of the Supreme Court from *Union of India v. Angle Afghan Agencies* AIR 1968 SC 718, *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, *Bhim Singh and Others Vs. State of Haryana and Others*, *Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd.*, *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and *Pournami Oil Mills and Others Vs. State of Kerala and Another*, have positively held that promissory estoppel is a plea which is enforceable and that the essential elements of that plea consists of a promise by representation by one, on which, the promisee acts and alters his position. We have no doubt that clause 3 of G.O. No. 498 amounted to a representation to persons like the petitioners who acted upon the promise contained therein and altered their position as a consequence thereof. Those factors were sufficient to attract the principles of promissory estoppel as found by the decisions referred to above. As a matter of fact the respondents had acted upon the representation containing the above promise by granting relief to the petitioners, but they limited relief to the restricted extent only.

10. It would have been possible for the respondents to contend that the concession or incentive or exemption from sales tax can be granted only by issue of a notification u/s 9 of the Andhra Pradesh General Sales Tax Act and that G.O. No. 498 issued by the Department of Commerce and Industry could not amount to a valid notification u/s 9 of the Act. After the decision of the Supreme Court in *Pournami Oil Mills and Others Vs. State of Kerala and Another*, even this submission cannot be successfully urged, because the Supreme Court has held that representation contained in a like Government order issued by an altogether different department has to be related to the power under the Sales Tax Act to grant exemption. The Supreme Court found the genesis of the power in section 10 of the Kerala General Sales Tax Act, even though the order granting concession as in the present case was issued by the Department of Commerce and Industry. We would have expected that if the statute confers a power and also prescribes the manner in which it has to be exercised, it should have been exercised in that prescribed manner and none other. But in its wisdom, the Supreme Court has chosen to discard that principle of law to grant relief on the basis of equitable estoppel in almost identical cases. We are bound by those decisions, though we would have decided otherwise on the basis of the wholesome principle that exercise of a statutory power in a manner different from that which is prescribed is not valid.

11. We find considerable force in the submission urged by the petitioners that clause 3 of G.O. No. 498 contained an unambiguous and unequivocal

representation that small-scale industrialists who commence industrial activities on and after October 3, 1989 and commence commercial production before March 31, 1995 would be entitled to tax holiday in a sum not exceeding Rs. 35,00,000 during the period of five years. That concession was extended by a notified order issued in the manner indicated in article 166(2) of the Constitution of India. We understand clause 6B(ii) of the guidelines to effect an alteration in that provision by limiting the extent of eligibility to a sum lesser than Rs. 35,00,000. Such an alteration in a notified order issued under article 166(2) of the Constitution could have been effected only by another notified order issued under article 166(2) of the Constitution and published in the same manner and subject to the same conditions and restrictions as provided in that article. That we understand to be the basic requirement of section 21 of the Interpretation in General Clauses Act. Such an alteration not having been effected by a notified order issued under article 166(2) of the Constitution of India, respondents are not entitled to rely upon the alteration or reduction in the eligibility of the petitioners for exemption to any amount lesser than that which was promised in clause 3 of G.O. No. 498 dated October 16, 1989.

12. Counsel for the Commercial Taxes Department urged that the petitioners knew the extent of their eligibility when the District Committee constituted under clause 6 of G.O. No. 498 issued proceedings fixing such amount. It is submitted that petitioners have also availed of tax holiday up to such eligibility in their assessments and cannot now resile and seek further concessions. We are of the view that the petitioners cannot be foreclosed from availing the full extent of concession granted in G.O. No. 498 only by reason of the order of the District Committee fixing their entitlement to a lesser amount. The prescription by the committee pursuant to the limits fixed in the Manual of Instructions cannot have any greater sanctity than those instructions themselves.

13. In this view, we hold that the petitioners are entitled to "sales tax holiday" for a period of five years subject to a ceiling of Rs. 35,00,000 on sales tax during the entire holiday period. We further hold that restriction or reduction of such eligibility to the sum of 100 per cent. of the capital investment under clause 6B(ii) of the Manual of Instructions or the eligibility fixed by the District Committee or the orders of assessment are illegal and unenforceable. There will be a consequential direction that the respondents shall give full effect to the eligibility of the petitioners in terms of clause 3 of G.O. No. 498 to the extent mentioned above for the period provided not exceeding five years and that the respondents shall not demand or collect sales tax from the petitioners except after granting the benefits of tax holiday in the amount and within the period as mentioned above.

14. We allow the writ petitions; but in the facts and circumstances we order that parties shall suffer the respective costs.

15. Petitions allowed.