
(2003) 08 CAL CK 0013
In the Calcutta High Court
Case No : WPTT No. 632 of 2003

State of West Bengal and Others

APPELLANT

Vs

D.B. Enterprise and Another

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

West Bengal Sales Tax Act, 1994 — Section 39(4)

Citation : (2004) 138 STC 143

Hon'ble Judges : S.P. Talukdar, J;Ganguly, J

Bench : Division Bench

Advocate : L.K. Gupta, Mahananda Roy and Seba Roy, for the Appellant;
Jayanta Mitra and Sumit Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.
2. This writ application has been filed by the petitioners challenging an order of the Tribunal dated June 27, 2003 in Case No. RN. 205 of 2003. By the said order the West Bengal Taxation Tribunal (hereinafter referred to as the Tribunal) stayed the operation of the provision of Section 39(4) of the West Bengal Sales Tax Act, 1994 (hereinafter referred to as the said Act). The Tribunal's view was that the balance of convenience demanded such an interim order of stay of operation of the amended portion of the said Act.
3. On the basis of such finding the Tribunal restrained the respondent State authorities from giving effect to the provisions of Printed at page 145 supra. sub-section (4) of Section 39 of the said Act till the disposal of the application before the Tribunal and the Tribunal fixed the matter for hearing on September 17, 2003.
4. The said interim order has been challenged before us on the basis of this writ petition by the State Government. Learned counsel appearing in support of the writ petition submitted that the Tribunal while staying the operation of the law, viz., Section 39(4) of the said Act has not recorded any finding at least on a

prima facie basis that the said law is violative of any provision of the Constitution. The learned Tribunal, it has been argued before us, proceeded on the basis of balance of convenience and by proceeding on the basis of balance of convenience and considering the complications, if any, that may arise in future, in the event the law is declared ultra vires, granted the order of stay. Learned counsel submitted that in view of the said interim order of stay of operation of the said Act, the State Government is seriously prejudiced as its collection of revenue will suffer a set back.

5. Learned counsel appearing for the respondents-dealers however, supported the order passed by the Tribunal but the learned counsel mostly argued that the impugned amendment is against the principles of promissory estoppel. Learned counsel submitted that as a result of exemption being granted under the said Act, various businessmen and traders have established their business ventures in the State and the said exemption was granted for a particular period as mentioned in the original Section 39. Before expiry of the said period this amendment has come and this is contrary to the promises held out by the State Government in the original Section 39. This being clearly contrary to the provisions of promissory estoppel, the order of the Tribunal is right. Learned counsel for the respondents has, however, not been able to point out before this Court the particular provision of the Constitution, if any, which has been infringed or violated by the impugned legislation. As already noted, no such finding has at least been prima facie recorded in the order of the Tribunal.

6. We have considered the matter in some length and since decisions have been cited before us by both the parties, we have to give certain findings on the question which have been raised before us. But we make it clear that those findings are prima facie in nature and those findings will not in any way affect the adjudication of the matter finally by the Tribunal.

7. When a Court or Tribunal is called upon to decide the constitutional validity of an Act, it has to discharge a very delicate function and in our view, such function has to be discharged with a sense of responsibility. A law enacted by a sovereign Legislature which has plenary powers can be struck down or its operation can be stayed by judicial order only on very limited grounds. It can be challenged before a court of law on the ground that the law lacks legislative competence on the basis of distribution of legislative power under the Constitution. It can also be challenged, inter alia, on the ground that the law infringes any of rights under Part III of the Constitution. In the absence of these two challenges being made or accepted by a Court or Tribunal to be prima facie present or existing, it is difficult for the Tribunal or the Court to stay the operation of law or even to strike it down. This position is far too well-settled to be questioned by the learned counsel appearing for the respondents and in fact this aspect of the matter has not been questioned by the learned counsel at all. We are, therefore, a little surprised to find that in the absence of any of the findings mentioned hereinabove, the Tribunal has granted the stay of operation of law only on the

question of balance of convenience.

8. Apart from that the question of balance of convenience in a matter of imposition of indirect taxation has also not been properly appreciated by the Tribunal.

9. In any case of indirect taxation the burden is always passed on to the consumer. In such a case if ultimately law is found to be bad the dealer does not suffer any prejudice since the dealer is not sharing the burden. But if the law is ultimately found to be good then the State exchequer will suffer as it will be denied the revenue which it was entitled to received as a result of the amended provision. There is no scope or provision under which the State can recover its losses. Therefore, in a case of imposition of tax burden by indirect taxation, the balance of convenience is not in favour of the dealer. We are prima facie of this view that on this aspect of the matter the learned Tribunal is not right.

10. Now coming to the question of the principles of promissory estoppel raised by the learned Counsel for the respondents, we find that three judgments have been cited before us by the learned counsel for the respondent. The first one was an unreported Division Bench judgment of this Court in the case of Health Guard Laboratories v. Assistant Commissioner, Commercial Taxes. The facts of that case are that the dealer applied for exemption. At the time when the application for exemption was made by the dealer, the dealer's right to get exemption was for a period of five years. Learned division Bench held that the right of the dealer to seek exemption is crystallised on the date when the application was made. Now it happens when the application was pending consideration there was an amendment and as a result of which the right to seek exemption was enhanced. The dealer wanted the enhanced exemption to be given in his favour. The said contention was rejected by the Tribunal. The decision of the Tribunal was challenged before this Court and this Court affirmed the decision of the Tribunal. We fail to appreciate the relevance of the said judgment to the facts of this case. Here as a result of amendment which has been brought into force no right which has accrued to the dealer prior to the bringing into operation of the amendment has been impaired or lost. In order to appreciate this aspect of the matter, the amendment as has been introduced in the said Act is set out below :

"(1) in Section 39, after sub-section (3), the following sub-section shall be inserted :

(4) Notwithstanding the provisions contained in sub-section (1) but subject to the provisions of sub-section (3), every dealer who has been enjoying, or has been entitled to enjoy, the benefit of exemption from payment of tax under sub-section (1), shall cease to enjoy such benefit of exemption on expiry of-

(a) five years from the date of his first sale of the goods manufactured in his newly set up small-scale industrial unit if such unit is situated within the area of the Kolkata Metropolitan Planning Area as described in the First Schedule to the West Bengal Town and Country (Planning and Development) Act, 1979 ; or

(b) seven years from the date of his first sale of the goods manufactured in his newly set up small-scale industrial unit if such unit is situated in any area other than the areas referred to in clause (a):

Provided that the dealer shall not be entitled to enjoy the benefit of exemption for the full period as referred to in clause (a), or clause (b), as the case may be, and he shall cease to enjoy such exemption from the day immediately following the day on which the aggregate of the benefit of exemption from payment of tax enjoyed by the dealer under his section, computed from the day of coming into force of this sub-section, exceeds two hundred per centum of the gross value of fixed assets."

11. As a result of the said amendment the exemption continues as was granted u/s 39 but the same continued with a rider which has been incorporated by the proviso. The rider is clear in its operation that it will operate from the day of coming into force of the said sub-section. Under the provision it has been made clear that the dealer shall not be entitled to enjoy the benefit of exemption for the full period as mentioned in clauses (a) and (b) immediately following day on which the aggregate of the benefit of exemption from the payment of tax enjoyed by a dealer under this sub-section exceeds 200 per centum of the gross value of the fixed assets and this should be computed from the day of coming into force of this sub-section. Therefore, no right which has accrued in favour of the dealer prior to coming into force of the sub-section has been taken away and amendment applies prospectively.

12. The other two judgments relied on by the learned counsel on behalf of the respondents are also not applicable having regard to the nature of the amendment pointed out above. The judgment in the case of Commissioner of Sales Tax v. Industrial Coal Enterprises reported in [1999] 114 STC 365 is on the question of interpretation of exemption provision. It is well-settled that in a law where construction of exemption provision gives rise to two possible interpretations, the one which is in favour of assessee should be accepted. These propositions have been reiterated in paragraphs 11 and 12 of the said judgment. In the instant case, there is no scope for two equally reasonable interpretation arising out of the impugned amendment. The impugned amendment is clear that it applies prospectively. Therefore, there is no case for its interpretation.

13. The next decision was in the case of Pournami Oil Mills v. State of Kerala reported in AIR 1987 SC 59. The said decision was relied in support of the argument on promissory estoppel. In the said decision at page 5 it has been made clear that there will be no estoppel against the Statute. Relevant observation of the learned judges in page 5 is set out below :

"It may be possible to contend with plausibility that in the absence of an enabling provision in the statute the State Government would not have the power to give up a part of the tax due to the State and there can be no estoppel against

statute."

14. The ratio of Pournami Oil Mills case therefore contradicts the contention urged on behalf of the dealer.

15. The learned counsel for the State has relied on a number of judgments in order to contend that in a matter relating to grant of exemption, the same can be withdrawn before the period mentioned in the earlier legislation. Reliance was placed on the judgment in the case of State of Rajasthan and Another Vs. M/s Mahaveer Oil Industries and Others, . Reliance was placed on paragraph 14. In the said paragraph it is made very clear that supervening public interest may authorise the State from withdrawing the benefit and such supervening public interest will prevail over any promissory estoppel. This was allowed even in a case where a scheme was floated giving the benefit which shows that promissory estoppel cannot be pressed into service even against a scheme. Reliance was also placed on the decision of the Supreme Court in the case of Shrijee Sales Corporation and Another Vs. Union of India (UOI), of the said judgment it has been laid down that superior equity reflected in the legislation can override individual equity and government is competent to resile from a promise even if no manifest public interest is involved. The learned Judges relied on the observation of the Supreme Court in M.P. Sugar Mills [1979] 44 STC 42 which authorises the government to resile from its promise on the basis of statutory provision. The principle that Government can change the law and thereby affect the promise, if any, is too well-settled and reliance in this connection may be placed in the judgment of the Supreme Court in the case of Kasinka Trading and another, etc. etc. Vs. Union of India and another, of the said judgment the following proposition from Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , have been quoted with approval :

"The Courts will only bind the Government by its promises to prevent manifest injustice or fraud and will not make the Government a slave of its policy for all times to come when the Government acts in its governmental, public or sovereign capacity".

16. In view of this overwhelming judicial opinion it is difficult for us to accept the contention of the learned counsel for the respondents that the Government is bound by promissory estoppel and Government cannot even by law change the exemption provision.

17. For the reasons aforesaid, we are of the view that the learned Tribunal did not properly exercise its discretion while granting stay of the impugned amendment of the said Act. We, therefore, set aside the said order of stay and direct the Tribunal to hear out the main matter on the date which has been fixed by it. We further reiterate that while deciding the matter on a final basis the Tribunal will be at liberty to examine the legality of the questions involved and will certainly not be guided by any observation made by us in this order.

18. The writ application is thus allowed. The order of the Tribunal is set aside.

19. There will be no order as to costs.

20. Let Xerox certified copy of this judgment, if applied for, be made available, to the learned counsel for the parties as expeditiously as possible.

21. Learned counsel for the parties will be entitled to note down the gist of the order for communication and the Tribunal is directed to act on the basis of such communication.