(2009) 09 MAD CK 0012

In the Madras High Court

Case No : W.A. No''s. 529 to 531 of 2005

Union Territory of Pondicherry APPELLANT

Vs

Premier Distilleries (P) Ltd. RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Pondicherry General Sales Tax Act, 1967 — Section 19, 19(1), 19(2), 19(3)

Citation : (2010) 30 VST 610

Hon'ble Judges : V. Dhanapalan, J;S.J. Mukhopadhaya, J

Bench : Division Bench

Advocate : R. Natarajan, G.A, for the Appellant; Arvind P. Datar, SC for N. Murari, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—As all the writ appeals have been preferred against common order, they were heard together and disposed of by

this common judgment.

2. The appellants (respondents to the writ petition - hereinafter referred to as the ''Government of Pondicherry''), issued notification allowing

certain industries to have sales tax exemption for five years. The notifications were amended from time to time. The respondents/writ petitioners

(hereinafter referred to as the ''company'') having denied the benefits, preferred three writ petitions.

W.P. No. 14435/02 was filed challenging the validity of notification No. 35/99 dated 30th Sept., 1999 issued by the Government of Pondicherry.

W.P. No. 14436/02 was filed challenging the assessment order for the assessment year 2000-2001 with further prayer for issuance of a writ of

mandamus to grant exemption as per Government Order dated 21st July, 2000.

The third writ petition, W.P. No. 38572/03 was filed for direction to produce copy of pipeline industries in the Union Territory of Pondicherry as

was submitted to the Union Government.

3. On 16th April, 2004, by impugned order, learned single Judge referred to the Government Orders and letter written by the Sales Tax

Department and held that Indian made Foreign Liquor (hereinafter referred to as ''IMFL'') industries in pipeline will also be eligible for benefit of

exemption under Policy No. 36/00 dated 21st July, 2000 and allowed W.P. No. 14436/02 and, consequently, it was held that there was no need

to grant any relief in W.P. No. 14435/02 and W.P. No. 38572/03.

4. Learned Counsel appearing on behalf of the Union Territory of Pondicherry submitted that learned single Judge failed to consider the status

prior to 1st April, 1999 and, thereafter, the decision of Government of Pondicherry based upon the policy decision of the Government of India to

take away sales tax exemption. The Government of Pondicherry also decided on 19th July, 2000 to withdraw the exemption. The existing

incentive of exemption from levy of sales tax on turnover of goods was made applicable in such industries, who fulfil any one of the following

conditions:

1) The industry should have been registered with the Industries Department of the Government of Pondicherry Central Government.

2) The industry should own land or building or should have acquired the land or building either by purchase or on lease or on rent.

3) The industry should have applied for loan for the project to any Bank or financial institution.

4) The industry should start production within two years from the date of issue of the notification withdrawing the incentive.

It is only in this background, by notification No. 36/2000/F2 dated 21st July, 2000, the Government of Pondicherry discontinued the exemption.

The exemption from this was to the extent that the existing incentive of exemption is to those new industries, which is in pipeline and fulfils the

following conditions:

1) The industry should have been registered with the Industries Department of the Government of Pondicherry Central Government.

2) The industry should own land or building or should have acquired the land or

building either by purchase or on lease or on rent.

3) The industry should have applied for loan for the project to any Bank or financial institution or should have own resources.

5. It was submitted that further exemption for three specific categories, viz., (i) IMFL, (ii) Gensets (iii) Soaps were already taken away and,

therefore, they do not come within the scheme of exemption. In that view of the matter, the finding in the impugned order in para 21 and 22 are not

sustainable at all. In fact, there is no specific finding as to how the company can be brought under the exemption and how non-grant of exemption

to such company could be considered illegal. The case of D. Ramachandran - W.P. No. 1409/01 was referred, which was filed in public interest

wherein the court held that the assessing authority alone is competent to consider in regard to the entire matter and issue appropriate order in

accordance with law. It was specifically pleaded in W.P. No. 14436/07 that the petitioner has not fulfilled the conditions in the notification dated

30.3.1999 and hence not eligible for exemption. Further as the IMFL industry has already been taken away from the scheme of sales tax

exemption by the same notification, their claim that they are coming under the pipe-line industry category mentioned in the Finance Department

notification dated 21.7.2000 is not acceptable. The pipeline industry mentioned in the notification therefore does not include IMFL, genset and

soap industries, which were already taken away from the scheme of tax exemption.

6. Further case of the appellant is that the subsequent policy decision of the Government taken on 19th July, 2000, clearly reveal that by G.O. Ms.

No. 35/99/F2 dated 30th March, 1999, the exemption from payment of sales tax in respect of goods manufactures by industries engaged in the

production of IMFL, Gensets and Soaps have been withdrawn from the general exemption available to industries under G.O. Ms. No. 15/74

Finance-CT dated 25th June, 1974, w.e.f. 1st April, 1999. Pursuant to this decision, notification in G.O. Ms. No. 36/2000/F2 dated 21st July,

2000 was issued withdrawing the exemption to new industries started after 21st July, 2000.

It was submitted that the observation made at para-22 of the impugned order that the same authority has considered the case of another manufacturer of IMFL placed in an identical situation is incorrect. The court has only drawn its conclusion on inference that the company is eligible

for exemption under notification dated 21st July, 2000. It was further submitted that there being an alternative remedy of appeal, the writ petition

ought not have been entertained by learned single Judge. Reliance was placed on dates and events with regard to establishment of the company,

subsequently purchased by the writ petitioner and submitted that the company cannot be termed to be a pipeline industry to derive the benefit

under G.O. Ms. 36/2000/F2 dated 21st July, 2000.

7. Learned Counsel appearing on behalf of the company while referred to one or other policy decision, mainly placed reliance on G.O. Ms. No.

36/2000/F2 dated 21st July, 2000 submitted that the company, which is a pipeline industry was also entitled for exemption, though it is dealing

with IMFL. Reliance was placed on the letter of the Commercial Taxes Department, wherein it was observed that IMFL industries are also eligible

for exemption as per notification G.O. Ms. No. 36/2000/F2 dated 21st July, 2000. It was also brought to the notice of the court that another

manufacturer of IMFL has not been denied the benefit. Further, according to the respondent, the issue of alternative remedy by way of appeal, as

raised by the appellant, cannot be pleaded at this stage.

So far as the parent notification and amending notifications are concerned, it was contended that the amending notification is linked to the parent

notification. Only if the parent notification, in totality, is withdrawn or discontinued, the amending notification to the parent notification can be held

to be ipso facto discontinued. However, when a notification is issued, any restriction will have to be incorporated in the new notification itself or

subsequently in the next notification. The circulars and letters issued by the department is binding on the commercial taxes department. Therefore,

in view of letter dated 19th Sept., 2000, the authority is bound to give exemption, the department having held that IMFL units established are

eligible if they satisfy the other conditions prescribed in G.O. Ms. No. 36/2000/F2 dated 21st July, 2000.

8. To decide the issue, it is relevant to notice different notifications issued by the Government of Pondicherry from time to time granting sales tax

exemption or withdrawing the same, as referred hereunder:

On 25th June, 1974, in exercise of powers conferred by Section 19(1) of the Pondicherry General Sales Tax Act, 1967, the Government of

Pondicherry issued notification contained in G.O. Ms. No. 15/74, whereby all industries were allowed sales tax exemption for five years, which

went into production on or after 1st April, 1971. It followed by 2nd notification contained in G.O. Ms. No. 164/86/F6 dated 29th Sept., 1986,

issued by the Government of Pondicherry granting exemption to industries in Karaikal and Mahe region of the Union Territory of Pondicherry

commencing production after 20th Sept., 1986 for grant of exemption for ten years. The 3rd notification, G.O. Ms. No. 35/99/F2 dated 30th

March, 1999, was issued whereby certain addition was made below notification No. 164/86/F6 dated 29th Sept., 1986, thereby the exemption

granted vide earlier notification dated 25th June, 1974 and 29th Sept., 1986 were amended to the extent as follows:

...the new industries commencing production of any of the following items, --

(i) Indian Made Foreign Liquor ;

(ii) Generators, their spare parts, accessories, radiators, their spare parts and accessories ; or

(iii) Soaps, soap powders and detergents in all their forms, on or after 1st April, 1999 shall not be eligible for exemption from tax payable under

the said Act as provided in the said notifications:

Provided that if any of the said industries or their branches have obtained any licence before 1st April, 1999, have already invested in the

infrastructure required for such industries and have not availed any benefit of sales tax exemption, they will be allowed to avail the general

exemption available to all industries in the said notifications:

Provided, further that this concession shall not be applicable to Indian Made Foreign Liquor sold at less than Rs. 600 per case.

The 4th notification was issued vide G.O. Ms. No. 36/2000/F2 dated 21st July, 2000. This notification is important for the determination of the

present case as on the basis of this notification, while Government of Pondicherry claims that the company is not entitled for exemption, the

company, per contra, claims such exemption on the basis of the said G.O. Ms. No. 36/2000/F2 dated 21st July, 2000, as quoted hereunder:

GOVERNMENT OF PONDICHERRY

FINANCE DEPARTMENT

(G.O. Ms. No. 36/2000/F2, dated 321st July, 2000)

NOTIFICATION

In exercise of powers conferred by Sub-sections (1), (2) and (3) of Section 19 of the Pondicherry General Sales Tax Act, 1967 (Act No. 6 of

1967), the Lieutenant Governor, Pondicherry, having been satisfied that it is necessary so to do in the public interest, is pleased to discontinue the

exemptions made in notification issued in G.O. Ms. No. 15/74/Fin (CT), dated 25th June, 1974, and G.O. Ms. No. 164/86/F.6, dated 29th

September, 1986:

Provided that the exemption made in respect of industries which have already come in will be continued for the period of their eligibility:

Provided further that the industries in the pipe-line will be entitled for the incentive of exemption from the levy of sales tax on the turnover from the

sale of goods manufactured by the industries for the period specified therein from the date of commencement of production, if such industries fulfill

anyone of the following conditions:

(a) the industries should have been registered with the Industries Department of the Government of Pondicherry/Central Government;

(b) the industries should own land or building or should have been acquired the land or building either by purchase or on lease or on rent; or

(c) the industries should have applied for a loan for the project to a ban or financial institution or should have own resources:

Provided also that the industries in the pipe-line should start production within two years from the date of issue of this notification.

2. This notification shall come into force with immediate effect.

(By order of the Lieutenant-Governor)

Dr. R. Padmanaabhan, I.A.S.,

Secretary to Government

9. Learned Counsel for the appellant, Government of Pondicherry submitted that in public interest the exemption made vide notification G.O. Ms.

No. 15/74 dated 25th June, 1974 and notification G.O. Ms. No. 164/86/F6 dated 29th Sept., 1986 having been withdrawn, the respondent-

company is not entitled for exemption. It is neither an ''industry'', which has already come into existence to get the benefit for the period of their

eligibility nor the company can be termed to be a ''pipeline industry'' for the purpose of incentive or exemption under the 1st and 2nd proviso to

notification dated 21st July, 2000, as quoted above.

10. To find out whether the respondent company can be termed to be a ''pipeline industry'' to derive the advantage of the notification dated 21st

July, 2000, we have also gone through the relevant dates and events. A small scale unit under the name of Premier Distilleries (P) Ltd., was

provisionally registered on 16th May, 1996. It was granted No Objection Certificate from the Pollution Control Board on 9th Nov., 1999 and

permission for construction/establishment was granted on 9th Dec., 1999. The licence for bottling of liquor was granted on 2nd Aug., 2000

followed by licence for possession and sale of IMFL and Beer granted on the same day, i.e., 2nd Aug., 2000. The company was registered as a

dealer on 3rd Jan., 2000 under the Pondicherry General Sales Tax Act, 1967, followed by grant of permanent small scale industry registration

certificate on 19th Dec., 2000. It has changed hands. From the aforesaid fact it will be evident that the respondent company is an industry in the

pipeline and, thereby, it is entitled for incentive of exemption from levy of sales tax on the turnover from the sale of goods manufactured by the said

industry for a period specified from the date of commencement of production. It has been registered with the Industries Department and fulfils the

other conditions.

11. It has not been disputed by the appellant, Government of Pondicherry that the Commercial Taxes Department, by its letter dated 19th Sept.,

2000, held that IMFL units would also be eligible, if satisfies the other conditions specified in G.O. Ms. No. 36/2000/F2 dated 21st July, 2000. It

has also been seen that such exemptions having been given to other IMFL companies.

Apart from the fact that the company has been provided with ''No Objection Certificate'' for construction of the distillery, registration certificate,

etc., it will be also evident that the respondent company filed its monthly return in Form A-2 of the Pondicherry General Sales Tax Act before the

Deputy Commissioner of Commercial Taxes, Pondicherry reporting its turnover and claimed exemption on the same. The assessing authority originally issued provisional assessment notice dated 11th Dec., 2000 and 2nd Feb., 2001 for the month of September to December, 2000,

proposing to disallow the claim of the exemption on the ground that the exemption was made available in view of notification dated 30th March,

1999. In response to the said notice, the respondent company, through their letter dated 12th Feb., 2001, filed its objection and claimed

exemption under notification dated 21st July, 2000. Thereafter, no order of provisional assessment was made, but, however the assessing authority

chose to issue pre-assessment notice dated 13th Aug., 2000 proposing to disallow the claim for exemption for the year 2000-2001, which was

confirmed by assessment order dated 1st Oct., 2000. Thereby, the authority did not choose to apply its mind with regard to exemption to which

one or other industry was entitled under G.O. Ms. No. 36/2000/F2 dated 21st July, 2000.

12. In the light of the aforesaid discussion if learned single Judge allowed the prayer in favour of the respondent company, we find no ground made

out to interfere with the said order. The appeals being devoid of merits, they are accordingly dismissed. However, there shall be no order as to

costs.

