(2004) 02 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6560 of 2003

Tirupati Marbles APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 24-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227

Citation : (2006) 146 STC 170

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; B.S. Bhati, Assitant Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioner against the respondents on November 6, 2003 with the prayer that by an appropriate writ, order or direction, the order dated October 8, 2003 (annexure 10) issued by the respondent No. 2, Assistant Commercial Taxes Officer, Ward No. 2, Circle Chittorgarh, by which the petitioner-firm was informed that under the notifications dated March 27, 1995 (annexure 1) and May 22, 2003 (annexure 8) issued by the State Government, the manufacture of marble slabs and units engaged therein had been keep out of the purview of exemption, be quashed and set aside and it may be held that the petitioner is entitled to exemption from sales tax up to the extent of annual turnover of Rs. 30 lakhs under the notification, annexure 1, dated March 27, 1995 from March 10, 2003.

2. The case of the petitioner-firm as put forward by it in this C writ petition is as follows:

The case of the petitioner-firm is that in order to promote khadi and village industries, the Union of India has enacted Khadi and Village Industries

Commission Act, 1956 (hereinafter referred to as "the Act of 1956") and similarly, the State Government enacted Rajasthan Khadi and Village Industries Board Act, 1955 (hereinafter referred to as "the Act of 1955) and the respective Commission and Board constituted under the Act of 1956 and the Act of 1955 register and monitor such small village industries and the individual small entrepreneurs were encouraged to set up such units for generating self employment. The concessions and incentives include, inter alia, subsidies and exemption from sales tax, etc. One such notification granting exemption from sales tax up to the annual turnover of Rs. 30 lakhs, was issued by the State Government on March 27, 1995 a copy of which is marked as annexure 1.

The further case of the petitioner-firm is that it set up one such small-scale unit for cutting of marble slabs and commenced commercial production on March 10, 2003 by making an investment of Rs. 20.31 lakhs and the project was financed by own funds and bank loan and a copy of the permanent registration certificate is marked as annexure 2. The petitioner-firm also got itself registered under the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as "the Act of 1994") and the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act of 1956") also with effect from September 28, 2002 and copies of the registration certificate are marked as annexure 3 and annexure 4 respectively.

The further case of the petitioner-firm is that it also applied for registration to Khadi and Village Industries Commission (for short "KVIC") for availing various benefits including the exemption from sales tax up to the turnover of Rs. 30 lakhs under the notification annexure 1 dated March 27, 1995 and a copy of the said application along with the project report is marked as annexure 5.

The further case of the petitioner-firm is that the KVIC through A letter dated August 28, 2003 (annexure 7) granted the registration to the petitioner-firm as KVIC unit with effect from March 10, 2003 for a period of three years up to March 9, 2006 and thus, for all purposes, the petitioner-firm is a KVTC unit and entitled to avail all benefits available to such unit with effect from March 10, 2003, in terms of notification, annexure 1, dated March 27, 1995.

The further case of the petitioner-firm is that the State Government issued notification dated May 22, 2003 (annexure 8) superseding notification dated March 27, 1995 (annexure 1) by which the exemption to KVTC unit was continued for certain industries excluding c however certain industries engaged in the sale of products like soap, bricks, kota stone, marble and sand stone, However, towards the end of the said notification (annexure 8), it was clearly mentioned that "the units already availing the benefits under the above superseded notification (annexure 1), shall continue to avail the benefits under this notification".

Thus, the case of the petitioner-firm is that since before issuance of the notification, annexure 8, dated May 22, 2003 the petitioner-firm was already availing the benefits under the previous notification, annexure 1, dated March

27, 1995 therefore, the subsequent notification, annexure 8, dated May 22, 2003 would have no effect on the benefit, which was being availed by the petitioner-firm prior to issuance of the notification, annexure 8, as the unit of the petitioner-firm was registered as KVIG unit with effect from March 10, 2003 as is evident from annexure 7.

Thereafter, through order, annexure 10, dated October 8, 2003 the respondent No. 2, Assistant Commercial Taxes Officer, informed the petitioner-firm that under the notifications dated March 27, 1995 (annexure 1) and May 22, 2003 (annexure 8) issued by the State Government, the manufacture of marble slabs and units engaged " therein had been kept out of the purview of exemption and this order, annexure 10, dated October 8, 2003 has been challenged by the petitioner-firm in this petition mainly on two grounds:

(i) That the impugned order, annexure 10, dated October 8, 2003 issued by the respondent No. 2 Assistant Commercial Taxes Officer is illegal, arbitrary and against the statutory notifications, annexure 1, dated March 27, 1995 and annexure 8 dated May 22, 2003 granting exemption from sales tax to the petitioner-firm, which was duly registered as KVIC unit with effect from March 10, 2003 as is evident from annexure 7 and therefore, the impugned order, annexure 10, deserves to be quashed and set aside being violative of Article 14 of the Constitution of India.

(ii) That the impugned order, annexure 10, dated October 8, 2003 is also against the principles of natural justice and therefore, void. Since the impugned order, annexure 10, was passed without B giving any opportunity of hearing to the petitioner-firm and the same was also a wholly non-speaking order, therefore, from this point of view also, the same deserves to be quashed and set aside.

A reply to the writ petition was filed by the respondents and their case is that the petitioner-firm has never availed the benefit of exemption under the superseded notification, annexure 1, dated March 27, 1995 and therefore, it is not entitled to benefit of exemption even from notification, annexure 8, dated May 22, 2003 because units already availing the benefit under the superseded notification, annexure 1, dated March 27, 1995 were allowed to continue to avail the benefit and since the petitioner-firm was not availing any benefit under the superseded notification, annexure 1, therefore, it is not entitled to benefit of exemption.

It has been further submitted by the respondents that had the petitioner-firm availed the benefit under the superseded notification, annexure 1, dated March 27, 1995 it would have not collected the sales tax from its consumers and deposited the same with the concerned check-post as is evident from annexures R/l to R/13 for the period from April, 2003 to November 19, 2003. Hence, impugned order, annexure 10, dated October 8, 2003 is perfectly legal and valid and no interference is called for with it and this petition deserves to be dismissed.

3. I have heard the learned Counsel for the petitioner and the learned Counsel for the respondents and gone through the materials available on record.

4. There is no dispute on the point that through letter, annexure 7, dated August 28, 2003 the KVIC granted registration to the petitioner-firm as KVIC unit with effect from March 10, 2003 for a period of three years up to March 9, 2006 and thus, the petitioner- firm is entitled to benefits available to such unit from March 10, 2003.

5. There is also no dispute on the point that through notification, annexure 1, dated March 27, 1995 exemption from sales tax up to the annual turnover of Rs. 30 lakhs was granted.

6. There is also no dispute on the point that through notification, annexure 8, dated May 22, 2003 the notification, annexure 1, dated March 27, 1995 was superseded and the exemption to KVIC unit was continued for certain industries excluding however certain industries engaged in the sale of products like soap, bricks, kota stone, marble and sand stone. However, towards the end of the said notification (annexure 8) it was clearly mentioned that "the units already availing the benefits under the above superseded notification (annexure 1), shall continue to avail the benefits under this notification".

7. There is also no dispute on the point that through letter, c annexure 9, dated September 8, 2003 the petitioner-firm wrote a letter to the Commercial Taxes Officer stating that since through letter, annexure 7, dated August 28, 2003 its firm was registered as KVIC unit with effect from March 10, 2003 therefore, sales tax be not charged from its sale. In response to the said letter, annexure 9, the respondent No. 2, Assistant Commercial Taxes Officer, issued the impugned order, annexure 10, dated October 8, 2003 informing the petitioner-firm that under the notifications dated March 27, 1995 (annexure 1) and May 22, 2003 (annexure 8) issued by the State Government, the manufacture of marble slabs and units engaged therein had been kept out of the purview of exemption.

8. The question for consideration is whether in the facts and circumstances just mentioned above, before issuance of notification annexure 8, dated May 22, 2003 the petitioner-firm was availing the benefit in view of the notification, annexure 1, dated March 27, 1995 with effect from March 10, 2003 the date of its registration as KVIC unit or not or whether before issuing the impugned order, annexure 10, dated October 8, 2003 the petitioner-firm was given opportunity of hearing or not.

9. In my considered opinion, in this writ petition, the basic question is whether before issuance of notification, annexure 8, dated May 22, 2003 the petitioner-firm was availing the benefit under the notification, annexure 1, dated March 27, 1995 with effect from March 10, 2003 the date of its registration as KVIC unit or not and such question cannot be answered straightway in the writ petition, especially when the case of the petitioner-firm that it was availing the benefit of exemption in view of notification, annexure 1, dated March 27, 1995 was categorically denied by the respondents and in view of this, that question has become mixed question of facts and law, which cannot be gone into and decided

straightway in writ petition.

10. Furthermore, it may be stated here that the benefit under the notification, annexure 8, dated May 22, 2003 will be given to those units, which were already availing benefit under the superseded notification, annexure 1, dated March 27, 1995. There is a much difference between the words "entitled" and "already availing benefit".

In this case, it is also not clear whether the petitioner-firm was already availing benefit under the superseded notification, annexure 1, or was entitled for benefit under the superseded notification annexure 1. If for the sake of argument the petitioner-firm was entitled for benefit under the superseded notification, annexure 1, but was not given that benefit, therefore, in view of the notification, annexure 8, the petitioner-firm would not be entitled to that benefit because it was not already availing that benefit. All such type of questions cannot be adjudicated upon and decided straightway in writ jurisdiction under Article 226 of the Constitution of India.

11. Apart from this, a bare perusal of the impugned order, annexure 10, dated October 8, 2003 reveals that before passing it, no opportunity of hearing was given to the petitioner-firm though through letter, annexure 9, dated September 8, 2003 the petitioner- firm made a request that its unit was exempt from sales tax with effect from March 10, 2003 as its unit was registered as KVIC unit with effect from March 10, 2003 through letter, annexure 7, dated August 28, 2003. Furthermore, the impugned order, annexure 10, simply says that because of the notifications dated March 27, 1995 (annexure 1) and May 22, 2003 (annexure 8) issued by the State Government, the manufacture of marble slabs and units engaged therein had been kept out of the purview of exemption and it nowhere states in specific terms that the petitioner-firm was not entitled to the benefit of exemption.

12. Thus, it appears that the point whether the petitioner-firm was entitled to the benefit of exemption with effect from March 10, 2003 (the date of its registration as KVIC unit) or not has not been considered and decided by the respondents in a proper manner and therefore, it would be just and proper to direct the respondent No. 2, Assistant Commercial Taxes Officer, to consider and decide that point by a speaking order, after giving an opportunity of hearing to the petitioner-firm.

13. For the reasons stated above, the impugned order, annexure 10, dated October 8, 2003 qua the petitioner-firm cannot be sustained and liable to be set aside and this writ petition deserves to be allowed.

14. Accordingly, this writ petition filed by the petitioner-firm A is allowed in the manner and to the extent that the impugned order, annexure 10, dated October 8, 2003 passed by the respondent No. 2, Assistant Commercial Taxes Officer qua the petitioner-firm is set aside and the respondent No. 2, Assistant Commercial Taxes Officer, Ward No. 2, Circle Chittorgarh, is directed to consider and decide

the point whether the petitioner-firm was entitled to benefit of exemption with effect from March 10, 2003 (the date of its registration as KVIC unit) or not, within a period of two months from the date of receipt of a certified copy of this order, by a speaking order, after giving an opportunity of hearing to the petitioner-firm and during the course of hearing, the petitioner-firm may raise all the submissions which were being raised through this writ petition. The petitioner-firm is directed to appear before the respondent No. 2, Assistant Commercial Taxes Officer, along with the certified copy of this order on or before March 9, 2004.

No order as to costs.