
(2012) 08 GAU CK 0077

In the Gauhati High Court

Case No : W. P. (C) No's. 2153 of 2010, 2603 and 4133 of 2011

Sunil Kumar Taparia

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2013) 57 VST 552

Hon'ble Judges : A.K. Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

**Advocate : O.P. Bhati, T. C. Das, H.K. Bora and J. Bhati, for the Appellant;
Rakesh Dubey, S. C, Finance Department, Mrs. Babita Goyal, Government
Advocate, Assam and B.C. Saikia, Government Advocate, for the Respondent**

Final Decision : Allowed

Judgement

A.K. Goel, C.J.—This order will dispose of W. P. (C) No. 2603 of 2011, W. P. (C) No. 4133 of 2011 and W. P. (C) No. 2153 of 2010 as all the three petitions have been filed by the same petitioner on the same issue. The petitioner seeks quashing of order dated May 2, 2009 passed by the Director of Industries and Commerce, Assam, followed by order dated February 14, 2010 passed by the Commissioner of Taxes, Assam under the provisions of the Assam Value Added Tax Act, 2003 and consequential assessment order. Case of the petitioner is that he is engaged in the business of manufacturing lubricating and fuel oil out of used oil. As per the Industrial Policy of 2003, sales tax exemption for seven years was permissible to eligible units. The petitioner, claiming to be eligible, applied for the said benefit, which was considered in accordance with the industrial policy and the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005. Eligibility certificate dated July 19, 2007 was issued in his favour granting benefit from March 20, 2006 to March 19, 2013. Accordingly, certificate of entitlement was also issued to the petitioner. However, on August 29, 2008, the Director of Industries and Commerce, Assam withdrew the sales tax exemption which was challenged vide W. P. (C) No. 4406 of 2008. The writ petition was allowed on

February 6, 2009 on the ground that the petitioner was not given reasonable opportunity in the matter. Thereafter, order dated May 2, 2009 was passed on the ground that the activity of the petitioner could not be termed as manufacturing, which was a condition for the grant of concession. The petitioner challenged the order dated May 2, 2009 and also order dated February 14, 2011 passed by the Commissioner of Taxes, Assam. The petitioner has also challenged consequential assessment order.

2. According to the petitioner, the process carried out by him amounts to manufacturing and, accordingly, entitlement and eligibility certificate having been issued, the same could not be withdrawn merely by change of opinion already formed in absence of any misstatement or suppression on the part of the petitioner.

3. We have heard learned counsel for the parties.

4. The learned counsel for the petitioner submits that the eligibility certificate mentions the raw materials and the finished products as declared by the petitioner as follows:

5. On the basis of the above particulars, the activity of the petitioner was treated to be manufacturing, treating the finished product to be different from raw material. In spite of this, in the impugned order, it has been held that no manufacturing was involved and exemption granted was liable to be cancelled.

6. The order passed by the Director of Industries refers to the order of the Commissioner of Taxes, taking a view that since no new commodity emerges, no manufacturing is involved. The principle has been applied to the case of the petitioner as follows:

It is found that there are four steps in the refining process:

(1) Dehydration: where the waste lubricants are being processed at about a temperature of 150° C to remove the water content in the used oil.

(2) Distillation: (i) the 1st function of this process is to remove from the used oil, fraction of such as SAE5 and SAE10 grades. This accomplished under a vacuum of 710 mm Hg to 720 mm Hg and a temperature of 150° C to 300° C is applied. The vapours of the fraction are routed through water cooled condenser and collected in receiver as fuel oil. (ii) The next second function of this process is to remove from the used oil, fraction of such as SAE20, SAE30 and SAE40 grades. This accomplished under a vacuum of 756 mm Hg to 759 mm Hg and a temperature of 360° C is applied. The vapours of the fraction are routed through water cooled condenser and collected in receiver as raw base oil.

(3) Clay treatment: The recovered raw base oil are transferred in bleaching vessel, mixed with clay in an agitator and processed under a vacuum of 700 mm Hg at a temperature of 150° C to 250° C.

(4) Filtration: The oil-clay mixture filtered out at the filter press and blended with

lubricant activities for converting them into different grades of lubrication oils.

After hearing from the unit, namely, M/s. Progressive Industries and considering the views of the Commissioner of Taxes, Assam, it has been concluded that the sales tax exemption benefit has been withdrawn from the unit.

7. The Commissioner of Taxes relied upon a Division Bench judgment of this court in Deepak Kumar Poddar Vs. State of Assam and Others, , holding that conversion of raw mustard oil into mustard oil did not involve manufacturing.

8. The learned counsel for the petitioner submits that once the Industries Department as well as the Sales Tax Department took the view that conversion of used oil into lubricating oil or fuel oil entitled the petitioner to tax incentives which the petitioner acted upon, it was not permissible to change the opinion on the basis of judgment of this court, which was distinguishable.

9. The learned counsel for the State submitted that the eligibility certificate granted could be cancelled at any time, even if the bona fide opinion was formed in favour of the petitioner that activity undertaken by the petitioner involved manufacturing.

10. Question for consideration is whether eligibility certificate once granted on formation of a bona fide opinion on a debatable issue can be cancelled by changing the opinion.

11. Clause 12 of the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005, which admittedly governs the issue, is as follows:

12. Termination of eligibility certificate as well as the certificate of entitlement for violation of or non-compliance with any of the conditions laid down in the order.--

(1) Under this order, this eligibility certificate is granted to an industrial unit, which fulfils all eligibility conditions in terms of this order and this eligibility certificate for the purpose of certificate of entitlement to enable the industrial unit to enjoy the benefit of tax exemption in terms of this order. Violation of any condition of the eligibility or information on any of these conditions being found false at any time after the issue of the eligibility certificate or obtaining of such certificate by fraud or misrepresentation or suppression of facts or failure on the part of the holder of the certificate of entitlement to comply with any condition, laid down in his certificate of entitlement or to furnish any information required by his prescribed authority with regard to the implementation of this order shall entail the termination of both the eligibility certificate and certificate of entitlement.

12. The above clause clearly lays down that eligibility certificate once granted can be cancelled only if there is violation of any condition or information furnished was found to be false or if certificate was obtained by fraud or misstatement or suppression. The impugned order does not show either the allegation of fraud, misrepresentation or suppression on the part of the petitioner nor violation of any of the condition of the eligibility. Only ground on which

eligibility certificate has been terminated is the change of opinion as to the eligibility of the petitioner to get the benefit. This course is clearly ultra vires the power conferred under clause 12 of the 2005 Order, referred to above. This being the clear position, it is not necessary to go into the question whether activity of the petitioner amounts to manufacturing in view of law laid down in the judgment of this court in Deepak Kumar Poddar Vs. State of Assam and Others, . The issue is debatable and as per opinion earlier formed by the Department, the petitioner was eligible. No subsequent development or suppression or misrepresentation by the petitioner has been pointed out. In these circumstances, the impugned orders cannot be sustained. Accordingly, we allow these petitions and quash the impugned orders. The respondent-authorities will be at liberty to proceed afresh in the matter in accordance with law.