

(2014) 08 CHH CK 0036
In the Chhattisgarh High Court
Case No : Writ Appeal No. 264 of 2011

State of Chhattisgarh and Others

APPELLANT

Vs

VM Extrusions Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Citation : (2015) 77 VST 397

Hon'ble Judges : Yatindra Singh, C.J;Pritinker Diwaker, J

Bench : Division Bench

Advocate : Prafull Bharat, Additional Advocate General and U.N.S. Deo,
Government Advocate, Advocates for the Appellant; Neelabh Dubey, Advocates
for the Respondent

Judgement

1. The only point involved in this writ appeal is,

"Whether or not M/s. VM Extrusions Private Limited (the respondent) is entitled to exemption of entry tax on the principle of promissory estoppel?"

It arises in this writ appeal from the judgment of the single judge dated March 23, 2011 allowing Writ Petition (T)-6057 of 2008 filed by the respondent.

The facts

2. The State of Chhattisgarh was formed after carving out an area from the erstwhile State of Madhya Pradesh on November 1, 2000. It was a backward area; though highly rich in natural resources and had large untapped potential for industrialisation.

3. In order to initiate economic and social growth, the State came out with a policy on January 25, 2002 for the years 2001-06 (the 2001-06 Policy). It gave various benefits to the industries setting up in the State.

4. According to the respondent,

"? It set up its factory in Raipur and started its commercial production on June

16, 2004 in pursuance of the 2001-06 Policy;

? It manufactures High Density Polyethylene Woven Bags (HDPE Woven Bags) and was middle scale thrust industry;

? It was entitled to benefit of exemption in electricity duty, stamp duty and entry tax under the 2001-06 Policy and got all the benefits under the 2001-06 Policy except the exemption in the entry tax."

5. The respondent filed a representation before the appellants claiming exemption from payment of entry tax on October 1, 2004.

6. During the pendency of the aforesaid representation, the State Government issued a notification dated September 1, 2005 (the notification) under section 10 of the Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 ("the Entry Tax Act") for exemption from payment of entry tax.

7. Under the notification, the benefit, of exemption from entry tax for seven years is to be given but it is to be given only to those new industrial units that commenced their commercial production on or after the first day of November, 2004.

8. The respondent had started its production on June 16, 2004 and as such, its representation was rejected on November 17, 2005 and thereafter assessment for entry tax under the Entry Tax Act for the year 2004-05 was also made on December 26, 2007.

9. Aggrieved by the aforesaid actions, the respondent filed Writ Petition (T)-6057 of 2008 for claiming exemption in entry tax as well as quashing of entry tax assessment for the year 2004-05.

10. The writ petition filed by the respondent was allowed by the single judge on March 23, 2011 on the ground of promissory estoppel holding that the respondent is entitled to exemption from payment of entry tax and assessment was quashed. Hence, the present writ appeal by the State Government and its officials.

The decision

11. We have heard counsel for the parties. 2001-06 Policy

12. It is not disputed between the parties that:

"? The 2001-06 Policy was issued by the State Government after approval by the Cabinet and was binding upon all the Departments and its officers;

? The 2001-06 Policy was never withdrawn and some benefits to the newly set up industrial units including the one by the respondent were given."

13. Clause 1 of the 2001-06 Policy is titled as "executive summary". It explains the strategies identified by the State for industrial development. It envisages

four broad strategies for development of the State. One of the strategies is directed incentives.

14. Clause 2.0 of the 2001-06 Policy is titled as "Development Strategies". It explains the strategies, already mentioned in the first clause. While explaining the strategy regarding directed incentives, it provides need for encouraging thrust sectors and providing fiscal benefits to attract new industries in these thrust areas.

15. Clause 1 also envisages that the strategies were to be applied in five "major clusters and thrust areas. One of the areas is "mineral based industries".

16. Clause 3.1 of the 2001-06 Policy is titled as "Cluster Based Industrial Development" and its sub-clause defines what are the "mineral based industries". "Cement and downstream industries" are also included as mineral based industries.

17. The State also issued a notification dated April 26, 2002 under the 2001- 06 Policy explaining the new industries that are included in the thrust sector. So far as "cement and downstream industries" under the "mineral based industries" are concerned, manufacture of HDPE woven bags is included under this notification.

18. In view of above, it is clear that the industrial unit set up by the respondent is included in the thrust sector in the "mineral based industry" as envisaged under the 2001-06 Policy. The fact that the respondent is a medium scale industry is admitted.

Benefits under the 2001-06 Policy

19. Clause 3.4 of the 2001-06 Policy is titled as "Directed Incentives". It provides number of incentives available to the industries. Under this clause, apart from other benefits, the thrust sector was entitled to exemption of electricity duty for a period of 10 years and exemption of entry tax, the details of which were to be issued separately.

20. Clause 4.0 of the 2001-06 Policy is titled as "Implementation and monitoring". It provides that all concerned Departments and institutions shall issue follow-up notifications to give effect to the provisions of this Policy within 60 days of the declaration of the Policy. However, no notification was issued by the concerned Department regarding exemption of entry tax within 60 days of the declaration of the policy. The notification was issued on September 1, 2005, namely, after more than three years of issuance of the 2001-06 Policy.

21. The notification limits the exemption of entry tax to the industrial units starting production after November 1, 2004. The industrial unit of the respondent started its production on June 16, 2004. The question should this benefit be extended to the respondent or not.

Benefit should be extended

22. The counsel for the State submits that:

"? The notification was not issued under the 2001-06 Policy, but was issued under another policy issued for the years 2004-09 (the 2004-09 Policy), under which the benefit could be given provided the commercial production started on or after November 1, 2004;

? In the case of the respondent, the commercial production started on June 16, 2004, namely prior to the date fixed in the notification dated September 1, 2005, and as such no exemption in entry tax can be given to it;

? The benefit under the 2001-06 Policy can only be given provided there was a notification by the concerned Department and as no notification was issued under the 2001-06 Policy, no benefit can be given."

The 2001-06 Policy

23. The respondent commenced its commercial production on June 16, 2004. Had it commenced production after November 1, 2004, then it would have got exemption irrespective of the fact whether it was set up in pursuance of the 2001-06 Policy or the 2004-09 Policy.

24. In view of the above, it is not relevant under which policy the notification was issued. The relevant thing is whether the respondent could claim exemption of entry tax on the principle of "promissory estoppel or not".

25. The respondent set up its industrial unit in pursuance of the promise given by the State that there will be exemption in entry tax and notification will be issued in 60 days. The State has been negligent. There was slackness as well as lethargy on the part of the State. It did not issue the notification within 60 days under the 2001-06 Policy but issued it after three years. Can the State take advantage of its own negligence or should it be permitted to do so.

26. The Basu's Shorter Constitution of India, 14th Edition, Reprint 2011 (page 1796) succinctly explains the principles governing the promissory estoppel as follows:

"(Promissory estoppel) means that if the Government or some other public body or its officials made a representation or a promise and an individual acts upon such promise and alters his position, Government or the public body must make good that promise¹ and shall, not be allowed to fall back upon the formal defect in the contract¹. Acting upon the promise or assurance is enough to invoke the doctrine; actual prejudice need not be proved by the promisee²."

27. It is correct that the respondent was incorporated under the provisions of the Companies Act, 1956 on January 20, 2002; whereas, the policy of the State Government was enunciated on January 25, 2002 but the fact still remains that no industrial unit was set up by the respondent prior to January 25, 2002. It was set up by the respondent after the enunciation of the 2001-06 Policy by the State Government and production itself started much after the 2001-06 Policy was

announced. There is no doubt that the respondent set up its industrial unit in pursuance of the promise made by the State Government.

28. The doctrine of promissory estoppel is an equitable doctrine³, and as such it is subject to the limitations to which all equitable rights and obligations are subject³. On the same page, Basu's Shorter Constitution of India explains them as follows:

"(a) It would be open for the Government or public authority to show that the officer or agent who made the representation acted beyond the scope of his authority and the person who dealt with him. Is supposed to have notice of the limitations of the authority of a public servant with whom he is dealing⁴.

(b) It would be open to the public authority to prove that there was special considerations which necessitated his not being able to comply with his obligations under the doctrine, in the public interest⁴.

(c) The doctrine cannot be invoked to prevent the Government from acting in discharge of its duty under the law⁴.

(d) The doctrine cannot be applied against the exercise of the legislative power of the State⁴, or against the statute 2.

(e) Where a contract describes itself as "provisional" and stipulates that Government would not be bound to complete it, (e.g., in the case of settlement by public auction), there is nothing to prevent the Government to change its policy and to cancel the provisional contract before the contract is finally accepted⁵.

(f) He who seeks equity must do equity. Hence the doctrine cannot be invoked where it is found to be inequitable or unjust to enforce it 2.

(g) The representation must be clear and unambiguous, and not tentative or uncertain 2."

29. It is admitted that the aforesaid exceptions do not apply in this case. The only objection for not giving the benefit to the respondent is that it did not start commercial production after November 1, 2004 as envisaged in the notification.

30. The respondent has set up its own industrial unit in pursuance of the promise given by the State Government under the 2001-06 Policy. It had already got exemption from payment of electricity duty as envisaged under the 2001-06 Policy. The Government has come out with the notification granting exemption in entry tax but not within the time stipulated under the 2001-06 Policy. The Government was negligent and there was slackness on its part.

31. Once the Government had given a promise to give exemption of the entry tax in order to give thrust to industrial growth and in fact such benefit from exemption of entry tax for seven years is being given to all similarly situate industries, then there is no justification to limit it only for industrial unit starting

production after November 1, 2004 especially when such notification ought to have been issued within 60 days of issuance of the 2001-06 Policy namely in 2002 itself.

Conclusions

32. In our opinion,

"? The respondent is entitled to exemption from payment of entry tax for seven years from the date of starting its commercial production namely from June 16, 2004.

? There is no justification to interfere with the order passed by the single judge."

The writ appeal has no merit. It is dismissed.

1 Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., .

2 Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), .

3 Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

4 Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others,

5 State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others,