(1995) 08 GAU CK 0025

In the Gauhati High Court

Case No : Civil Rule No. 2436 of 1994

Timpack Private Limited — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1995) 3 GLR 138

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : P.K. Goswami, A.C. Borbora, S.S. Shanna and R. Borbora, for the Appellant; K.P. Sharma and B. Dutta, for the Respondent

Final Decision : Allowed

Judgement

A.K. Patnaik, J.—In this application under Article 226 of the Constitution, the Petitioners have challenged the notification dated 28.7.93 of the Govt, of India, Ministry of Industries, Department of Industrial Development, stipulating that transport subsidy to industrial units in selected areas shall be granted only or a period of 5 years from the date of commencement of commercial production of the industrial units and have also prayed for a direction on the Respondents to pay the transport subsidy to the Petitioners.

2. The facts very briefly as stated in the writ petition are that by a notification dated 23.8.71, the Govt, of India framed a scheme for grant of subsidy for transportation of raw materials and finished goods to and from selected areas with a view to promote the growth of industries in the said areas. The said scheme was to come into effect from 15.7.91 for selected areas "A" which included Jammu and Kashmir and the North Eastern Region, namely the States of Assam, Meghalaya, Manipur, Nagaland and Tripura and the then Union Territories Arunachal Pradesh and Mizoram. Initially, the scheme was to remain in operation till 31.3.79. Subsequently, the period of the scheme was extended from time to time and by the notification dated 25.2.91 of the Govt, of India,

Ministry of Indusuies, Department of Industrial Development, the period of the scheme was further extended from 1.4.90 to 31.3.95, i.e., till the end of Eighth 5 year plan. But thereafter by a notification dated 28.7.93, the Govt, of India, Ministry of Industries, Department of Industrial Development, the scheme was amended and it was stipulated that the transport subsidy under the said scheme would be made available to industrial units for a period of five years from the date of commencement of commercial production and that the amendment would have effect from 1.9.93. Pursuant to the said amendment, the Director, Govt, of India, Ministry of Industries, Department of Industial Development, issued a circular dated 14.9.93 to the Secretaries, Department of Industries of respective State Governments intimating them that as per the amendment only those units which had commenced, commercial production within a period of 5 years prior to 1.9.93 would be eligible for the transport subsidy and that they will case to be eligible once the five year period is over or till expiry of the scheme whichever is earlier. In accordance with the said circular dated 14.9.93, the Director of Industries Meghalaya, Shillong, issued a notice dated 9.5.95 inviting claims for transport subsidy from the industrial units in the State for the period from 1.4.93 to 31.3.95 to be submitted on or before 30.6.94 and it was clearly stated in the said notice that only those units which had commenced commercial production within a period of 5 years prior to 1.9.93 (i.e., on or after 1.9.88) would be eligible for transport subsidy and they would cease to be eligible once the five year period was over. The Petitioner No. 1 and its Managing Director, Petitioner No. 2, who owns a small scale industry registered with the Director of Industries, Meghalaya manufacturing various timber products at Byrnihat in the State of Meghalaya and has been receiving transport subsidy under me scheme submitted representations dated. 14.6.94 to the Director, Ministry of Industries, Department of Industrial Development, New Delhi and to the Commissioner & Secretary to the Govt, of Meghalaya, Department of Industries, Shillong, stating therein that they had acted on the basis of the notification dated 25.2.91 extending the scheme upto 31.3.95 and had entered into various contracts for selling their products after taking into consideration the cost factor under the subsidy and the period for which it was to remain in operation and that they had made various commitments to the customers on the basis of the said extension granted to the scheme by the notification dated 25.2.91 and requested them to issue appropriate orders for payment of their bills for transport subsidy. The Petitioners also submitted to the Director of Industries, Meghalaya their claims for transport subsidy for the period from 26.8.93 to 31.3.95 alongwith various documents by their letter dated 14.6.94. But by letter dated 15.6.94, the Director of Industries, Govt. of Meghalaya informed the Petitioners that in terms of the notification of the Govt, of India dated 28.7.93, the unit of the Petitioners was no longer eligible to claim transport subsidy and as such no action can be taken on the claims as submitted by them. It is on these facts that the Petitioners have invoked the extraordinary jurisdiction of this Court for appropriate relief.

3. At the hearing of the writ petition, the first contention raised by Mr. P.K. Goswami, learned Counsel for the Petitioner, was that since the Govt, of India, Ministry of Industries, Department of Industrial Development, by notification dated 25.2.91 had made a representation that transport subsidy under the scheme would be extended till 31.3.95 and Petitioners have acted on the basis of the said representation and altered their position by quoting prices of finished products to different buyers worked out after taking into account the transport subsidy on raw '' materials and finished products that would be available to the Petitioner under the scheme upto 31.3.95, the Petitioners were entitled to the said transport subsidy upto 31.3.95 on the ground of promissory estopped. In support of his submission, Mr. Goswami relied on the judgments of the Supreme Court In the case of Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., Pournami Oil Mills and Others Vs. State of Kerala and Another, Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, and Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, . Mr. Goswami submitted that in the case of Pournami Oil Mills (supra), the Kerala Government issued first an order dated 11.4.79 granting some exemptions to industries from Sales Tax, but thereafter issued a second order notified on 21.10.80 granting less exemption that it did under the first order dated 11.4.79 and the Supreme Court applying the ratio of promissory estoppel laid down in the case of M.P. Sugar Mills (supra) held that all parties who had set up industries prior to 21.10.80 on the basis of promises under the order dated 11.4.79 would continue to enjoy the exemption under the order dated 11.4.79 for the full period of 5 years from the date of the start of the indusury Mr. Goswami. further submitted that in the case of Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another, the Supreme Court explained that the Govt, could revoke or withdraw an exemption from payment of tax, but such power of the revocation or withdrawal of the Government is subject to the limitation that the power cannot be exercised in violation of the rule of promissory estoppel. He also contended that the aforesaid law as laid down by the Apex Court was discussed in the case of Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, wherein it was explained that once an exemption was assured ,by the Government for a certain period and the entrepreneur had acted on the said assurance of the Govt, that the exemption would be granted for the particular period, the industrial unit would be entitled to the benefit of the exemption for the entire period on the ground of estoppel even if the exemption was with drawn or superceded by subsequent orders. Mr. Goswami submitted that since in the present case the benefits under the transport subsidy scheme were extended upto 31.3.95 by the notification dated 25.2.91 and the Petitioners had acted on me basis of the representation held out in the said notification that the benefit of the transport subsidy scheme would be available to the Petitioners upto 31.3.95, this Court ought to direct the authorities to grant the transport subsidy to the Petitioners upto 31.3.95 on the basis of the principle of promissory estoppel.

4. In reply to the aforesaid submissions of Mr. Goswami, Mr. K.P. Sarma, CGSC, relying on the averments in the affidavit-in-opposition filed on behalf of the Respondent Nos. 2 and 3, submitted that paragraph 6 (xvii) of the scheme for transport subsidy as notified in me notification dated 23.7.71 stipulated that the Govt, of India had full discretion to refuse to entertain or to reject any claim for transport subsidy and accordingly under the said paragraph of the scheme the Govt, was fully empowered to make any amendment to the scheme during its currency. The Govt, of India was thus fully within its powers to amend the scheme by the notification dated 28.7.93 limiting the benefit of the transport subsidy to industrial units for a period of 5 years from me date of commencement of commercial production and the Petitioners cannot make any grievance of the same. Mr. Sarma also contended that the scheme for grant of transport subsidy was made by the Government in exercise of its executive powers and could be altered by the Government as and when it decided to change its policy and placed reliance on the observations of the Apex Court in the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, that in matters of economic policy a certain measure of freedom or play in the joints have to be allowed to the executive and the Court will not normally interfere in such matters.

5. The aforesaid contention of Mr. Sarma that the Govt, of India was fully empowered to make any change or modification to the scheme for transport subsidy framed under the notification dated 23.7.71 and that a great amount of latitude has, to be allowed to the executive to after the scheme for transport subsidy as and when it thinks fit is no doubt correct. But as has been held by the Apex Court in various decisions cited by Mr. Goswami, the power of the Government to revoke or withdraw exemptions from tax is subject to the principles of promissory estoppel. In the case of Bakul Oil Industies Limited v. State of Gujarat (supra), the Supreme Court observed:

With must, however, observe that the power of revocation or withdrawal would be subject to one limitation viz, the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the government grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute.

The aforesaid principle of law that the power of revocation or withdrawal of exemption granted by the Govt. of India for payment of tax can only be exercised without offending the rule of promissory estoppel was again explained and reiterated by the Apex Court in the case of Pine Chemicals Limited v. Assessing Authority (supra):

The learned Counsel for the Appellants also contended that they arc entitled to enjoy the benefit for the full period of five years both on law as also on the ground of estoppel. We have already noticed that in Bakul Oil Case this Court held that in the case of a grant of exemption without specifying any period for which the exemption is available the government could withdraw the same at any time. Though in that case on facts no further question can arise since it was held that the dealer was not entitled to the benefit of the subsequent notification giving the exemption from a period of five years on the ground that the notification was prospective in operation and therefore not applicable to the dealer in that case, this Court made certain further observations to the effect that even in the case of exemption for a particular period it could be withdrawn at any time subject of course to the plea of estoppel. In Pournami Oil Mills case also the learned Judges appear to have given the benefit of exemption for the full period even after the withdrawal on the basis that the industry was set up in pursuance of some representation made by the government amounting to estoppel. In the present appeals also there are lot of materials to show that the government made representations to industry that they would give tax exemptions and other incentives and invited entrepreneurs to establish their industries in J & K. Relying on those representations each of these Appellants have set up their industries. It is not necessary to set out these factual details in the judgment. Suffice, it to say that we have carefully considered all the materials and are of the view that the Appellants acting on the representations had set up their industries. Therefore they are entitled to claim the benefit of the exemption for the entire period of five years calculated as per the terms of the government orders, even if it were to be held that S.R.0. 80/82 superseded the earlier exemption orders.

Thus, the Apex Court has taken a consistent view in the cases of Pournami Oil Mills (supra), Bakul Oil Industries Limited (supra) and Pine Chemicals Limited (supra) that where the benefit of exemption of tax is granted to an industrial unit for a certain period by the Govt, by an order and the said benefit is sought to be withdrawn by a subsequent Govt, orders, the industrial unit which had acted on the basis of the earlier exemption order would be entitled to the benefit of the exemption for the entire period as specified in the earlier Govt, order on the ground of estoppel, In my opinion, the aforesaid principles laid down by the Apex Court in the case of exemption from tax would equally apply to the benefit of transport subsidy under the notification dated 23.7.71 as extended upto 31.3.95 by the. notification dated 25.2.91 and the Petitioners would be entitled to the benefit of transport subsidy for the entire period upto 31.3.95 on the ground of promissory estoppel if they plead and establish on fuels that they had acted upon the representation of the government in the notification dated 25.2.91 that the transport subsidy would be available to the Petitioners upto 31.3.95.

6. Mr. Sarma. however, contended that there was no clear and unequivocal promise in the two aforesaid notifications that the transport subsidy would be available to the Petitioners upto 31.3.95 and at any rate Petitioners have not proved that they had established an industry pursuant to the notification dated 23.2.91 and all that the Petitioners claim is that they had entered into some agreements with the buyers for sale of their finished products at prices worked out on the basis of the transport subsidy that would have been available to them under the scheme, but the dates of agreements given in the chart annexed to the writ petition would show that these agreements have been made only after the notification dated 25.2.95.

7. The submission of Mr. Sarma that no clear or unequivocal promise has been held out by the Government of India in the notifications dated 23.7.71 and 25.2.91 that transport subsidy would be granted to the Petitioners upto 31.3.95 is not at all correct. In the case of Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI), Jagannath Sethi, J, quoted the following passage from Halsbury''s Laws of England, 4th Edition, Volume 16, Page 1071, Para 1595 :

1595. Representation must be unambiguous - To found an estoppel a representation must be clear and unambiguous, not necessarily susceptible of only one interpretation, but such as will reasonably be understood by the person to whom it is made in the sense contended for, and for this purpose the whole of the representation must be looked at. This is merely an application of the old maxim applicable to all estoppels that they ''must be certain to every intent...thus the foundation of estoppel is that the representation should be such as will reasonably be understood by the person to whom it is made in the sense he contended for. In the present case, the Petitioner No. 1 was given subsidy by the government on the transportation of raw materials and finished products for its industrial unit under the notification dated 23.7.71 as extended and modified from time 10 time. Accordingly, when by notification dated 25.2.91, the transport subsidy scheme under the notification dated 23.7.71 was extended for a further period upto 31.3.95, it would be reasonably be understood by the Petitioners that the said transport subsidy would be given to the Petitioner No. 1 for the period upto 31.3.95. There was thus a clear or unequivocal promise to grant transport subsidy to the Petitioner No. 1 under the 1971 scheme upto 31.3.95.

8. Similarly, the contention of Mr. Sharma that the Petitioners were not entitled to relief on the basis of estoppel as they had not set up an industry pursuant to the notification dated 25.2.91 is also misconceived. It has been explained in the aforesaid case of Delhi Cloth and General Mills Limited (supra):

All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means the party had changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel.

The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more.

Thus to get relief from the Court on the basis of the doctrine of promissory estoppel, all that is required for the Petitioners to show is that they had acted on the representation and had altered their position by relying on the representation. As the Petitioners had acted and altered their position on the basis of the representation under the notification dated 25.2.91 that the transport subsidy would be available to them upto 31.3.95 by working out the prices of their finished products accordingly and quoted the same to different parties and had entered into agreements that they would supply their finished products at such prices, they were entitled to the relief of transport subsidy upto 31.3.95 on the basis of promissory estoppel. In fact, in the case of Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., the Supreme Court found that the Respondents therein had acted upon a representation of the Central Government, Department of Excise and Customs, and had not recovered from the wholesale dealers the amount of Excise Duty attributable to the costs of corrugated fibre boards containers used by the Respondents for packing the cartons, outers for cigarettes during the period in question and held on the basis of estoppel that it would be most inequitable to allow the Excise Authorities to assess Excise Duty on the basis of the value of cigarettes manufactured by the Respondents which would include costs of corrugated fibre boards containers.

9. Regarding the submission of Mr. Sarma that the dates of the agreements mentioned in Annexure - 12 to the writ petition were all subsequent to the notification dated 28.7.93, it has been explained by Mr. Goswami, learned Counsel for the Petitioners, that some of the aforesaid agreements were prior to the aforesaid notification dated 28.7.93 and some after the said date and these agreements which arc of dates after the notification dated 28.7.93, were actually negotiated prior to the said notification. Mr. Goswami produced before me documents to show that pursuant to the tender notices the Petitioner No. 1 had quoted prices of its finished products after taking into account the transport subsidy and supplies were being made by the Petitioners on the basis of such prices quoted prior to notification dated 28.7.93. Mr. Goswami further explained that although the impugned amendment to the scheme was made by the notification dated 28.7.93 the Petitioners came to learn of the said amendment only when the notice dated 5.5.94 was issued by the Director of Industries, Meghalaya indicating therein that only those units which had commenced commercial production within a period of 5 years prior to 1.9.93 would be eligible for transport subsidy and accordingly even after 28.7.93 the Petitioners continued to labour under the impression that transport subsidy would be available to them upto 31.3.95 irrespective of date on which they had commenced commercial production and continued to negotiate with buyers for sale of their finish products at competitive prices which took into account the transport subsidy on its raw materials and finished products. Considering all

these facts as arc borne out by the averments in the writ petition as well as the documents annexed to it and the documents produced before me by the Petitioners, I am of the view that the Petitioner No. 1 acted upon the representation in the notification dated 25.2.91 that the transport subsidy under the notification dated 23.7.71 would be available to the Petitioner No. 1 upto 31.3.95 and hence is entitled to relief on the basis of promissory estoppel.

10. Finally, relying on the decision in the case of M.P. Sugar Mills (supra) an attempt was made by Mr. Sarma to plead without a foundation in the affidavit-in-oposition that in view of the facts that have transpired since the making of the representation, public interest would be prejudiced if the government is required to carry out the promise in the representation. But from the records of the Govt, of India produced before me, I do not find any such facts which have come to light for the government to withhold the subsidy to the Petitioners in the public interest and the reason for the amendment to the scheme made by the notification dated 28.7.93 is that once an Industrial unit functions for an initial period of 5 years, it is expected to sustain itself without any subsidy, The plea of public interest raised by Mr. Sarma, therefore, had no factual basis. In view of my aforesaid conclusions, it is not necessary for me to deal with the other contentions of Mr. Goswami and Mr. Sarma relating to the challenge to the notification dated 28.7.93 of the Govt. of India, Ministry of Industries Department Of Industrial Development.

11. In the result, this writ petition is allowed and the Respondents are directed to consider the claim of the Petitioner No. 1 for transport subsidy for the period upto 31.3.95 Milder the notification dated 23.7.71 as amended from time to time and extended upto 31.3.95 by the notification dated 25.2.91 in accordance with the terms of the notification dated 23.7.71 and any other guidelines and instructions of the Respondents that may be in force and applicable and the Respondents will not reject the said claim on the ground that by the notification dated 28.7.93 or any circular, notice or letter pursuant thereto, the claim for transport subsidy is permissible only for a period of 5 years from the date of commencement of commercial production of an industrial unit. The Petitioner No. 1 shall file its claim with necessary documents, if not already been filed before the director of Industries, Meghalaya within a period of one month from today and the same shall be processed and finalised by the Respondents within a period of 4 months thereafter, considering the facts and circumstances of the case, the parties shall bear their own costs.

