(1996) 07 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2713 of 1993

S.G.N. Cables Industries Private Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 08-07-1996

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1997) 115 PLR 592 : (1997) 1 RCR(Civil) 222

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : None, for the Appellant; S.K. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This petition has been filed for quashing of the notification (Annexure P-2) whereby the Government imposed octroi on consumption, use or sale of the goods shown in that Annexure.

2. The petitioner is a small industrial unit which was registered with the Directorate of Industries on 1.12.1988. Petitioner says that being a small scale industrial unit, it is entitled to exemption from payment to taxes and octroi in view of the Industrial Policy of 1978 and the Industrial Incentive Code which provide for such exemption. It is said that the petitioner has been granted exemption certificate for a period of six years from the date of registration. Further assertion of the petitioner is that in spite of the declaration made by the Government through the Industrial Policy Statement and the Industrial Incentive Code, the Notified Area Committee is seeking to charge octroi from it on the basis of Annexure P-2. By placing reliance on the decision of this Court in Civil Writ Petition No. 551 of 1985 (M/s. Molins of India Ltd. v. State of Punjab,) 1 the petitioner has pleaded that the respondent No. 4 should be restrained from charging octroi on the goods brought by the petitioner within the limits of the Notified Area Committee.

3. In the reply filed on behalf of respondent No. 4 claim of the petitioner for grant of exemption from payment of octroi has been contested. Respondent No. 4 has pleaded that the petitioner went into production on 29.11.1988 and it is governed by the Industrial Police Statement, 1987 which has been notified by the Government on 30.3.1988. According to respondent No. 4, there is no provision for exemption from payment of octroi in the Industrial Policy Statement of 1987 and the petitioner has no right to claim exemption from payment of octroi under that policy.

4. On 5.7.1996 learned counsel for the petitioner and respondent No. 4 had appeared. Their arguments were heard and the case was adjourned for today as per the request made by the learned counsel for the petitioner, who wanted to make further submission in the light of judgment dated 29.5.1996 rendered in Civil Writ Petition No. 2390 of 1994 and connected writ petitions. However, today no one has appeared to make further submissions on behalf of the petitioner.

5. The only point argued by Shri Goyal, learned counsel for the petitioner is that after having granted exemption from payment of octroi to the newly set up industrial units, the Government does not have any power to withdraw such exemption directly or indirectly. Learned counsel submitted that as per the Industrial Incentive Code, 1978, exemption from payment of Octroi is available to all small scale industries and there is no reason or justification for the Government to issue notification annexure P-2, and respondent no. 2 is not entitled to charge octroi from the petitioner. On the other hand, Shri Mittal submitted that when the petitioner got registration, the Industrial Incentive Code 1978 was not operative and the Industrial Policy statement of 1987 was applicable. Shri Mittal submitted that this policy statement was notified on 30.3.1988 and the petitioner''s unit got registered after that date and, therefore, the petitioner cannot claim any benefit of the earlier Industrial Incentive Code.

6. The issue similar to the one raised in this petition has been considered by a Division Bench in C.W.P. No. 2390 of 1994 (M/s. Bajwa Cement Industries Limited v. State of Punjab and Ors.,) decided on 29.5.1996 alongwith two other writ petitions. The Division Bench took notice of the earlier judgment in M/s. Molins of India Limited and held :-

"From the above extracted portions of the three notifications, it is clear that for the units coming into existence after the issue of these notifications, benefits specified under these "notifications only are admissible and none of these notifications provide for grant of exemption from octroi and house-tax. Only in the notification dated 30th March, 1988 the Government gave option to the units which were covered by Incentives Scheme, 1978, also and which came into production on or after 30th April, 1988. They were given a choice to exercise option under the old scheme or the new scheme. None of the petitioners have claimed that they exercised option under para 1(b) of the notifications dated 30th March, 1988. It is, therefore, clear that the benefits which were given to the units set up as per the incentives Code of 1978 issued under the Industrial policy statement, 1978, have not been continued under the industrial policy statements of 1987, 1988 and the incentives code of 1992. As a logical corollary, we hold that the petitioners are not entitled to claim benefits of exemption from payment of octroi or house-tax."

7. The judgment in M/s. Molins India Ltd. (supra) has been distinguished with the following observations :-

"The judgment of this Court in M/s. Molins of India Limited (supra) on which reliance has been placed by Shri Aggarwal has no bearing on the issues raised in this case. In that case the court had found that the industrial unit had been established on the basis of the promise held out by the Government for grant of incentives. The court took the view after having made the petitioners to believe that they would be entitled to particular set up of incentives, the Government cannot backtrack from the promise and deny such benefits to the newly established industries. This is not the fact situation obtaining in these cases. Moreover, in view of the latest pronouncements of the Supreme Court, we do not find any ground to accept the plea of the petitioners based on the decision in M/s. Molins of India Limited (supra)."

8. In my opinion the petitioner''s case is fully covered by the judgment of the Division Bench and, therefore, no relief can be given to the petitioner.

9. Consequently, the writ petition is dismissed. It is further made clear that respondent No. 4 shall now be entitled to recover the amount of octroi, including the arrears, from the petitioners and also interest as per the provisions of law for the period during which the petitioner did not pay octroi on the basis of the stay order passed by this Court on 14.5.1993.