
(1989) 08 GAU CK 0020

In the Gauhati High Court

Case No : Civil Rule No's. 160 of 1982 and 122 of 1983

Shyamal Prasad Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Tripura Sales Tax Act, 1976 — Section 3(2), 3(3)
Tripura Sales Tax Rules, 1976 — Rule 5(2)

Citation : (1990) 79 STC 293

Hon'ble Judges : J.M. Srivastava, J;B.P. Saraf, J

Bench : Division Bench

Advocate : A.M. Lodh and H. Lodh, for the Appellant; M. Majumdar, Government Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Saraf, J.—The petitioner, who is a manufacturer of steel furniture in Agartala, is aggrieved by the order passed by the sales tax authorities holding that the sales of taxable goods made by him are not exempt under Sub-section (2) of Section 3 of the Tripura Sales Tax Act, 1976, or Sub-rule (2) of Rule 5 of the Tripura Sales Tax Rules, 1976 and has approached this Court by filing the two present writ petitions. As the facts and questions of law involved in both the petitions are common, they were taken up for hearing together.

2. The case of the petitioner is that he is carrying on the business of manufacture of steel furniture under the name and style of Steel Well Industries, Agartala. He is registered as a dealer under the Tripura Sales Tax Act, 1976 (hereinafter referred to as "the Act"). He is also registered as a small-scale industry with the Department of Industries to the Government of Tripura vide Registration No. SSI/AGT/8/78-79 dated May 2, 1978. The petitioner sold the goods manufactured by him in his newly set up small-scale industry and claimed the sales of taxable goods made by him as exempt from tax by virtue of the provisions contained in Sub-section (2) of Section 3 of the Act and Sub-rule (2) of Rule 5 of the Tripura

Sales Tax Rules, 1976 (hereinafter referred to as "the Rules"). The Superintendent of Taxes, Agartala, rejected the contention of the petitioner on two grounds : Firstly, that Sub-section (2) of Section 3 is only an enabling provision and the same becomes effective only when a notification, as contemplated therein, is made by the State Government. As no such notification had been made in the present case, it was held that the petitioner was not entitled to claim exemption under the said provision. Secondly, that exemption under Sub-rule (2) of Rule 5 was not allowable to newly set up industry. Accordingly, claim for exemption from tax was rejected and tax was levied on its turnover, which was also estimated and the actual figures of sales were enhanced.

3. The appeal of the petitioner was not admitted for non-payment of the demanded tax. On revision before the Commissioner, the Commissioner held that the petitioner was not entitled to exemption claimed by him as he had failed to maintain his account books properly to the satisfaction of the assessing authority. The orders of the taxing authorities are under challenge before us.

4. The learned counsel for the petitioner, Mr. A.M. Lodh, made the following submissions : (i) that the petitioner is a newly set up small-scale industry and it is entitled to the exemption from payment of tax on its turnover as contemplated by Sub-section (2) of Section 3 of the Act ; (ii) that the claim of the petitioner for exemption is also fully covered by Sub-rule (2) of Rule 5 of the Rules which provides that sales by a newly set up small-scale industry of goods manufactured by it shall not be taxable for a period of three years ; (iii) that, in any event, the estimation of turnover made by the Superintendent of Taxes is most arbitrary, inasmuch as there is no basis or material in support of the same and the impugned assessments are not tenable on that ground also.

5. We have considered the submissions of the learned counsel for the petitioner. We have also heard Mr. Majumdar, learned Government Advocate, appearing for the respondents. For proper appreciation of the submissions made in the case, it is necessary to refer to the relevant provisions of the Act and the Rules. Section 3 of the Act is the charging section and it provides, inter alia, that every dealer in taxable goods shall pay a tax on his turnover at the rate specified in column (3) of the Schedule attached to the Act. Sub-section (2) thereof empowers the State Government to exempt from payment of tax any taxable goods if in its opinion it is necessary to do so for increasing the production of goods or for protection or encouragement of industry within the State. It can be done by a notification in the Official Gazette. Power has also been vested in the State Government to make an exemption in respect of tax payable on sales of any taxable goods as may be prescribed. Sub-sections (2) and (3) being relevant for the purpose of deciding the questions of law involved in the present writ petitions are reproduced below :

"3. Liability to tax and exemption from tax.--(1)

(2) If the State Government is of opinion that it is necessary or expedient so to

do for increasing the production of goods or for protection or encouragement of industry within the State, it may, by notification in the Official Gazette subject to such restrictions and conditions, exempt from payment of tax, either in whole or in part the sale of any taxable goods or class of taxable goods or any dealer or class of dealers for such period as may be specified therein.

(3) Subject to such restrictions and conditions as may be prescribed, the State Government may make an exemption, or reduction in rate, in respect of any tax payable under this Act on the sales of any taxable goods to such person or class of persons as may be prescribed.

(4)"

6. The expression "prescribed" has been defined in Clause (e) of Section 2 of the Act to mean "prescribed by Rules under this Act". The State Government made Rules under the Act, namely, Tripura Sales Tax Rules, 1976. Rule 5 of the said Rules deals with the various deductions that are allowable in computing taxable turnover of a dealer. Sub-rule (2) thereof, which is relevant reads as follows :

"5. (1) In calculating his taxable turnover a dealer liable to pay tax u/s 3 may deduct from his gross turnover, his taxable turnover on the following, namely :--

(i)

(ii)

(iii)

(2) Sales by a newly set up small-scale industry of goods manufactured by it during the period of 3 years since the date of its first sale of such manufactured goods :

Provided that the dealer claiming the benefit of this clause will be so eligible only if he keeps separate accounts in respect of such newly set up small-scale industry, issues serially numbered cash or credit memos for sales of goods manufactured in such industry, keeps vouchers and other documents for purchases of plant and machinery for establishment of such industry and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such an industry set up by him and that no amount by way of tax under the Act has been realised by him in respect of such sales :

Provided further that if any such newly set up small-scale industry is sold or otherwise transferred to a new owner during the said period of 3 years the benefit of this clause shall be available to such transferee or the new owner duly for the unexpired portion of said period of 3 years.

Explanation.--For the purpose of this clause "newly set up small-scale industry" means a new industrial unit,--

(i) with an investment up to Rs. 10 lakhs on plant and machinery, excluding the

value of land and building ;

(ii) which is registered with the Small-scale Industries Department, Government of Tripura ;

(iii) which is liable to pay tax as a dealer under the Act, but shall not include any expansion, addition or modification of an existing industrial unit."

7. The question that falls for determination in this case is whether the petitioner is entitled to exemption from payment of tax under Subsection (2) of Section 3 of the Act or under Sub-rule (2) of Rule 5 of the Rules.

8. A perusal of Sub-section (2) of Section 3 of the Act makes it abundantly clear that it is an enabling provision empowering the State Government to grant certain exemptions. It does not by itself exempt any sale from tax. It is for the State Government to exercise the power under the said provision if it is satisfied that it is expedient to do so for the purposes mentioned therein. The exercise of the power is also hedged with certain restrictions and conditions. One of such conditions is that it can be given only by a notification in the Official Gazette. Till such a notification is made specifying the taxable goods or class of taxable goods or any dealer or class of dealers who shall be exempt from payment of tax, the said provision does not come into operation at all and no exemption can be claimed by any dealer on the basis of the same. The case of the Revenue is that no notification has been made by the State Government in exercise of the power conferred on it under the said sub-section. The learned counsel for the petitioner also could not produce before us even at the time of hearing any such notification. He, however, placed reliance on a report of the Working Group of the Government of India published in April, 1969, in the matter of fiscal and financial incentives for starting industries in backward areas which recommended certain fiscal incentives for attracting entrepreneurs or to set up industries in selected backward areas. One of the recommendations was to grant exemption from sales tax, both on raw materials and finished products to such units for a period of five years from the date of their going into production. We are unable to appreciate the aforesaid contention of the petitioner. No claim can be based on the recommendations of the working group or any committee. The claim must be based on some provision of the Act, Rules or even on act or promise of the State Government if shelter is sought behind the principle of promissory estoppel. That is not the case. The aforesaid contention is, therefore, not tenable. The petitioner next relied on a scheme, namely Tripura State Scheme for Incentives to Industrial Units, 1984, which was published in the Tripura Gazette on November 17, 1984, wherein there is reference that the said scheme would be applicable even for the existing units which were covered by the earlier Tripura State Scheme for Incentives to Ancillary, Small-scale and Cottage Industries and Industrial Co-operatives, 1979. The said scheme in para 14 provides that "industrial units will be eligible for exemption of the sales tax, under Tripura Sales Tax Act, 1976, on finished products for a period of 5 (five) years from the date of starting production". On the basis of the aforesaid reference of 1979

Scheme in the 1984 Scheme it was contended that the petitioner was entitled to the benefit of exemption from payment of sales tax. We are not impressed by the aforesaid submission of the learned counsel for the reason that as elaborated above, Sub-section (2) of Section 3 is only an enabling provision and it is for the State Government to exercise powers thereunder as and when it deems expedient to do so. In the instant case that admittedly having not been done, the petitioner cannot be allowed to claim any benefit of exemption under the said provision. So far as the Incentive Scheme of 1984, it has no relevance to the case of the petitioner as it does not relate to the period during which the industry of the petitioner was started. It was started in the year 1978. Even the Incentive Scheme of 1979 of which reference has been made in the 1984 Scheme but the text of which is not before us, was published subsequent to the setting up of the industry by the petitioner. In any event, all those are relevant in a case where claim is based on the principle of promissory estoppel. That is not the case of the petitioner. Nor any evidence or material has been brought on record to sustain such a claim. As such, we hold that the petitioner's claim of exemption under Sub-section (2) of Section 3 is not tenable.

9. The next question for consideration is whether the petitioner is entitled to exemption under Sub-rule (2) of Rule 5 of the Rules. The said rule has been framed in exercise of the powers conferred under Sub-section (3) of Section 3 of the Act. It provides for exemption from levy of tax in respect of sales by a newly set up small-scale industry during a period of 3 years since the date of its first sale of such manufactured goods. The expression "newly set up small-scale industry" has been defined in the explanation to the said sub-rule. Certain conditions have also been laid down for claiming the benefit of exemption. Some of the conditions are that the dealer has to keep separate accounts in respect of the newly set up small-scale industry, to issue serially numbered cash or credit memos for sales of goods manufactured in such industry, to keep vouchers and other documents for purchases of plant and machinery for establishment of such industry and maintain other records to prove that sales claimed exempt under the said clause were of goods manufactured in such an industry set up by him and that no amount by way of tax under the Act had been realised by him in respect of such sales. In the instant case, admittedly the petitioner is a newly set up small-scale industry. Apparently, it falls under Sub-rule (2) of Rule 5 and is entitled to exemption from sales tax in respect of sales of its manufactured goods for a period of 3 years, if it can show compliance with the requirements laid down therein. The Superintendent of Taxes interpreted Sub-rule (2) of Rule 5 and held that there was nothing in Sub-rule (2) which could be so interpreted as to allow exemption to a newly set up small-scale industry. In the course of hearing we asked the learned Government Advocate to let us know as to how the aforesaid conclusion was arrived at by the assessing officer. The language of Sub-rule (2) of Rule 5 is explicit. It provides for exemption in respect of sales by a "newly set up small-scale industry". There was no answer. Apparently, the interpretation given by the assessing officer was not in accordance with the

language of Sub-rule (2) of Rule 5. It was, however, contended that the exemption is available only on fulfilment of the requirements laid down therein. According to Mr. Majumdar, in the present case, the Superintendent of Taxes found some discrepancies in the accounts for the period ending March 31, 1978, on account of which the petitioner was not entitled to the exemption. Our attention was drawn to the order of assessment dated July 1, 1980, wherein one or two cases of non-issue of cash memos had been pointed out by the assessing officer. The assessing officer also pointed out the discrepancies in the purchase figure shown in the trading account and in the ledger. The purchase figure shown in the trading account was shown at Rs. 69,432.79 whereas in the ledger it had been shown as Rs. 69,332.79. There appears to be a difference of Rs. 100. The learned counsel for the petitioner, in reply, submitted that the alleged discrepancies were fully explained. According to him, these were minor errors which could not be regarded as discrepancies to justify the rejection of the claim for exemption. We do not think it necessary to go into this aspect of the matter as we find that the sales tax authorities erroneously rejected the claim of the petitioner on the ground that the petitioner being a newly set up industry was not entitled to any exemption under Sub-rule (2) of Rule 5. We are of the firm opinion that the petitioner being a newly set up industry falls squarely under Sub-rule (2) of Rule 5 of the Rules and is entitled to exemption granted therein on fulfilment of the requirements of the said sub-rule. It may be pertinent to mention that the various requirements regarding maintenance of accounts, cash memos, etc., are intended only to enable the assessing authority to satisfy itself that the sale in respect of which exemption is claimed is a sale of goods manufactured by it in its newly set up industry. The aforesaid satisfaction must be in respect of each and every sale. If the evidence in respect of a particular sale is not satisfactory, the claim can be rejected only to the extent of that sale. The taxing authorities shall not be justified to reject the entire claim of a dealer for exemption on the ground of defect in cash memos or lack of evidence in respect of a particular sale or transaction claimed to be exempt.

10. Mr. Majumdar, learned Government Advocate, fairly stated that the taxing authorities in this case acted on the assumption that the petitioner being a newly set up industry, was not covered by Sub-rule (2) of Rule 5 and rejected the claim on the ground itself without properly applying its mind to the facts of the case and fulfilment of the requirements of the said rule. It was submitted that if the petitioner's case falls under Sub-rule (2) of Rule 5, the cases should be remanded to the Superintendent of Taxes to examine the claim afresh in the light of the decision of this Court. We find the submission of Mr. Majumdar reasonable. Accordingly, we set aside the impugned orders of assessment and direct the Superintendent of Taxes to examine the claim of the petitioner for exemption under Sub-rule (2) of Rule 5 of the Rules in the light of the observations made above.

11. In that view of the matter, it is not necessary for us to consider the other contention of the petitioner regarding arbitrary determination of the turnover, etc.

12. In the result, the two writ petitions are allowed to the extent indicated above. No order as to costs.

J.M. Srivastava , J.

13. I agree.