(1989) 08 GAU CK 0007

In the Gauhati High Court

Case No : Civil Rule No. 98 of 1987

Steel Industries APPELLANT

Vs

State of Tripura and Others RESPONDENT

Date of Decision : 16-08-1989

Acts Referred:
Tripura Sales Tax Act, 1976 — Section 3(2)

Citation : (1990) 78 STC 360

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

Bench : Division Bench

Advocate : B. Choudhury, for the Appellant; S. Barman Roy, General and M. Majumdar, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—By this writ petition, the petitioner challenges the order of assessment dated July 30, 1987, passed by the Superintendent of Taxes, Agartala, for the years ending 1984-85, 1985-86 and 1986-87 levying sales tax on the ground that the sales made by him during the relevant period were exempt from sales tax u/s 3(2) of the Tripura Sales Tax Act, 1976 (hereinafter "the Act"), read with the Tripura State Scheme for Incentives to Industrial Units, 1984.

2. The case of the petitioner is that he had been carrying on a small-scale industrial unit since September 26, 1983, under the name and style of Steel Industries at Agartala. The same is also registered with the Department of Industries, Government of Tripura, The petitioner started production in the said industrial unit and made sales of the products thereof. On the sales so made, sales tax was also collected. The petitioner could later learn that there was a scheme named the Tripura State Scheme for Incentives to Industrial Unit, 1984, which was published in Tripura Gazette, November 17, 1984 and he was entitled to exemption of sales tax for five years under the said Scheme. He, therefore, claimed exemption. The claim was rejected and tax was levied on the sales made

by him by the impugned assessment. The petitioner has challenged the same.

3. To appreciate the submissions, it is necessary to examine relevant provisions of the 1984 Scheme. Para 14 under item IX of the said Scheme provides that industrial units covered by the Scheme would be eligible for exemption of sales tax under the Tripura Sales Tax Act, 1976, on finished products for a period of five years from the date of starling production. Conditions for eligibility have been laid down in item V of the Scheme which reads :

"V. Eligibility

An ancillary, village, cottage and small-scale, medium/large scale industrial unit or industrial co-operative which is sought to be set up or for which substantial expansion is planned will be eligible for one or more incentives under the Scheme subject to the condition that such units should be registered with the Director of Industries, Tripura or other competent authority and subject further to the condition that no unit can claim these incentives as a matter of right."

The expressions "Industrial unit", "existing units" and "new units" are defined in item VII of the Scheme as below :

1. "Industrial unit" means any ancillary, small-scale/medium, large, village and cottage industry or any industrial co-operative other than that run by the Government departmentally. It also refers to either a new unit or an existing unit going in for substantial expansion/diversification.

3. "Existing unit" means industrial unit for the setting up of which effective steps were taken prior to the 1st April, 1984.

4. "New unit" means any industrial unit for the setting up of which effective steps were taken on or after the 1st April, 1984.

The Scheme was brought into force with effect from 1st April, 1984.

4. No provision was, however, made in the Tripura Sales Tax Act in accordance with the aforesaid Scheme to give any exemption in terms of para 14 under item IX of the Scheme. In the meantime by corrigendum dated 13th May, 1985, some amendment was made and para 14 under item IX was substituted by the following :

"Some of the industrial products have been exempted from payment of sales lax under Sub-section (2) of Section 3 of the Tripura Sales Tax Act, 1976, vide, Government of Tripura, Revenue Department''s Notification No. F. 4(4)-Tax/TST/82/D-2 dated 20th February, 1985."

It may be mentioned that the product manufactured by the petitioner has not been exempted u/s 3(2) of the Act.

5. The Superintendent of Taxes held that the petitioner is not entitled to any exemption in respect of sales of goods made by him under the provisions of the Tripura Sales Tax Act. The petitioner himself also admits that he was oblivious of

any exemption from sales tax and started collecting sales tax which was reflected in his return of turnover for the quarter ending on December 31, 1984. His case is that on getting instructions from respondent No. 4, the Inspector of Taxes (annexure C-2 dated April 25, 1987) which is to the following effect :

"Sales tax exempted up to August 13, 1987. Sales tax to be charged with effect from August 14, 1987", he stopped collecting sales tax. Admittedly, there is no provision in the Act exempting the sales made by the petitioner from tax. The claim of the petitioner is primarily based on the doctrine of promissory estoppel. In the alternative, the petitioner claims that the advice by the Inspector of Taxes on April 25, 1987, would operate as estoppel against the Superintendent of Taxes and the State in the matter of levy of sales tax.

6. We have heard the learned counsel for the petitioner. We have also heard Mr. M. Majumdar, learned Government Advocate for the State of Tripura. It was submitted by Mr. Majumdar that the doctrine of promissory estoppel has no application to the present case; the petitioner is not covered by the 1984 Scheme, and the note given by the Inspector cannot bind the respondents.

7. We have considered the submissions of the learned counsel for both the parties. We do not find the contentions of the petitioner acceptable. Let us first deal with the plea of doctrine of promissory estoppel. The principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. Admittedly, the industrial unit was set up in 1983, much before the publication of the 1984 Scheme. The petitioner was not even aware of the 1984 Scheme and, as such, question of acting on it or on any representation made therein does not arise. On the other hand, there is categorical statement of the petitioner himself that he was oblivious of any provision granting exemption of sales tax. Under such circumstances, the doctrine of promissory estoppel has no application.

8. We also find that in the instant case, the industry was set up before the specified date, i.e., April 1, 1984 and, as such, it does not fall within the purview of the said Scheme. The petitioner, therefore, cannot make any claim on the basis of the said Scheme.

9. So far as the last submission is concerned, which in effect is a claim of estoppel on the basis of the note given by the Inspector of Taxes, we find that the said note was given on April 25, 1987, whereas the impugned assessments relate to periods up to March 31, 1987, i.e., prior to that date and, as such, any claim based on the said note cannot affect the impugned assessments.

10. In view of the aforesaid factual position, we do not deem it necessary to decide the important question whether the note in the form of opinion given by the Inspector of Taxes would act as estoppel and the Superintendent of Taxes would be prevented from assessing the turnover of a dealer and levying tax thereon under the provisions of the Act. We leave it open to be decided in an appropriate case.

11. In view of what is stated above, we do not find any merit in the writ petition and the same is, therefore, dismissed. No order as to costs.

