**(2013) 05 AHC CK 0031**

**In the Allahabad High Court**

**Case No :** Misc. Bench No. 3851 of 2013

Tirupati Enterprises and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

**Date of Decision :** 09-05-2013

**Acts Referred:**

**Citation :** (2014) 69 VST 439

**Hon'ble Judges :** Rajiv Sharma, J;Arvind Kumar Tripathi (II), J

**Bench :** Division Bench

**Final Decision :** Disposed Of

# Judgement

1. Sri H.P. Srivastava, learned Additional Chief Standing Counsel, submits that no useful purpose would be served by keeping the writ petition pending as the Writ Petition No. 2686 (M/B) of 2008 in which interim order has been granted is pending consideration, to which Sri Akhilesh Kalra has no objection and has consented for disposal of the writ petition at the admission stage itself. Heard Sri Akhilesh Kalra, learned counsel for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel.

2. Petitioner No. 1-M/s. Tirupati Enterprises is dealer and is engaged in the trading of sugar in wholesale by purchasing the same from the manufacturers of sugar and thereafter sells the same to retail dealers, whereas petitioner No. 2 is the proprietor/partner of petitioner No. 1.

3. In short, the grievance of the petitioners is that the respondents are seizing the sugar of dealers including the petitioner on the pretext that they are liable for entry tax to the manufacturer of sugar or the taxing Department and for releasing the same, the petitioners have to furnish an undertaking in view of notification dated May 20, 2005.

4. Giving backgrounds of the case, the petitioners submit that after promulgation of Sugar Industry Promotion Policy, 2004, the State Government promised certain incentives including exemption on entry tax. In this regard, a notification

 

dated May 20, 2005 was also issued in exercise of powers conferred u/s 4B of the Uttar Pradesh Tax on Entry of Goods Act, 2000 (U.P. Act No. 12 of 2000) exempting from payment of entry tax on non-levy sugar manufactured in a new unit.

5. As M/s. Balrampur Chini Mills have been granted an eligibility certificate under the aforesaid policy, any sugar purchase from the manufacturing unit of the said group was liable for exemption of entry tax. Therefore, the petitioner and similar other dealers started purchasing sugar from the said group. In 2007, the State Government revoked the policy, under which incentives were granted for setting up the sugarcane industries. Therefore, Balrampur Group of Companies filed a Writ Petition No. 2686 (M/B) of 2008, questioning the action of the authorities and this court passed an ad interim order dated May 9, 2008, providing therein that no coercive steps shall be taken against the petitioner for realization of administrative charges, entry tax, VAT and purchase tax.

6. Clarifying the position, it has been submitted that only incentive available to the present petitioners and other dealer is that purchasing of sugar from the industry covered under 2004 policy is only with regards to difference of rate as the sugar purchase from any other normal industries would cost more than the sugar brought from the industries covered by 2004 policy.

7. On the other hand, Sri H.P. Srivastava, while admitting that the exemption has been granted vide notification dated May 20, 2005 but 2007, the State Government has revoked the policy under which incentives were granted and as such, the action of the respondents cannot be said to be unwarranted. However, he submitted that there will be no objection if any restrained order is being passed subject to the final outcome of writ petition No. 2686 (M/B) of 2008, wherein ad interim order has been passed and the matter is seized up before the Bench.

8. As much emphasis has been laid on the notification dated May 20, 2005, we deem it appropriate to reproduce the same, which is as under:

Whereas, the State Government is satisfied that it is expedient in the public interest so to do.

Now, therefore, in exercise of the powers u/s 4B of the Uttar Pradesh Tax on Entry of Goods Act, 2000 (U.P. Act No. 12 of 2000), the Governor is pleased to exempt, with effect from May 20, 2005, from payment of the tax, a dealer, on entry of non-levy sugar manufactured in a new unit established or a unit which has undertaken expansion by a company under Sugar Industry Promotion Policy, 2004 of the State, into the local area from any place outside that local area, for consumption, use or sale therein, subject to the following conditions:

(i) The dealer furnishes to his assessing authority, a certificate obtained from the assessing authority of the aforesaid company certifying that such non-levy sugar is eligible for exemption under the aforesaid policy;

 

(ii) The dealer shall not pay on such non-levy sugar to the above manufacturer;

(iii) In case of purchase from a unit which has undertaken expansion exemption shall be available only in relation to the production of the unit in excess of the base production.

Explanation.--For the purposes of this notification the expression ''new unit'', ''unit which has undertaken expansion'' and ''base production'' shall have the meaning assigned to them in section 4A of the Uttar Pradesh Trade Tax Act, 1948.

9. Thus, it is clear that new manufacturing unit/manufacturing unit covered under the Sugar Industry Promotion Policy, 2004, was exempted from payment of entry tax, subject to the conditions enumerated hereinabove.

10. The record reveals that when the exemption was taken away by the revocation of the policy, M/s. Balrampur Chini Mills Ltd. filed a writ petition No. 2686 (M/B) of 2008. A Co-ordinate Bench of this court, after considering the lengthy arguments advanced by the counsel for the parties, passed a detailed interim order and the relevant portion reads as under:

Considering the arguments of the parties counsel and the question involved, we are prima facie, satisfied that the State has not been able to indicate any supervening public interest, which required the scheme to be withdrawn and that the petitioners are entitled to the limited protection of the exemptions at this stage, which they were enjoying on the date when the policy is said to have been revoked, i.e., June 4, 2007. So far as the further benefits/incentives are concerned, that is the matter which is to be considered at the time of hearing of the case.

We, therefore, provide as an interim measure that in the meantime no coercive steps shall be taken against the petitioners for realization of the administrative charges, entry tax, VAT and purchase tax, till the date of listing.

Taking into consideration the aforesaid facts and circumstances, we dispose of this writ petition with the direction that no coercive steps shall be taken against the petitioner by the respondents-authorities for realization of entry tax towards its sugar purchase from any of the unit covered under Sugar Industry Promotion Policy, 2004, provided requisite certificate is produced by the petitioner before the concerned authorities. However, this order will be subject to the final outcome of writ petition No. 2686 (M/B) of 2008 pending before this court.