(2008) 02 P&H CK 0117

In the Punjab And Haryana At Chandigarh

Shivalik Plastichem (India) Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:
Constitution of India, 1950 — Article 14, 19

Citation : (2008) 14 VST 345

Hon'ble Judges : Satish Kumar Mittal, J;Rakesh Kumar Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar Garg, J.—By way of this writ petition, the petitioner is seeking issuance of a writ in the nature of certiorari or any other appropriate writ or direction declaring the orders dated May 19, 2005 and June 15, 2005 (annexures P19 and 20) as illegal, arbitrary, mala fide, violative of Articles 14 and 19(1)(g) of the Constitution of India, and ultra vires of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (hereinafter referred to as, "the Rules, 1991"). It is relevant to mention that vide order dated May 19, 2005 (annexure P19) the petitioner was required to deposit the amount as a consequence of cancellation of its eligibility and exemption certificate under the Rules of 1991. The said order was passed by the sales tax authorities as the Director of Industries and Commerce, Punjab vide his order dated March 30, 2005 has found that the petitioner is not eligible for grant of incentive of exemption from sales tax. The petitioner had filed representation to the respondent-department against the order dated March 30, 2005 which was dismissed vide order dated June 15, 2005 (annexure P20).

2. As per the averments made in the writ petition, the petitioner-company entered into an agreement for purchase of land measuring 5 kanals and 15 marlas comprised in Khewat/Khatoni No. 20/22, Khasra No. 8/7/2(6-4), 8/2/2(6-4), 14/1(0-18) situated at village Muthari (Ban Majra), Hadbast No. 124, District Ropar, on March 18, 2000/March 24, 2000 for a sum of Rs. 6,00,150 and

the petitioner-company paid Rs. 50,000 as earnest money. In pursuance of the agreement to sell, the petitioner-company was put in possession of the land. After getting into the possession of the said land in pursuance of the agreement to sell, the petitioner-company started raising construction and also called for quotations for the required plant and machinery. Thereafter, the petitioner-company applied for SSI registration with the Industries and Commerce Department, Punjab and got provisional certificate No. 161102598-Prov/SSI dated April 28, 2000. It is also averred in the writ petition that in pursuance of the agreement to sell dated March 18, 2000, the sale deed of the land was also executed on March 21, 2001 in the name of the company.

3. It is the case of the petitioner that the respondent-State of Punjab with a view to promote growth of industries in the State had been providing from time to time various incentives for the new industrial units. The State Government issued a Notification No. 1NCII/15/43/965/96/18/4176 dated June 1, 1996 for sales tax exemption/sales tax deferment for the units who had taken effective steps by April 30, 2000.

4. It is the case of the petitioner that it was granted eligibility certificate on November 28, 2002 vide annexure P10 by the Department of Industries for grant of incentives of sales tax exemption. It is the further case of the petitioner that the petitioner-company being eligible for the said incentives submitted an application for issuing it the sales tax exemption certificate on May 30, 2002 vide annexure P13. The said application was duly received in the office of the Assistant Excise and Taxation Commissioner, Rupnagar vide annexure P14 and in pursuance of this application, the petitioner-company was granted sales tax exemption certificate dated August 26, 2003 vide annexure P15. Vide this certificate the unit of the petitioner-company was held entitled to the deferment of or exemption from payment of tax in accordance with the provisions of the Rules, 1991 for the period April 10, 2002 to April 9, 2012 subject to the maximum amount of tax exemption of Rs. 7,40,85,000.

5. It is the further case of the petitioner that acting on the above said certificate, granting sales tax exemption, the petitioner-company did not charge any sales tax from its customers. However, the petitioner-company received a letter dated April 5, 2005 (annexure P16) from the Assistant Excise and Taxation Commissioner, Ropar to show cause as to why exemption certificate be not cancelled and tax exemption availed by the petitioner-company be not recovered from it. It is further alleged in the writ petition by the petitioner that the said show cause notice was given by the sales tax authorities after receiving letter dated March 30, 2005 from the office of Director of Industries to the effect that the exemption of sales tax given to the petitioner unit may be stopped. The petitioner-company submitted its reply to the aforesaid show cause notice on April 12, 2005 and May 5, 2005 wherein it was mentioned that the eligibility certificate as well as the sales tax exemption certificate were granted to the petitioner-company after following the due procedure and there was no occasion

to abruptly cancel the same. However, the Assistant Excise and Taxation Commissioner illegally proceeded to cancel the eligibility certificate with reference to Rule 8 of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 vide order dated May 19, 2005 (annexure P19) and required the petitioner-company to deposit the amount of Rs. 55,63,150 immediately.

6. The petitioner filed C.W.P. No. 18390 of 2005 in this court challenging the order dated May 19, 2005. As per the averments of the petitioner notice of motion was issued and reply was filed by the respondents disclosing that respondent No. 3, i.e. The Director of Industries and Commerce Department, Punjab, Chandigarh has rejected his representation vide order dated June 15, 2005. Since the said order was not challenged in C.W.P. No. 18390 of 2005 therefore, the writ petition filed by the petitioner was dismissed as withdrawn to challenge both the orders of Taxation Department as well as the Industries Department, i.e. (annexures P19 and P20).

7. On the basis of the above noticed facts, the petitioner has challenged the impugned order, i.e., annexures P19 and P20 cancelling the eligibility certificate and consequent withdrawal of sales tax exemption on the ground that the same are patently illegal, arbitrary and against the provisions of the Act and the Rules framed thereunder.

8. Counsel for the petitioner has vehemently argued that there has been no false representation on the part of the petitioner-company as agreement to sell was executed on March 18/24, 2000 and in pursuance thereof the sale deed was also executed on March 21, 2001 and the company was put into possession immediately after entering into the agreement to sell and therefore the company was fully eligible for the tax incentives and the eligibility certificate was issued to the company after examining all the documents submitted by it and the same cannot be withdrawn arbitrarily.

9. The writ petition has been contested by the State by filing a short affidavit stating therein that the petitioner has not approached this court with clean hands as C.W.P. No. 18390 of 2005 was dismissed as withdrawn on October 31, 2006 and no opportunity to file a fresh writ petition was granted by this court and the present writ petition is barred by the principle of res judicata. Along with this affidavit, the respondents have also placed on record a copy of the judgment dated October 31, 2006 passed by this court in C.W.P. No. 18390 of 2005.

10. We have heard learned Counsel for the parties and perused the record. The petitioner has challenged the order dated May 19, 2005 annexure P19 earlier in C.W.P. No. 18390 of 2005 and the same was dismissed as withdrawn by this court as the petitioner has not raised any challenge to the withdrawal of the eligibility certificate issued by the Department of Industries. A perusal of the judgment dated October 31, 2006 would show that neither any opportunity was granted to challenge the order dated May 19, 2005 (annexure P19) afresh by this court nor any such prayer was made by the petitioner while praying for dismissal

of writ petition as withdrawn. In view of this fact, the petitioner cannot challenge the order dated May 19, 2005 (annexure P19) again through this writ petition.

11. Even otherwise a perusal of annexure P19 would show that for being eligible to tax benefits as per the notification issued by the Department, the unit in question must have been allotted land by April 30, 2000 whereas admittedly in the present case the petitioner-company was not the owner of the land on the said cut-off date. Admittedly, the sale deed was executed in favour of the petitioner-company on March 21, 2001, i.e., much after the cut-off date. Confronted with this factual position, the petitioner has further contended that the company was put into possession vide agreement dated March 18, 2000 and there was no misrepresentation on his part to the authorities and after examining all his documents, the petitioner was held to be eligible for tax concessions and therefore, the petitioner must be deemed to be completing/ fulfilling the conditions of having the land on or before the cut-off date April 30, 2000. The said contention of the petitioner is without any substance. The petitioner has placed on record copy of the sale deed dated March 21, 2001 vide annexure P12. It has been recited in the sale deed that the whole of the consideration of Rs. 3,73,863 has been received by the seller in advance at his residence from the purchaser and possession will be delivered to the purchaser without any objection.

12. On the other hand, in the agreement to sell (annexure P1) dated March 24, 2000 it is stated that the owner of the land has received only a sum of Rs. 50,000. There is no recital to the effect that the possession of the land has been handed over to the petitioner-company through the said agreement to sell. Both these documents, i.e., agreement to sell (annexure P1) and sale deed (annexure P12) are contradictory to the averments made in para No. 2 of the writ petition wherein the petitioner has specifically stated that he had paid a sum of Rs. 50,000 as earnest money and in pursuance of the said agreement to sell the petitioner-company was put in possession of the land. It is well-settled that the agreement to sell will not transfer the title of the land and therefore, it cannot be said that the petitioner had become owner of the land before the cut-off date, i.e., April 30, 2000.

13. A perusal of annexure P19 would further show that while passing the impugned order the Assistant Excise and Taxation Commissioner, Ropar has clearly mentioned that the exemption certificate granted by the sales tax authorities is being cancelled on the basis of intimation received from the General Manager, District Industries Centre, Mohali vide memo No. DIC/Moh/Sale Tax/1606 dated March 30, 2005 vide which the Sales Tax Department was intimated that the unit of the petitioner is not covered under the category of "unit in pipeline" cases as the dealer has failed to purchase land before April 30, 2000 as per the condition No. 2 of the notification and the eligibility certificate granted to the petitioner by the Industries Department has been cancelled by the Department of Industries.

14. Thus, from this fact alone it is very much clear that at the time of filing of C.W.P. No. 18390 of 2005 it was to the knowledge of the petitioner that the eligibility certificate granted by the Industries Department has been cancelled and in spite of this fact to his knowledge the petitioner has failed to challenge the said order and therefore, the present writ petition filed by the petitioner on the same cause of action is not maintainable.

15. In view of the above stated facts, we find no merit in the writ petition and do not feel inclined to interfere in the orders annexures P19 and P20 passed by the authorities.

16. Thus, the writ petition is dismissed.