

(1992) 02 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 6138 of 1983

Shri Guru Ashish Wire Industries

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 06-02-1992

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 49(2)

Citation : (1992) 02 GUJ CK 0030

Hon'ble Judges : Y.B. Bhatt, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; Rekha M. Doshit, AGP, instructed by M.G. Doshit and Co., for the Respondent

Judgement

G.T. Nanavati, J.—The case of the petitioner is that relying upon the sales tax incentive scheme for new industries declared by the Government on December 22, 1977 and August 27, 1980, it has set up a new industry to manufacture mild steel wires out of iron strips in a backward area. It started commercial production on July 23, 1981. Eligibility certificate was granted by the Industries Commissioner on December 17, 1982. Exemption certificate was granted by the sales tax authorities on February 6, 1982. In order to give effect to the scheme, the Government had also issued a notification on February 5, 1981 u/s 49(2) of the Gujarat Sales Tax Act, 1969, by inserting entry No. 118 in the Schedule to the parent notification of 1970. However, by a subsequent notification dated August 17, 1982, the Government, in exercise of the powers u/s 49(2) of the Act, amended entry at serial No. 118 and included the industry of "wire-drawing of steel and items requiring wire rods as essential raw materials" in the list of the excluded industries. Respondent No. 2 thereafter issued a notice to the petitioner stating therein that the exemption certificate granted to it was liable to be cancelled in view of the said notification of August 17, 1982. Not only that but the Commissioner of Sales Tax also issued a circular on February 10, 1982, wherein it is stated that in spite of the exemption certificates granted prior to August 17, 1982 benefit of exemption cannot be made available to the excluded

industries. Apprehending that the certificate granted to it will be cancelled, the petitioner has filed this petition not only challenging the proposed action but also for getting a declaration application to the petitioner's industry. Subsequent to the filing of the petition, respondent No. 2 passed an order on December 9, 1983, cancelling the exemption certificate granted to the petitioner. By amending the petition, the petitioner has also challenged the said order.

2. The fact that the petitioner has set up a new industry in a backward area pursuant to the resolutions of 1977 and 1980 is not in dispute; so also the fact that the petitioner had started commercial production on and from July 23, 1981. The competent authority under the Schedule had also issued eligibility certificate mentioning therein that the petitioner had invested in fixed assets Rs. 1,21,931.69, and that the petitioner was eligible for the sales tax incentive benefits. As pointed out earlier, the benefit to which the petitioner had become entitled is now denied only on the ground that on and from August 17, 1982, the petitioner's industry came to be included in the list of excluded industries and, therefore, the exemption from payment of sales tax was not available to it after that date. The petitioner is claiming relief invoking the doctrine of promissory estoppel and the respondents are resisting the same on the ground that the exemption has been now taken away by statutory notification and there cannot be any estoppel against the exercise of any legislative powers.

3. Obviously, in view of the admitted facts of this case, the petitioner can validly invoke the doctrine of promissory estoppel. Further it is to be noted that the notification dated February 5, 1981, issued u/s 49(2) of the Act was issued for the purpose of giving effect to the sales tax incentive, scheme declared by the Government by its resolution dated August 27, 1980. It was not an independent act of the State Government as can be seen from entry 118 itself. The notification dated February 5, 1981, was thus issued in discharge of its obligation under the scheme. Even if such a notification had not been issued, the new industry which had become entitled to the benefit under the scheme could have approached the court and compelled the Government to extend the benefit under the scheme to it. Therefore, even though it is true that a concession by way of exemption from payment of tax granted can always be withdrawn by means of legislation, such a power has to be regarded as subject to one limitation that the power cannot be exercised in violation of the Plea of promissory estoppel. In *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, the facts were that the Government of Gujarat, though issued a notification in exercise of its powers u/s 49(2) of the Act and had exempted certain sales and purchases from payment of tax, thereafter by another notification issued on July 17, 1971, the industry of decortication was taken out from the purview of the earlier notification. The question which had arisen was whether the exemption was available for the period earlier to July 17, 1971, and that for the period thereafter the said industry had no right to claim exemption. The Supreme Court held that the exemption was only by way of concession and, therefore, it was open to the State Government to withdraw or revoke the said concession. The

Supreme Court further held that however, such a power of revocation or withdrawal would be subject to one limitation, viz., the power cannot be exercised in violation of the rule of promissory estoppel. In that case the plea of promissory estoppel was not raised before the High Court and before the Supreme Court. It was not established that the new industry was set up because of any representation made or promise held out by the government.

4. As the exemption notification dated February 5, 1981, was issued by the Government solely for the purpose of giving effect to the sales tax incentive scheme declared by it by its resolution dated August 27, 1980, and as the doctrine of promissory estoppel has become a part of the law of the land, we think it just and proper to hold that the subsequent notification dated August 17, 1982, which had the effect of withdrawing the exemption formerly available to certain industries, can have no application to those industries, which were set up pursuant to the promise contained in the Government resolution dated August 27, 1980 and the notification dated February 5, 1981. This is not a case where the new industry was set up not relying upon the promise contained in the Government resolution dated August 27, 1980, nor is this a case where the new industry was set up after August 17, 1982. Though the notification dated August 17, 1982, would apply to such industries it had no application to the new industry which was set up relying upon the promise of sales tax incentives declared by the State Government and which had fulfilled other conditions of the scheme. In view of the facts of this case, it will have to be held that the said notification had no application to the petitioner and it was entitled to get all the benefits available under the scheme as stipulated in the eligibility certificate and the sales tax exemption certificate. The order passed by respondent No. 2 cancelling the exemption certificate will have to be regarded as illegal.

5. In the result, this petition is allowed. The order dated December 9, 1983, passed by the second respondent cancelling the exemption certificate is set aside and it is declared that the petitioner is entitled to the benefits of sales tax exemption as stipulated in the eligibility certificate dated December 17, 1981, and the exemption certificate dated February 6, 1982. The respondents are directed to grant such benefits to the petitioner. Rule is made absolute accordingly with no order as to costs.

6. Petition allowed.