(2016) 02 MP CK 0082

In the Madhya Pradesh High Court

Case No : WP No. 4136 of 2014

Ritspin Synthetics Ltd. APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 226

Citation : (2016) 1 JabLJ 389 : (2016) 2 MPLJ 616

Hon'ble Judges : P.K. Jaiswal and Jarat Kumar Jain, JJ.

Bench : Division Bench

Advocate : Brian D''Silva learned Senior Advocate with A.K. Upadhyay, learned Counsel, for the Appellant; D.S. Pawar, learned Counsel and P. Bhargava, learned Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging the notification dated 17.5.1995 (Annexure P/4), issued under Section 3-B of the Madhya Pradesh Electricity Duty Act, 1949, on the ground that, it was opposed to the principles of Article 14 and Article 19 (1) (g) of the Constitution of India as the same is discriminatory as it forms a class amongst class therefore, the said notification was bad in law and is ultra vires to the Constitution of India. The petitioner has also sought the quashment of orders dated 9.1.2013 and 8.5.2013, passed by the respondent No.3 and prayed for refund of the extra electricity duty amount of Rs.67,40,606/-, including the surcharge levied to the petitioner together with the interest.

2. The petitioner is a private limited company, owing what is described as a spinning mill at Pithampur, District Dhar. The petitioner claims to be manufacturing ''man made fabrics'' in this mill and to work a factory license has been issued by the Government of M.P vide Annexure P/3, for manufacturing process of spinning of all types of yarns from man made fibers, natural fiber, cotton fiber and made up. The petitioner unit is chargeable to electricity duty.

3. The petitioner who is given the benefit and an amount of Rs.67,40,606/- be ordered to be adjusted for the excess payment made for a period from 7.1.2009 to 31.7.2011. On verification, it was found that the petitioner unit was not in fact a textile unit and respondent passed the order dated 6.12.2012 and directed to pay the amount of Rs.67,40,606/- in the Government treasury for the period 7.1.2009 to 31.7.2011.

4. By order dated 9.1.2013, the respondent No.3 ? Chief Engineer and the Chief Electrical Inspector of Government of M.P. passed an order directing for depositing the amount of Rs.67,40,606/-. He challenged the said order by filing Writ Petition No.3243/2013, on the ground that the same was arbitrary and was passed without giving the opportunity of hearing to the petitioner and thus, was violative of principle of natural justice. The Division Bench of this Court by order dated 3.3.2014, set aside the same and granted the opportunity to the respondent to pass an appropriate order, after giving an opportunity of hearing to the petitioner. The respondent No.3 by order dated 8.5.2014, after granting opportunity of hearing to the petitioner representative, affirmed the action by holding that the notification dated 17.5.1995, exemption was granted for certain items, but the same is not extendable to the spinning unit and held that the petitioner is liable for electricity duty as provided in the Schedule by virtue of notification dated 17.5.1995.

5. M.P. Electricity Duty Act is an Act to provide for the levy of a duty on sale or consumption of electrical energy. The respondent No.1 exercising the powers vested in Section 3 of the Act and the power of exemption as contained under Section 3(B) of the Act notified the M.P. Electricity Duty (Amendment), 1995, inter alia amending the rate of duty as contained in the table below. By way of notification under Section 3-B, the respondent ? State while extending the exemption fixed the rate of duty for textile units excluding spinning mills at 5% per unit and other industries as 8%. The petitioner''s unit is of spinning unit and not a textile unit. It is a separate unit and is not covered under the term of textile unit as is provided in the schedule of the notification dated 17.5.1995. Section 3(B) of M.P. Electricity Duty (Amendment) Act, 1995 reads as under :-

"Section 3-B Power to exempt.- Where the State Government is of opinion that, -

(i) in order to encourage the establishment of any particular industry or class of industries in the State; or

(ii) having regard to the particular circumstances of any industry or class of industries; or

(iii) in order to extend facilities to such persons or class of may, by notification, specify;

it is necessary or expedient so to do in the public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification, -

(a) exempt from payment of duty in whole or in part-

(i) any distributor of electrical energy or producer in respect of the electrical energy sold or supplied to such industry for the purposes thereof;

(ii) where any producer or class of producers runs the industry, in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry;

(iii) any distributor of electrical energy or producer in respect of the electrical energy sold to or used for consumption by person or class of persons and for purposes specified in the notification;

(b) cancel any such notification and again subject, by a like notification, the distributor of electrical energy or producer or class of such producers to the payment of such duty in respect of such sale, supply or consumption of electrical energy."

6. The State Government in order to extend the facilities to such classes of consumer for the purpose of running their undertakings as are specified in the Schedule below, it is necessary and expedient so to do in public interest. The State Government exempts hereby from payment of duty on the Electrical Energy sold or Supplied by any distributor of electrical energy; or producer

Schedule

Sr.No.

Industries and others classes of consumers

Extent

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Textile Mills other than Spinning Mills

Duty in excess of 5 per cent unit of tariff of Madhya Pradesh Electricity Board

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7. By notification dated 17.5.1995, the State Government notified the exemption extended to various industries operating in the State, but no exemption was extended to the spinning mills and, therefore, the petitioner''s spinning mill was levied duty @ of 8%.

8. The respondent No.1 again amended the table below Section 3 of the Act of 1949 by promulgating the M.P. State Electricity Duty (Amendment) Act, 2011. The notification dated 10.8.2011 prescribed 9% as the rate for textile mills and other plants. As per para B at Serial No.9 the following has been stated :-

The Madhya Pradesh Act No. 28 of 2011

The Madhya Pradesh Electricity Duty (Amendment) Act, 2011

Sr. No.

Consumer Category

Consumed Electricity (in unit)

Rate of duty in percent of tariff per unit of electricity per months

(1)

(2)

(3)

(4)

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Power looms, Flour Mills Oil expeller, thresher and similar other Machinery used for agricultural processing, Textile Mills and other plants.

9 Percent

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A perusal of this Schedule goes to show that the duty so chargeable is 9%, which is chargeable on textile mills and other plants like.

9. As per notification dated 17.5.1995, it clearly shows that the legislature in its wisdom has excluded the spinning mill from the purview of its notification. As per 2011 notification, which came into force w.e.f. 10.8.2011, the State Government has fixed the electricity duty @ 9% for all plants, therefore, it can be clearly said that the spinning is at par with the textile mills. A bare perusal of item No. 9 of Schedule Part B of notification 2011, clearly goes to show that in this item all the plants are included which have diverse functions, i.e., to say in this entry Power-looms, Flour Mills, Oil Expeller, thresher and similar other Machinery used for agricultural processing, Textile Mills other plants have been included. This clearly shows that all kinds of plants have been included no matter that they are having diverse functions and produce diverse products in their respective units.

10. By notification dated 25.4.2012, new Act known as M.P. Vidyut Shulk Adhiniyam, 2012, has come into force and the Schedule annexed to it shows that various rate of electricity duty prescribed for various entries. Meaning thereby, the earlier schedule depicting the various entries pertaining to various consumers and the rate of duty so prescribed have paved way to extinction with the coming into force of the new notification. Now the electricity duty is to be paid as per as Part-A of the Schedule of the M.P. Viddhut Shulk Adhiniyam, 2012. As per Schedule under the Vidyut Shulk Adhiniyam 2012 now the spinning mills are kept with the entry containing textile industry which is illustrated as under :-

Schedule-2012

9. Textile mills, weaving mills and spinning mills..... 9 per cent

11. From the perusal of the aforesaid, it is clear that the duty levied from the petitioner is as per this schedule, which is prevalent as per the Act where the

subject matter of this lis is the period covered from 7.1.2009 to 31.7.2011 and the duty so leviable shall be as per as the Schedule A of the Notification dated 17.5.1995. The petitioner has tried to lay his claim on the strength of letter dated 11.1.2012 by virtue of which Rs.67,40,606/- have been ordered to be refunded to the petitioner for a period from 7.1.2009 to 31.7.2011. The Superintendent Engineer, who had granted this sanction order has been served with the show cause notice to explain his conduct and further D.E. has also been initiated in this regard. Immediately, thereafter the competent authority of the State Government cancelled the aforesaid letter with a direction to pay the amount of electricity duty of Rs.67,40,606/-.

12. Learned Senior counsel for the petitioner on the strength of various documents tried to establish that the spinning unit is a textile industry. These documents also do not support his case as these documents on the contrary establish that the spinning unit is a ''part'' of textile industry. In respect of challenge to the vires an objection has been raised by the learned Deputy Advocate General that the same is misplaced because the Act has been repealed and by virtue of notification dated 25.4.2012 now the new Act has come into force.

13. Whenever the Act is repealed it must be considered, except as to transactions past and closed, as if it had never existed. The effect thereof is to obliterate the Act completely from the record of the Parliament as if it had never been passed by it, it never existed except for the purpose of those actions which were commenced, prosecuted and concluded while it was existing law. Legal fiction is one which is not actually a reality and which the law re-cognise and the Court accepts as a reality. Therefore, in a case of legal fiction the Court believes something to exist which in reality does not exist. It is nothing but a presumption for existence of the state of affairs which in actuality is nonexistent. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under the circumstances. Therefore, when Section 15 of M.P. Vidhyut Shulk Adhiniyam, 2012, repealed M.P. Electricity Duty Act, 1949 w.e.f. 25.4.2012, the law in M.P. Electricity Duty Act, 1959 in effect came to be non-existent except as regards the transactions, past and closed or saved and now at this stage, after coming into force of M.P. Vidhyut Shulk Adhiniyam, he cannot challenge the validity of notification dated 17.5.1995, by virtue of the provision of Section 15(2) Clause (a) of the M.P. Vidhyut Shulk Adhiniyam, 2012. In the case of U.P. Cooperative Spinning Mills Federation Ltd. & Anr. v. Ram Pratap Yadav & Ors. reported as (2007) 11 SCC 428, the Apex Court considering the notification of 16.10.1981 and 1975 regulations declined to accept the distinction between spinning mills and textile mills. Since basically spinning mills and textile mills are complementary to each other and, therefore, held that "spinning mills" would also come under the description of "textile mills".

14. In the present case, we have to go through the exemption granted by the State Government under Section 3(B) of M.P. Electricity Duty Act, 1949 and

particularly serial No.6 of Schedule whereby, the State Government granted exemption from payment of electricity duty to the textile mills other than spinning mills and thus, we cannot accept the said proposition because the industry engaged in spinning shall not be entitled for the aforesaid exemption. The petitioner has no contention that notification dated 17.5.1995 is vitiated by any constitutional or legal infirmity. Notification dated 17.5.1995 prescribed different rates of electricity duty for the textile mills except the spinning mills. By this notification, spinning mills were taken out of different category, the petitioner contends that the mill owned by it is a textile mill entitled for the concessional electricity duty prescribed under notification dated 17.5.1995. This concessional electricity duty is sought to be taken away by the impugned notification, which makes it clear that the concessional electricity duty relating to textile mills should be available only where energy supplied for manufacture of cloth industry engaged in spinning and the petitioner shall not be entitled for the said concessional rate of electricity duty. There was an attempt made by the petitioner to contend that all types of yarns from man-made fibres, natural fibre, cotton fibre and made up is manufactured in its textile mills. It is not in dispute that cloth is not manufactured from all types of yarns at the petitioner''s mill at Pithampur, District Dhar. Going by the impugned amendment, electricity duty applicable to textile mills cannot apply to the petitioner''s mill. Impugned notification classifying spinning industries separate from textile industries is not beyond scope of Section 3(B) of the M.P. Electricity Duty Act. There is nothing on record that financial condition of spinning units was not satisfactory and as such, categorisation along with general power consumer is correct. This would indicate that the financial condition of the consumer and its ability to pay electricity duty at a particular rate was taken into consideration while classifying spinning unit separately from textile unit. In one case power is supplied for the purpose of manufacturing cloth and in another case power is supplied for the purpose of processing cloth. Undoubtedly, the financial ability of a class of consumers is relevant basis for classification and such classification has nexus with the object sought to be achieved. In view of the explanation offered by the State, it cannot be said that this is a case of treating two equals unequally. We are not satisfied that the challenge on the basis of Article 14 of the Constitution of India has been made out.

15. In the case of Aashirwad Films v. Union of India & Ors. reported as (2007) 6 SCC 624, the State Government issued notification levying entertainment tax on Hindi films at a rate higher than that on films in local language (Telugu in this case) was found prima facie arbitrary. In such circumstances, in para 24, 25 and 26, the Hon''ble Supreme Court, held the burden was on the State to show that the levy was justified. The Apex Court held that the purported classification only on the basis of language without anything more and in particular having regard to the difference in the rate of tax is ex facie arbitrary.

16. In the case of State of Maharashtra v. Manubhai Pragaji Vashi & Ors. reported as 1995 (5) SCC 730 grants-in-aid to Government recognised private

law colleges cannot be denied while extending such facility to recognised private colleges with other faculties by the State. The Apex Court held that such denial cannot be justified on the ground of paucity of funds and held that the same is discriminatory and in violative of Article 14 of the Constitution. The aforesaid decisions are distinguishable and do not apply to the facts in case in hand.

17. The spinning mills and textile mills are having different scope of work and also different product comes as final product from these particular mill and thus, the textile and spinning mills cannot be treated at par with one another.

18. For the above mentioned reasons, writ petition filed by the petitioner has no merit and is accordingly, dismissed but without any orders as to cost.