
(2011) 09 BOM CK 0131

In the Bombay High Court

Case No : Writ Petition No. 7356 of 2011

Vithal Sugar Manufacturing Ltd.

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Purchase Tax on Sugarcane Act, 1962 — Section 1(3), 12B, 6(1), 6(4), 95
Maharashtra Value Added Tax (Levy and Amendment) Act, 2005 — Section 2, 55, 55
Maharashtra Value Added Tax Act, 2005 — Section 95(1)(c)

Citation : (2012) 1 ALLMR 234 : (2012) 1 BomCR 291 : (2011) 45 VST 407

Hon'ble Judges : Sayed A.A, J;Chandrachud D.Y, J

Bench : Division Bench

Advocate : Uday Warunjikar, for the Appellant; Vinay A. Sonpal, A Panel Coun.,
for the Respondent

Final Decision : Dismissed

Judgement

Chandrachud D.Y. (Dr.), J.—In these proceedings under Article 226 of the Constitution, the petitioner has challenged the constitutional validity of the provisions of section 55 of the Maharashtra Value Added Tax (Levy and Amendment) Act, 2005. In addition, the petitioner has questioned the legality of three notices issued by the Purchase Tax Officer, Sugarcane, Solapur dated 4 August 2011, calling upon the petitioner to pay an amount of Rs. 7,34,05,112/- being the liability of the petitioner in respect of purchase tax under the Maharashtra Purchase Tax on Sugarcane Act, 1962 for the period 2008-09, 2009-10 and 2010-11. The petitioner called into question an order passed by the State Government in the Finance Department, rejecting the application made by the petitioner for exemption u/s 12-B of the Maharashtra Purchase Tax on Sugarcane Act, 1962. The petitioner is a Company incorporated under the Companies Act 1956. On 29 July 2010, the petitioner submitted an application to the State Government, seeking an exemption from the payment of purchase tax u/s 12-B of the Maharashtra Purchase Tax on Sugar Cane Act, 1962. By an order

dated 10 December 2010, passed by a Division Bench of this Court in a petition instituted under Article 226 of the Constitution, the State Government was directed to consider and decide the application submitted by the petitioner u/s 12-B of the Maharashtra Purchase Tax on Sugarcane Act, 1962. The application has been rejected, as noted earlier, by a communication dated 21 February 2011. The petitioner had submitted returns for 2008-09, 2009-10 and 2010-11. The returns were not accompanied by the payment of purchase tax as required by the provisions of section 6(4). Accordingly notices for payment were issued to the petitioner on 4 August 2011 and the Bank Account of the petitioner has been attached in realization of the amounts due.

2. The State Legislature enacted the Maharashtra Value Added Tax Act of 2002. As originally enacted, the Act provided that it shall come into force on such date as may be notified by the State Government in the Official Gazette. Section 95 stipulated that several Acts would stand repealed. Among others in Clause (c) was the Maharashtra Purchase Tax on Sugarcane Act 1962. The State Legislature enacted the Maharashtra Value Added Tax (Levy and Amendment) Act, 2005. Section 2 of the Amending Act provides that for the existing provisions of section 1 (3) of the Principal Act, a new provision shall be substituted by which the Principal Act was to come into force on 1 April 2005. The Maharashtra Value Added Tax 2002 was thus brought into force, for the first time, in the State of Maharashtra with effect from 1 April 2005, having been notified after receiving the assent of the Governor, in the Maharashtra Government Gazette on 31 March 2005. Though in the Act as originally enacted, section 95(1)(c) provided for the repeal of the Maharashtra Purchase Tax on Sugarcane Act 1962 that provision did not take effect for the simple reason that the parent Act itself was not brought into force until 1 April, 2005. Simultaneously, it was provided in section 55 of the Amending Act that in section 95 of the principal Act, Clause (c) of sub-section (1) shall stand deleted. As a consequence, the provision by which the Maharashtra Purchase Tax Act on Sugarcane Act 1962 was to stand repealed was deleted with effect from 01 April 2005, the day on which the Value Added Tax Act was brought into force in the State.

3. The challenge to the constitutional validity of section 55 of the Amending Act is based on the submission that the Maharashtra Purchase Tax on Sugarcane Act, 1962 was repealed by section 95(1)(c) of the Maharashtra Value Added Tax Act, 2005. Once repealed, it is urged, the Act of 1962 would cease to have existence and the deletion of the repealing provision by the Amending Act, 2005 is constitutionally ultra vires.

4. There is no merit in the challenge. Section 95(1)(c) of the MVAT Act 2005 provided for the repeal of the Maharashtra Purchase Tax on Sugarcane Act 1962. However, as noted earlier, the provisions of the MVAT Act, 2002 were not brought into force by the State Government upon its enactment. In 2005 the State Legislature enacted the Amending Act. The Amending Act provided that the MVAT Act, 2002 would come into force from 1 April 2005. Simultaneously, the State

Legislature provided for the deletion of Clause (c) of subsection (1) of section 95, in section 55 of the Amending Act 2005. The net consequence was that simultaneously with the enforcement of the MVAT Act, 2002, the repealing provisions contained in section 95(1) stood amended so as to delete a reference to the repeal of the Maharashtra Purchase Tax on Sugarcane Act, 1962, The State Legislature was within its plenary power to do so. As a matter of fact, the repealing provisions of section 95(1)(c) were never brought into force. Simultaneously with the enforcement of the MVAT Act, 2002 on 01 April 2005, the repealing provisions were reconstructed so as to exclude a reference to the repeal of the Purchase Tax Act. Hence, there is no merit in the first submission.

5. In so far as the claim for remission is concerned, section 12-B of the Maharashtra Purchase Tax on Sugarcane Act, 1962 provides as follows:

12-B. Remission of Tax - For the purpose of encouraging the (establishment of new factories or units, or for the purpose of overcoming any difficulties in respect of any factories or units in the initial periods of manufacture or production of sugar,) the State Government may, by notification in the Official Gazette, remit the whole or any part of the tax payable by or under this Act, for such period or periods (including ny period of periods which commenced before the date of commencement of the Maharashtra Purchase Tax on Sugarcane (Amendment) Act, 1974) and subject to such conditions (if any), as it may specify in such notification.

6. Section 12-B is an enabling power. The State Government is empowered to remit the whole or any part of the tax payable under the Act. The State Government is empowered to do so in order to encourage the establishment of new factories or units or for the purpose of overcoming any difficulties in respect of any factories or units in the initial period of manufacture or production of sugar. While remitting the tax, State Government may do so for such period or periods and subject to such conditions as may be specified. The levy of tax is a sovereign function. The power to remit the payment of tax is an incidence of the sovereign power of the State. No assessee has a vested right to claim are mission from the payment of tax. An assessee may in a given situation, be aggrieved if a remission has been granted to one but not to any other assessee similarly situated. However, in this case a challenge on the ground of discrimination has not been set up with any particularity. Consequently, as a matter of first principle, we do not find any substance in the contention of the petitioner. In the application for remission that was submitted by the petitioner on 28 July 2010, it was only stated that the Unit is a new unit and facing financial difficulties. No details whatsoever were furnished to the State Government. The State Government was in those circumstances justified in rejecting the request for remission. The exercise of the power by State Government cannot hence be faulted.

7. Section 6(1) of the Maharashtra Purchase Tax on Sugarcane Act, 1962 provides that every occupier liable to pay tax under the Act shall, within thirty

days after the end of every month to which the return relates, submits a monthly return in the prescribed form to the Commissioner. Sub-section (2) provides that every return shall be accompanied by a receipt for payment of the full amount of tax leviable u/s 3 for the period to which the return relates. Subsection (4) mandates that the full amount or the remaining amount due shall be paid by the occupier into the Government Treasury or the Reserve Bank of India by such date as may be specified in a notice served by the Commissioner. Section 12(2) provides that any tax or penalty (or interest) recoverable under the Act and remaining unpaid may be recovered as an arrear of land revenue. In the present case, admittedly, though the petitioner filed returns for the assessment years 2008-09, 2009-10 and 2010-11, they were not accompanied by receipts for payment of tax as mandated. In these circumstances, the action of the authorities in issuing a notice of demand and in seeking enforcement of the liability to pay cannot be faulted. Special Counsel for the State also stated before the Court that the returns which were filed by the petitioner clearly stated that no payment has been made together with the returns.

8. Having considered the grievance of the petitioner on merits, we find no reason to interfere in the writ jurisdiction under Article 226 of the Constitution. In this view of the matter, having considered the submissions, we do not find any merit in the petition. The petition shall accordingly stand dismissed.