(2022) 03 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition (M/B) No. 266 Of 2005

Shiva Power APPELLANT

Vs

Secretary & Others RESPONDENT

Date of Decision : 02-03-2022

Acts Referred:
Central Excise Act, 1944 — Section 5A

Citation : (2022) 03 UK CK 0016

Hon'ble Judges : S. K. Mishra, J;R.C. Khulbe, J

Bench : Division Bench

Advocate : P.R. Mullick, Mohit Maulekhi, Shobhit Saharia, Vipul Sharma, Hari Mohan Bhatia

Final Decision : Allowed

Judgement

S.K. Mishra, J

1. By filing this writ petition, the petitioner, which a partnership firm, has prayed for issuance of a writ of certiorari quashing the order of the respondent No.2, i.e. the Deputy Commissioner, Customs & Central Excise, E-Block, Nehru Colony, Dehradun, i.e. Annexure No.X, dated 16.03.2005, whereby the petitioner was directed to start paying the Central Excise duty on future clearances and also imposing the Central Excise Duty on past clearances notified under Notification 50/2003. The petitioner has also prayed for issuance of writ of certiorari quashing the opinion of the respondent No.3 (Annexure No.IX) in expressing to the respondent No.2, his opinion on extension of benefit of exemption to new industrial units established in the category "industrial activities in non-industrial areas". The petitioner has further prayed for issuance of a writ of mandamus directing the respondent No.3 to allow the benefit of exemption on the strength of Central Excise Notification 50/2003.

2. The Government of India, Ministry of Commerce & Industry (Department of Industrial Policy & Promotion), issued a new industrial policy dated 07.01.2003,

providing the fiscal incentives to new Industrial Units and to existing units on their substantial expansion. The policy provided for new industrial units and existing industrial units on their substantial expansion which are set up in Growth Centres, Industrial Infrastructure Development Centres, Industrial Estates etc., as stipulated in Annexure-I and other areas as notified from time to time by the Central Government are entitled to 100% outright excise duty exemption for a period of ten years from the date of commencement of commercial production. Annexure-I to the policy provides the location in the Tehsil in the State of Uttarakhand where a new industrial unit or an existing industrial unit was required to be established in order to claim exemption. In the Original List issued by the notification, "other areas as notified from time to time" was not included. However, as per the General Exemption No.51 (i.e. starting from Page No.35 of the brief), SI. No.9 at Page No.39 of the brief provides for Turner Road, Clement-town, Khasra Nos.610 and 625 in Rishikesh, District Dehradun.

3. It is not disputed at this stage that Khasra Nos.610 and 624 are the relevant Khasra Nos. on which new industrial units of the petitioner stand. Therefore, it was argued by the learned counsel for the petitioner that the case of the present petitioner is covered by a Full Bench Judgment of this Court in the case of "M/s Om Ispat vs. Secretary, Industrial Department, Government of Uttarakand, Dehradun and others, Writ Petition (M/S) No.163 of 2009", dated 04. 08.2011. Therefore, it is prayed that since the matter is covered by a Full Bench Judge of this Court, there is no impediment in issuing a writ of certiorari and mandamus, as prayed by the petitioner in the writ petition.

4. Mr. Shobhit Saharia, the learned counsel for the respondent No.1, Mr. Vipul Sharma, the learned counsel for the respondent No.3, and Mr. Hari Mohan Bhatia, the learned counsel for the respondent No.4, would argue that the petitioner's case does not come under the notification 50/2003, and it cannot also take advantage of the notification No.49/2003 dated 10.06.2003, as it is not a thrust industry.

5. We have clearly examined the pleadings raised by the learned counsel for the respondents, and we give much emphasis on the counter-affidavit of the Deputy Commissioner, Central Excise, Dehradun.

6. From the pleadings raised, it is appropriate to record certain pleas taken by them, as we are of the opinion that the arguments raised by the learned counsel for the respondent Nos.2 and 4 are going beyond pleadings they have raised.

7. In Paragraph No.4 of the counter-affidavit, it is contended that the petitioner is a new unit which has commenced commercial production after 07.01.2003, but the Khasra Nos. of the said unit are under the category of "Industrial Activity in Non-Industrial Area". Hence, the petitioner is ineligible for exemption under the said notification, as the area has not been declared as an Industrial Area for the purpose of a new unit. Clarification given by the Managing Director, SIDCUL is acceptable because it being the notified Nodal Agency for routing the subsidies/

incentives of various schemes of New Industrial Policy.

8. It is further pleaded that Notification No.49/2003 pertains to thrust industries defined in scheduled appended to the said notification. It is further submitted that the Office Memorandum No.1(10)/2001-NER dated 07.01.2003, issued by the Ministry of Commerce & Industry (Department of Industrial Policy & Promotion), has a provision for Nodal Agency for routing the subsidies/ incentives under various schemes of New Industrial Policy. The Ministry of Commerce & Industry (Department of Industrial Policy & Promotion), vide their notification dated 06.03.2003 have notified the State Industrial Development Corporation of Uttarakhand as a Nodal Agency for the State of Uttarakhand.

9. The Deputy Commissioner further pleaded that to ascertain the eligibility of exemption, under Notification No.50/2003-CE dated 10.06.2003, claimed by the Industrial Units falling under the above-mentioned category 2 and 4, a clarificationwassoughtvideletterC-No.II (8)PREV/MISC/4/204 dated 21.02.2005 from the Nodal Agency. The Managing Director of SIDCUL, vide letter No.3389/ MD/SIDCUL/2005-06 dated 03.03.2005 has clarified that benefit of concessional industrial package in the category of Industrial Activity in Non-Industrial Area and Industrial Activity in Non-Industrial Area (to be notified with extension) would accrue only to existing industries (established prior to 07.01.2003) who go for substantial expansion, and not to newly established units.

10. It is further pleaded that in the present case, though the Khasra Nos. have been notified in the category "Industrial Activity in Non-Industrial Area", but this has been done only for existing industries undertaking substantial expansion and not for new industries.

11. The Deputy Commissioner further plead that the answering respondents have interpreted the notification dated 10.06.2003 on the basis of clarification given by the Nodal Agency, and Khasra Nos. mentioned in Annexure II appended to the said notification are divided into four categories, namely (i) Existing Industrial Estate/Region, (ii) Proposed Industrial Area, (iii) Expansion of Existing Industrial Area, and (iv) Industrial Activity in Non-Industrial Area (to be notified alongwith extension), or Industrial Activity in Non-Industrial Area. It is further pleaded that the MD, SIDCUL in their aforesaid clarification has clarified that while sending the Khasra Nos. for notification to Government of India by the Government of Uttaranchal (now Uttarakhand), in the category "industrial activity in non-industrial area" (to be notified alongwith extension), "industrial activity in non-industrial area", reference was made of existing Industrial Unit only. The intention of the Government of India was very clear. Therefore, the Khasra Nos. were divided into four categories, as mentioned above. Khasra Nos.610 and 624, Turner Road, Clement-town were in Non-Industrial Area. Therefore, to extend the benefit of exemption to those industries (existing prior to 07.01.2003), located in such area, i.e. Industrial Activities in Non-Industrial Area, the Government of India notified such Khasra Nos. under the said category. Therefore, it is pleaded that as also clarified by the MD, SIDCUL, the existing unit

who have undertaken substantial expansion would be eligible for exemption under the said notification. But the new units which have commenced commercial production after 07.01.2003 are not eligible for exemption under the said notification. Therefore, the respondents plead that the writ petition should be dismissed.

12. An examination of these pleadings, therefore, leaves the following question to be determined:-

“Whether under the Industrial Policy, a new unit setup in a non-industrial area, but notified the Khasra No. in General Exemption No.51, will be eligible to get the benefit of the New Industrial Policy of remission of the Central Excise, or only an existing unit doing 25% of development in a non-industrial area is only entitled to such remission to be exclusion of the new units?

13. In our considered opinion, this matter has already set at rest by the Full Bench Judgment of this Court in the case of M/s Om Ispat (supra). After a detailed discussion of the facts, the Full Bench at Paragraph No.10 has observed as follows:-

“10. It transpires that the Deputy Commissioner, Central Excise wrote a letter dated 21.02.2005 to the Managing Director of State Industrial Development Corporation of Uttarakhand (SIDCUL), which is the Nodal Agency for routing the subsidies / incentives under the policy, seeking clarification with regard to the exemption being granted under the notification No.50/2003 dated 10.06.2003. In response to the said letter, SIDCUL replied vide letter dated 03.03.2005 indicating that the category 6 “Industrial Activity in Non-Industrial Area” and “Industrial Activity in Non-Industrial Area (to be notified alongwith extension)” refers to existing industrial units only and that the benefit of exemption in the aforesaid two categories would accrue only to an existing industry which goes in for a substantial expansion.

11. The Deputy Commissioner Central Excise on the basis of the clarification given by SIDCUL, informed the petitioner by its letter dated 18/21.03.2005 that exemption from Central Excise is to be given in Khasra No.54 in village Behedeki to existing units only and since the petitioner’s unit is a new unit, the benefit of exemption under the notification dated 10.06.2003 cannot be granted”.

14. These two paragraphs show that the point of controversy in the judgment rendered by the Full Bench of this Court in the case of M/s Om Ispat (supra), and the point of controversy arising in this writ petition are identical.

15. While deciding the case, the Full Bench has held as under. We find apt to quote the exact words used by the Full Bench.

“22. The sole question which is required to be considered is whether the petitioner is entitled for central excise exemption under the notification No.50/2003 dated 10.06.2003.

23. Clause 3.1 of the policy dated 07.01.2003 indicate that new industrial units located in growth centres, etc. as stated in Annexure-I to the policy would be entitled to exemption of central excise duty. Locations were identified in general in Annexure-I to the policy, which included Iqbalpur Tehsil in District Haridwar. Clause 3.1 of the policy dated 07.01.2003 provided that the Central Government, in addition to the areas specified in Annexure-I, could further notify other areas from time to time. The notification No.50/2003 dated 10.06.2003 notified other areas and also provided further details of the industrial estates/areas/regions, the village, khasra nos. and the tehsil where a new unit or an existing unit was required to be located. The notification dated 10.06.2003 clearly indicated that new industrial units which are located in the areas specified in Annexure-II would be entitled for exemption which have commenced their commercial production on or after 07.01.2003. Annexure-II to the notification dated 10.06.2003 indicated Khasra No.54 in Tehsil Roorkee in village Behedeki in District Haridwar.

24. The petitioner's unit is located in Khasra No.54 in village Behedeki in Tehsil Roorkee and has established a new unit and started commercial production after 07.01.2003 and consequently applied for exemption. The respondents contention that the petitioner's unit is not located in the industrial area specified in the notification dated 10.06.2003 is on account of the reasoning that category 'C' under District Haridwar applies only to existing units and not for new units. This reasoning is based on the basis of the heading given in category 'C' namely, "Industrial Activity in Non-Industrial Area (to be notified alongwith extension)" implying that this category refers to existing industrial units.

25. In our opinion, the reasoning adopted by the respondents is patently erroneous and cannot be culled out from the categories mentioned in Annexure-II.

26. The notification dated 10.06.2003 clearly indicates that a new unit would be entitled for exemption if it commences production after 07.01.2003 established in an area specified in Annexure-II. The said categories mentioned under District Haridwar namely, (A) Existing Industrial Estates, (B) Proposed Industrial Area / Estates, (C) Industrial Activity in Non-Industrial Area (to be notified alongwith extension) and, (D) Expansion of Existing Estates does not in any manner indicate that the said categories (A), (B), (C) & (D) relates to an existing unit or to a new unit. Consequently, we are of the opinion that category 'C' does not specify that it relates to an existing unit only. The stand taken by the opposite party is patently erroneous, misconceived and cannot be accepted.

27. SIDCUL itself had clarified that the words "to be notified alongwith extension" under category 'C' was a typographical error, which in our opinion is correct and we further hold that the said words "to be notified alongwith extension" does not in any manner indicate that another notification was required to be issued under Section 5A of the Central Excise Act, 1944 to claim the benefit of exemption. The notification dated 10.06.2003 by itself was sufficient to claim the benefit of exemption.

29. A Division Bench of this Court in Writ Petition No.333 of 2005 (M/B) tilted as M/s S. S. Poles Vs. The Secretary, Industries Department & others decided on 16.05.2005, held that the opinion of the Managing Director of the SIDCUL could not override the notification dated 10.06.2003 and held that the notification dated 10.06.2003 would prevail. We are in agreement with the said decision". (underlined to emphasize)

16. Therefore, in that view of the matter, we come to the conclusion that the controversy involved in this case has already set at rest by the Full Bench of this Court, and it has, vide its aforesaid judgment, categorically come to the conclusion that remission of Central Excise is also available to a new industrial unit setup in a non-industrial area, but where the Khasra No. is specified in General Exemption No.51.

17. We are also in agreement with the judgment of the Full Bench that the petitioner is entitled to exemption under Notification No.50/2003, dated 10.06.2003.

18. We are also of the opinion that there is neither plausible rationale, nor it is an intelligible differentia to uphold the contention that only existing units with substantial development are eligible to get the tax/duty remission and holiday. The very purpose of devising the industrial policy, i.e. Notification No.50/2003 is to give incentive to growth of industry in the two States. It should also apply to new units in non-industrial areas.

19. Hence, we are of the opinion that the writ petition is a meritorious one, and should be allowed.

20. The writ petition is, therefore, allowed. The order dated 16.03.2005, passed by the respondent No.2 and the opinion of the respondent No.3 in expression to the respondent No.2 his opinion on extension of benefit of exemption to new industrial units established in the category industrial activities in non-industrial areas are, hereby, quashed. Rule is made absolute.

21. Urgency certified copy of this order be issued to the parties on proper application.

