
(2008) 09 RAJ CK 0086
In the Rajasthan High Court

Uma Polymers Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 18 VST 213

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the petitioner has prayed for quashing impugned order Annex.-10 dated 15.05.2008 besides seeking the declaration that while calculating the interest subsidy, input tax credit availed by a unit cannot be reduced from the ?tax payable?.

2. The petitioner company is pursuing the business of manufacture of flexible packaging material having its factory at village Mogra in Jodhpur district. With a view to provide the investors attractive opportunity to invest in the State of Rajasthan, the State Government has promulgated scheme under the Rajasthan Investment Promotion Policy 2003, published in the Official Gazette on 28.07.2003 (in short, hereinafter referred to as ?the Scheme of 2003?). As per Clause 7 of the said Scheme, 2 expansion are made entitled to various subsidies. As per Clause 9 of the Scheme of 2003, the entitlement to subsidy is to be decided by the State Level Screening Committee or the District Level Screening Committee, as the case may be. The Industries Department is the nodal coordinating, monitoring and implementing department and any matter pertaining to interpretation of any clause of the Scheme of 2003 is required to be referred to the Finance Department of the State of Rajasthan.

3. In the writ petition it is asserted that the petitioner company invested a huge amount of Rs. 860 lacs while implementing extensive expansion programme and,

therefore, the petitioner company is entitled to the benefit of interest subsidy under the Scheme of 2003. The District Level Screening Committee accordingly in its meeting dated 28.03.2007 declared the petitioner company eligible under the category of expansion as per the Scheme of 2003. For the said purpose, entitlement certificate Annex.-2 dated 09.04.2007 was issued in favour of the petitioner company.

4. The petitioner company filed an application on 13.04.2007 before the Commercial Taxes Officer requesting to disburse the ?interest subsidy?. After detailed scrutiny, respondent No. 3 passed order dated 04.08.2007 whereby disbursement of interest subsidy in the sum of Rs. 15,85,345/-was approved. While approving the aforesaid interest subsidy respondent No. 3 categorically observed that the petitioner company has

5. In the month of March 2008, an application was filed by the petitioner before respondent No. 3 for sanction/disbursement of interest subsidy for the period 2007-2008. The petitioner after filing the said application, received notice issued u/s 59 of the VAT Act 2003 calling upon the petitioner company to satisfy as to why the claim for the interest subsidy may not be rejected. A reply to the said notice dated 02.04.2008 was submitted by the petitioner in which it is stated that the petitioner was held entitled for the interest subsidy. Respondent No. 3 however further issued a notice on 02.04.2008 Annex.-8 in which it was stated as to why the order dated 04.08.2007 may not be revoked/cancelled. The petitioner filed reply to the said notice Annex.-8 dated 02.04.2008 by which it was proposed to cancel the order dated 04.08.2007.

6. In its reply dated 10.04.2008, challenging the jurisdiction of respondent No. 3 to issue notice u/s 59 of the Rajasthan VAT Act, 2003 the petitioner submitted that Section 17 of the VAT Act, under which the proposed action has been sought to be taken does not confer upon the authority the jurisdiction to initiate the disbursed vide order dated 04.08.2007 was absolutely in consonance with the provisions of the Scheme. So also, there is no express provision for review in the Scheme. The petitioner has placed on record its reply dated 10.04.2008, being Annex.-9 to the writ petition.

7. However, suddenly the petitioner received an order dated 15.05.2008 on 28.05.2008 whereby the respondent No. 3 has withdrawn the order dated 04.08.2007 issued by his predecessor in-office and further raised demand of interest subsidy of Rs. 15,85,345/-while also levying interest for the period intra random for Rs. 1,28,739/-. The said order is placed on record as Annex.-10 to the writ petition.

8. According to the petitioner, bare perusal of the aforesaid order Annex.-10 dated 15.05.2008 shows that respondent No. 3 has passed the order with pre-occupied mind and notion in the mechanical manner. The impugned order is ex facie against the principles of natural justice inasmuch as respondent No. 3 has not even afforded any Learned Counsel for the petitioner vehemently argued that

there is no express power of review provided under the Scheme of 2003, therefore, the order impugned is without jurisdiction. It is further argued that bare reading of the provisions of the Scheme shows that there is provision under Clause 7 (1) (b) of the Scheme of 2003 to grant the interest subsidy upon investment made in modernization/expansion/diversification the subsidy shall be subject to maximum of 50% of the additional amount of State and the Central Sales Tax or VAT payable or deposited by the applicant over and above the highest tax payable or deposited, whichever is higher, in any of the three immediately preceding years. The order dated 04.08.2007 was rightly passed by the competent authority Assistant Commissioner Commercial Taxes, Special Circle II, Jodhpur and the said authority after taking into consideration the relevant provisions passed the order dated 04.08.2007 whereby the interest subsidy in the sum of Rs. 15,85,345/-was sanctioned. It is contended by learned Counsel for the petitioner that while passing such order of interest subsidy in favour of the petitioner the said authority has rightly considered the intention of the framers of the Scheme and the framers of the Scheme have used the expression 'payable or deposited, whichever is higher' in Clause 7 (i)(b) of the Scheme and the word 'deposited' as appearing in Clause 7 (i)(b) does not mean deposited in cash and, therefore, by making adjustment of (i) (b) of the Scheme. The view of respondent No. 3 of calculating the tax payable as per Clause 7 of the Scheme, the net tax payable is required to be taken into account, therefore, while ascertaining the amount of tax payable, the input credit availed by the assessee is required to be deducted from the tax payable. Such stand, according to learned Counsel for the petitioner, is totally untenable and in clear misreading of the provisions of the Scheme of 2003.

9. Learned Counsel for the petitioner while inviting attention of the Court towards Section 4 of the Rajasthan VAT Act 2003 submitted that as per definition of tax payable in the Act of 2003, 'tax payable' by a dealer shall be at such point or points as may be prescribed in the series of sales by successive dealer and shall be levied on the taxable turn over of sale of goods specified in Schedule III to VI at the rate as mentioned in the Schedule. As per the petitioner, the input tax credit is the tax paid on purchases which has nothing to do with the tax collected on the sales and sales tax payable by an assessee and, Learned Counsel for the petitioner argued that Section 17 of the VAT Act 2003 has no application in the instant case having entirely different field and scope and the provisions contained therein cannot be relied upon for the present purposes. According to him, prior to coming into force of the provisions of the Rajasthan VAT Act 2003, the provisions of Rajasthan Sales Tax Act 1994 were in vogue and accordingly tax payable was to be given its meaning in consonance with Section 4 of the Act of 1994. It is submitted that the framers of the scheme have apparently kept the provisions of Rajasthan Sales Tax Act 1994 in mind and the provisions of Section 17 of VAT Act 2003 cannot be imported to adversely affect the rights of the petitioner. Therefore, as per learned Counsel for the petitioner, the order dated 04.08.2007 was passed by the predecessor in-office of respondent No. 3 was

perfectly in Learned Counsel for the petitioner relied upon the judgments of the Supreme Court in support of his contentions. It is submitted that in the case of Harbhajan Singh Vs. Karam Singh and Others, , the apex Court held that in the absence of there being express provision of review the authority cannot review its previous order. Similarly, in the case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, , it is held that the power of review is not inherent power, it must be conferred by law either specifically or by necessary Per contra, learned Counsel for the respondents while filing reply submitted that the predecessor in-office of respondent No. 3 wrongly sanctioned the benefit of interest subsidy and the said order was not in consonance with the provisions of the scheme, therefore, it was felt necessary to rectify the mistake committed by the predecessor in- office of respondent No. 3, therefore, the order impugned is perfectly justified and there is no error in it. As per learned Counsel for the respondents, the picture which is convexed by the petitioner is totally incorrect and the reply filed by the petitioner was duly considered by the present holder of the office, therefore, it can very well be said that after due application of mind the order impugned has been passed in which no interference is required. As per reply of the respondents, none of the grounds raised by the petitioner in the writ petition is sustainable in the eye of law. The nodal officer is bound to give effect to the provisions of the scheme and he is required to act in accordance with the provisions of the Rajasthan VAT Act 2003.

10. It is submitted by learned Counsel for the respondents that the petitioner's assertion is not correct that the provisions of Rajasthan VAT Act would not apply in the present case. The mistake apparent on the face of record is liable to be corrected, therefore, it has been corrected in accordance with the provisions of law and no interference is required under Article 226 of the Constitution of India. Learned Counsel for the respondents while inviting attention towards the reply of the respondents submitted that the scheme itself contained the procedure and the provisions for grant of subsidy and, if any interest subsidy has been granted contrary to the provisions of the scheme, then, it is well within the jurisdiction of the respondents to correct the error which is apparent on the face of record. Therefore, all the questions regarding interpretation are required to be seen at the time of granting sanction to the claimant but, in this case, the predecessor in-office committed error while granting interest subsidy and it was felt necessary to correct the error committed by him, therefore, it cannot be said that order of the predecessor in-office was reviewed whereas it was only rectification of an error apparent on the face of record. Therefore, according to the respondents, no interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India is required.

11. Further, although no specific plea has been raised in the reply, but, during the course of arguments, learned Counsel for the respondents invited attention of the Court towards Section 33 of the VAT Act in which it is provided that any rectification of mistake is permissible and even that power can be exercised by the authority suo motu and, in this case, it has rightly been exercised by the

present officer who is on the chair, therefore, no interference is warranted in this case and the writ petition deserves to be dismissed.

12. However, in the rejoinder, it is submitted by the petitioner that without admitting even if it is assumed that the doubt or apprehension prevailing in the mind of the assessing authority had some substance, it was incumbent upon him to have the same referred to the Finance Department of the State Government as per Clause 11 of the Scheme. In the rejoinder, it is denied that the C.T.O. is the nodal officer for the scheme. The machinery provisions are incorporated by reference and therefore provisions of the Rajasthan VAT Act are not applicable. According to the petitioner, a perusal of the scheme shows that it is a scheme floated by the State Government for the benefit of industries and there is no applicability of the Rajasthan VAT Act or Rajasthan Sales Tax Act either by express provision or intendment. In this view of the matter, the order impugned cannot be termed as rectification of the mistake; moreover, its erroneous interpretation by the authority presently holding the post only goes to show that the order of the predecessor in-office has been reviewed. The petitioner company was rightly granted the interest subsidy on the basis of true and correct interpretation of the term 'tax payable' which is of course left under the Rajasthan VAT Act and, therefore, the definition given thereunder is relevant and conclusive. In this view of the matter, this writ petition deserves to be allowed.

13. I have considered the rival submissions.

14. First of all, in this case, the Scheme framed by the State Government is required to be seen. According to the said scheme, the State Government with a view to providing the investors an attractive opportunity to invest in the State of Rajasthan promulgated the said scheme. According to the said scheme, in Clause 5, there are eligibility conditions which provides that the benefits (subsidies as per Clause 7 and exemptions as per Clause 8) under this Scheme, shall be available to all units, other than those covered in the list of ineligible units, subject to the fulfillment of certain conditions. Admittedly the petitioner unit was found eligible by the respondents and, for the said purpose, its case was considered by the District Level Screening Committee for the grant of interest subsidy in its meeting on 28.03.2007. The petitioner company was found eligible under category 'expansion'. The Assistant Commissioner, Commercial Taxes, Special Circle-II, Jodhpur accordingly vide order dated 04.08.2007, after considering the recommendation of the screening committee and in view of the provisions of the Scheme of 2003, found the petitioner company entitled for the benefit of interest subsidy and passed the order of sanction of the interest subsidy in favour of the petitioner.

15. However, the successor in-office of then respondent authority issued notice to the petitioner u/s 59 of the Rajasthan VAT Act 2003. It is strange that Section 59 of the VAT Act was invoked by the respondent for reviewing the order of sanctioning the interest subsidy. In my opinion, irrelevant provisions of law were taken recourse to by the said authority and, therefore, the impugned order

cannot be treated to an order in consonance with the correct provisions of law. The authority appears to have passed the impugned order in arrogance of superior wisdom than his predecessor in-office. Perusal of the order impugned manifestly shows that even no provisions of law which have been taken into consideration have been mentioned. Moreover, when specific plea is taken by the petitioner disputing the stand taken by the respondent, then, there is no power left under the Scheme to the respondent authority to review the order passed by his predecessor in-office because as per Clause 11 of the Scheme of 2003 it requires to be referred to the Finance Department of the State Government.

16. At the time of arguments, attention of the Court was invited by learned Counsel for the respondents towards the provisions of Section 33 of the Rajasthan VAT Act 2003 whereunder there is provision under the head ? Rectification of mistake?. In my view, when the Scheme of 2003 itself consists of the provision for the procedure then the matter was to be decided in accordance with the provisions of the Scheme which is introduced with a view to providing investors an attractive opportunity to invest in the State of Rajasthan. Even if the respondent authority in its wisdom was of the opinion that interest subsidy was wrongly granted to the petitioner by his predecessor in-office, then, recourse could only be had to the provision under Clause 11 of the Scheme of 2003. Apparently, respondent No. 3 who has passed the order impugned is not conversant with the tax law and has manifestly shown his incompetence while unnecessarily interfering in the matter without jurisdiction. Of course, if any illegal benefit was granted, then, it was to be referred to the Finance Department of the Government of Rajasthan; but, without referring the matter to the Finance Department, in usurpation of the authority, the respondent thrust his interpretation in regard to which he had no jurisdiction.

17. An important aspect of the case is that in whole of the reply filed by the respondent, it is nowhere stated by the concerned authority who has passed the impugned order how the order passed by his predecessor in-office was wrong or bad in law and how his own interpretation is correct. Merely an assertion is made that it was done by way of rectification of the mistake and, being the nodal officer, all the points taken by the petitioner have been considered. In my opinion, before the Court also, it is not stated by the respondents as to how the earlier order was bad in law and how the contentions mentioned in the writ petition by the petitioner are not acceptable. In the absence of any counter to the grounds taken by the petitioner, coupled with the fact that there is no provision of review in the Scheme, it can very well be said that unless power of review is expressly or by necessary implication provided for, without jurisdiction, the earlier order cannot be reviewed. Reliance may be placed on the judgments of the Hon''ble apex Court in the case of Harbhajan Singh (supra). In the said judgment, their Lordships of the Supreme Court observed as follows:

...In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling

or reversing the Mahalkari's order. The subsequent order dated February 17, 1959 re-opening the matter was illegal, ultra vires and without jurisdiction. The High Court ought to have quashed the order of the Collector dated February 17, 1959 on this ground.

(8) We are of the opinion that the same principle applies to the present case and the Director, Consolidation of Holdings had no power to review his previous order dated 3rd April, 1958 rejecting the application of Harbhajan Singh under S. 42 of the Act. It follows that the subsequent order of the Director, Consolidation of Holdings dated 29th August, 1958 allowing the application of Harbhajan Singh was ultra vires and illegal and was rightly quashed by the High Court. Similarly, in the reply filed by the respondents when the legal position enumerated by the petitioner is not specifically controverted with reference to any specific provision of law, then, of course, it can be said that there was no error in the order Annex.-4 passed by the predecessor in-office of respondent No. 4 so as to warrant interference either by way of review or rectification. In this view of the matter, Annex.-10 has been passed without jurisdiction, more so it is not even substantiated by cogent reply and cannot be sustained in the eye of law.

18. In the above facts and circumstances, it is however made clear that the Courts are already flooded with cases and the State authorities, at the time of passing orders, should act in caution to take proper care of the provisions of the relevant law. Administrative orders need be passed strictly in accordance with law and not in casual manner. In the instant case, notice has been issued to the petitioner u/s 59 of the Rajasthan VAT Act 2003. The said provision is not even relevant because it provides for penalties. Secondly, the authority must be conversant with the provisions of law before exercising the jurisdiction and satisfy itself whether power sought to be exercised is vested in it to pass such an order. In this regard, relevant portion of the notice Annex.-8 may be seen which reads as under:

In view of the above, obviously the impugned order cannot be said to be an order of rectification of mistake but it is an order of review which is not permissible under the Scheme. Therefore, in the facts and circumstances of the case, the order impugned is totally contrary to the provisions of law and principles of natural justice, therefore, the same deserves to be quashed.

19. As a result of the aforesaid, this writ petition is allowed. The order impugned Annex.-10 is quashed. It is however made clear that the respondent State is not precluded from interpreting any of the clauses of the Scheme so formulated but, at the same time, it is expected that unnecessary harassment may not be practiced by any of the State authorities in ignorance of the fact that the Scheme is meant to promote and protect the industrial growth in the State. So also, if any order contrary to the interest of the industrial establishment is passed, then, at least notice should be given and after granting opportunity of hearing any order can be passed by the competent authority in accordance with law.

20. There shall however be no order as to costs.