

(2004) 06 CAL CK 0047
In the Calcutta High Court
Case No : Writ Petition No. 1182 of 2000

Prasad Forms Pvt. Ltd.

APPELLANT

Vs

Assistant Commissioner, Commercial Special Cell and Others

RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Central Sales Tax (West Bengal) Rules, 1958 — Rule 11
Constitution of India, 1950 — Article 226
West Bengal Sales Tax Act, 1994 — Section 39, 40, 41
West Bengal Sales Tax Rules, 1995 — Rule 2(1)

Citation : (2005) 140 STC 11

Hon'ble Judges : Bhaskar Bhattacharya, J

Bench : Single Bench

Advocate : ;Roy, for the Respondent

Final Decision : Allowed

Judgement

Bhaskar Bhattacharya, J.—By this writ application, the petitioner has prayed for declaration that the Notification No. 2425 F.T. dated 12th August, 1999 cannot be made applicable to the petitioner who had established the industrial unit prior to the passing of the said notification. The petitioner has also prayed for declaration that it is entitled to get remission of tax by virtue of the prior Notification being No. 1324 F.T. dated April 28, 1995 issued under the Central Sales Tax Act, 1956. The petitioner has prayed for further direction upon the respondents to withdraw the purported order dated October 12, 1999 passed by the respondent No. 1 by which the State respondent has refused to issue eligibility certificate u/s 41 of the West Bengal Sales Tax Act, 1994 which is applicable to the Central Sales Tax Act, 1956 under Notification No. 1324 F.T. dated April 28, 1995 with effect from September 1, 1999.

2. The following facts are not in dispute :

(a) The petitioner was attracted by various incentives to the manufacturers in West Bengal with regard to full exemption, remission and deferment of tax both

under State law and the Central law by various sections, viz., Section 39, Section 40, Section 41, etc., of the West Bengal Sales Tax Act, 1994 and accordingly, established a unit of manufacturing computer stationery.

(b) In view of the aforesaid provisions, the petitioner filed an application for temporary registration before the Director of Industries, West Bengal, and the said Director issued a temporary registration certificate to the petitioner in 1996 and subsequently, the said authority issued permanent registration certificate to the petitioner on February 2, 1998. The commercial production of the petitioner started on August 28, 1997 and the petitioner made first sale of product manufactured at the said unit on August 22, 1997 and immediately made application for registration. After making necessary enquiries and verifications as required under the provisions of 1994 Act and Central Act, the Commercial Tax Officer, Asansol, granted registration Nos. AS/6552 and 2988(AS) to the petitioner as a manufacturer of computer stationery by making the certificate valid from August 22, 1997.

(c) u/s 41 of 1994 Act read with relevant rules framed thereunder, the petitioner was entitled to remission of tax for seven years both under 1994 Act and the Central Act to the extent of 85 per cent of gross value of fixed capital assets and the respondent No. 1 after receiving the application filed by the petitioner granted eligibility certificate to the petitioner for remission of tax u/s 41 of 1994 Act for the period November 15, 1997 to November 14, 1998. By virtue of the said eligibility certificate, the petitioner was also entitled to remission of tax under the Central Act in view of Notification No. 1324 F.T. dated April 28, 1995.

(d) The petitioner again applied for renewal of the said eligibility certificate for the period of November 15, 1998 to November 14, 1999 but with effect from September 1, 1999 a notification being No. 2425 F.T. dated August 12, 1999 was issued by the Government of West Bengal and by virtue of the said notification Clause (mm) in Sub-rule (1) of Rule 2 was incorporated in West Bengal Sales Tax Rules, 1995 by which production or making of computer stationery from paper, the manufacture carried on by the petitioner, was excluded from the definition of manufacture.

(e) In view of such amendment, when the application for renewal of eligibility certificate u/s 41 of 1994 Act was taken up for hearing by respondent No. 1 on October 12, 1999, the said respondent renewed the eligibility certificate from November 15, 1998 to August 31, 1999 and refused to renew the same on and from September 1, 1999.

3. Being dissatisfied, the petitioner has come up with the instant writ application.

4. The learned advocate appearing on behalf of the petitioner has strenuously contended that the amended definition of "manufacture" by introduction of Rule (mm) cannot affect the vested right of the petitioner and, as such, the petitioner should be entitled to the benefit of Section 41 of 1994 Act, as if, the said amendment has not come into force.

5. This application is opposed by the State-respondent and Mrs. Roy appearing on behalf of the State-respondent has made twofold submissions.

6. First, this writ application should not be entertained as the appropriate remedy of the petitioner lies before the West Bengal Taxation Tribunal. Secondly, there cannot be any promissory estoppel against statute and as such the petitioner is not entitled to get benefit of Section 41 of the 1994 Act, the moment the petitioner's unit ceased to be a manufacturing unit within the amended definition.

7. The first question that arises for determination in this writ application is, therefore, whether this writ application is maintainable before this Court in view of the provisions contained in the West Bengal Taxation Tribunal Act, 1987.

8. There is no dispute that the petitioner claims benefit under Central Act and not under 1994 Act which is a scheduled Act under the West Bengal Taxation Tribunal Act, 1987. Although, by virtue of the provisions contained in Rule 11 of the Central Sales Tax (West Bengal) Rules, the definition of "manufacture" mentioned in the West Bengal Sales Tax Rules applies mutatis mutandis to the Central Excise Act, but relief that was conferred upon the petitioner was not under 1994 Act but in exercise of powers conferred under the Central Sales Tax Act, 1956.

9. Since the Central Sales Tax Act, 1956 is not a scheduled Act within the meaning of the West Bengal Taxation Tribunal Act, 1987, I find substance in the contention of the learned advocate for the petitioner that the Taxation Tribunal has no jurisdiction to decide whether the benefit under Central Sales Tax Act, 1956 is available to the petitioner after amendment of the definition of manufacture mentioned in 1994 Act read with Rules thereunder. I, thus, find that the first point should be answered in favour of the petitioner.

10. The next question is whether the amended definition of manufacture or manufacturing process affects the vested right of the petitioner to have tax exemption already granted to the petitioner.

11. The point under dispute is now concluded by several decisions of various High Courts as well as the apex Court of the country. In the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, it has been held that any unit of small-scale industries which is set up in view of allurements given by the State Legislature, cannot be deprived of the benefit already granted by curtailing such benefit by way of amendment. The same view has also been taken by the Supreme Court in the case of Bakul Cashew Co. v. Sales Tax Officer, Quilon reported in [1986] 62 STC 122.

12. It is now settled position of law that on the basis of existing eligibility, if a person is allured to set up industrial unit in expectation of getting benefit of tax for a particular period on fulfilment of certain requirements and once on the basis of such requirements such industrial unit is given such benefit, subsequently, by way of amendment such right cannot be taken away. The amendment that has been made will be applicable to the other units which are set up after the said

amended definition of "manufacture" or "manufacturing process" have come into force. But the petitioner should be entitled to the benefit as was available at the time of obtaining first registration of eligibility certificate.

13. I, thus, find substance in the contention of the petitioner that the Notification No. 2425 F.T. dated August 12, 1999 will not be applicable to the petitioner and the petitioner will be entitled to the remission of tax as mentioned in Notification No. 1324 F.T. dated April 28, 1995 issued under the Central Sales Tax Act, 1956.

14. I, thus, allow the writ application. Let there be an order in terms of prayer (a), (b) and (c) of this writ application.

No costs.