

**Parsonal Babulal and anr. Vs. State of U.P. and anr.**

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**Court :** Allahabad

**Decided On :** Jan-13-1988

**Reported in :** [1988]69STC363(All)

**Judge :** S.D. Agarwal and ;B.N. Misra, JJ.

**Appeal No. :** Civil Misc. Writ No. 668 of 1987

**Appellant :** Parsonal Babulal and anr.

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** Bharatji Agarwal and ; R.K. Agrawal, Advs.

**Disposition :** Petition allowed

**Judgement :**

**B.N. Misra, J.**

1. Challenge in this writ petition is to the order dated 30th May/1st June, 1987 (annexure 4) passed by the Joint Director of Industries, Agra Region, Agra, respondent No. 2, whereby the five years period of exemption from payment of sales tax previously granted to the petitioner has been reduced to 3 years. The petitioner No. 1 is a registered partnership firm of which petitioner No. 2 is one of

the partners. It is registered as a small-scale industry with the Director of Industries vide registration certificate dated 26th March, 1984 (annexure S.A. 1) and it is noted in the copy of the certificate of registration that the date of commencement of production was 14th March, 1984. It established the new unit and constructed the factory at 11-A/2-A, Ram Nagar Katra Wazir Khan, Hathras Road, Agra, for production of oil and oil-cakes. According to the petitioner, it set up the aforesaid new unit acting on the specific and clear representation by the State Government providing for exemption from payment of sales tax for a period of five years as per terms and conditions contained in Government Notification No. 8244 dated 30th September, 1982 and that its total investment in the project is Rs. 3,09,000 in respect of land, building, plant and machinery. Annexure 1 to the writ petition is a copy of the certificate dated 2nd April, 1984 granted by the General Manager, District Industries Centre, Agra, that the investment of the petitioner is Rs. 3,09,005.22. As the petitioner fulfilled all the requirements for the grant of eligibility certificate for exemption from payment of sales tax under Section 4-A of the U. P. Sales Tax Act, 1948 (hereinafter referred to as 'the Act'), the Joint Director of Industries, respondent No. 2, granted the eligibility certificate on 30th April, 1984, annexure 2, and exemption was granted for a period of five years with effect from 12th March, 1984. Subsequently, an objection having been raised, information was sought for from the petitioner as to its investment in the new unit. In this context respondent No. 2 submitted a report on 7th March, 1987, annexure 3, to the Director of Industries to the effect that the petitioner's investment in the new unit was more than Rs. 3 lacs. However, the petitioner was served with the impugned order dated '30th May/1st June, 1987, and informed that its eligibility certificate dated 30th April, 1984, annexure 2, had been modified and the period of exemption reduced from five years to three years on the basis of Government Notification No. 6468 dated 27th August, 1984, as it was found on enquiry that the petitioner's investment in the unit was less than Rs. 3 lacs. Being aggrieved by the aforesaid order the petitioner has moved this Court for issuance of a writ to quash the aforesaid order.

2. In the counter filed on behalf of respondent No. 2, it is admitted that the petitioner had originally been granted exemption from payment of sales tax under Section 4-A of the Act for a period of five years under Notification No. 8244 dated

30th September, 1982, but by virtue of Government Notification No. 6468 dated 27th August, 1984, the period of exemption was reduced to three years in respect of units with capital investment not exceeding Rs. 3 lacs in the district Agra, and as on enquiry it was found that the petitioner's investment was less than Rs. 3 lacs, the period of exemption has been reduced to three years.

3. The impugned order dated 30th May/1st June, 1987, annexure 4, has been challenged on two grounds. The first is that as the petitioner had established its unit on the specific and clear promise made by the State Government for grant of exemption for a period of five years by virtue of Notification No. 8244 dated 30th September, 1982, on the principle of promissory estoppel it was not open to the State Government to withdraw the exemption subsequently under Notification No. 6468 dated 27th August, 1984. The second ground is that the authorities have wrongly and without any basis arrived at the finding that the petitioner's investment in the unit is less than Rs. 3 lacs.

4. On the first point Mr. Bharatji Agarwal, learned counsel appearing for the petitioner, urged that the petitioner had set up and established the small-scale industry on the basis of the clear representation held out by the State Government that the industry was entitled to exemption from payment of sales tax for a period of 5 years under the Government Notification No. 8244 dated 30th September, 1982. Subsequently by Notification No. 6468 dated 27th August, 1984, a condition was introduced for the first time that in the case of new units in the district of Agra with capital investment not exceeding Rs. 3 lacs, the period of exemption shall be three years from the date of starting production. It is submitted that as the petitioner had set up its new industry on the basis of the representation made by the State Government under the earlier notification, the State Government was estopped from withdrawing the said exemption to the detriment of the petitioner by a subsequent notification. In support of this contention reliance is placed on a decision of the Supreme Court reported in AIR 1987 SC 590 (Pournami Oil Mills v. State of Kerala), wherein similar withdrawal of exemption under the Kerala General Sales Tax Act was under consideration. The Supreme Court held as follows :

6. It may be possible to contend with plausibility that in the absence of an enabling provision in the statute the State Government would not have the power to give up a part of the tax due to the State and there can be no estoppel against statute. But that question does not arise here because we have Section 10 empowering the State Government to grant exemption from tax.

6. ...

7. Under the order dated April 11, 1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case of *M.P. Sugar Mills* (1979) 2 SCC 409. On the other hand, reliance has been placed on behalf of the State on a judgment of this court in *Bakul Cashew Co. v. Sales Tax Officer, Quilon* (1986) 2 SCC 365. In *Bakul Company's case* (1986) 2 SCC 365 this court found:

That there was no clear material to show any definite or certain promise had been made by the Minister to the concerned persons and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel has been made out. This court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act, as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred, In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High

Court to the decision in *M. P. Sugar Mills'* case (1979) 2 SCC 409. In our view, to the facts of the present case, the ratio of *M. P. Sugar Mills'* case (1979) 2 SCC 409 directly applies and the plea of estoppel is unanswerable.

8. It is not disputed that the first order, namely, the one dated April 11, 1979, gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the notification.' All parties before us who in response to the order of April 11, 1979, set up their industries prior to October 21, 1980 within the State of Kerala would thus be entitled to the exemption extended and/or promised under that order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after October 21, 1980 obviously would not be entitled to that benefit as they had notice of the curtailment in the exemption before they came to set up their industries.

5. As pointed out in the aforesaid case, while the first notification dated 11th April, 1979, under Section 10 of the Kerala General Sales Tax Act, gave more of tax exemption, the second notification dated 21st October, 1980 withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso to the second notification. In these circumstances the Supreme Court held that industries within the State of Kerala set up 'in response to the notification dated 11th April, 1979, prior to 21st October, 1980 the date of the second notification, would be entitled to the exemption extended and/or promised under the earlier notification dated 11th April, 1979.

6. Sri P.C. Srivastava, learned Standing Counsel, supporting reduction of the period of exemption submitted that the doctrine of promissory estoppel is not attracted as Notification No. 6468 dated 27th August, 1984 is a statutory one issued under Section 4-A of the Act. He placed reliance on a decision of the Supreme Court reported in 1987 UPTC 201 (*Shri Bakul Oil Industries v. State of Gujarat*) wherein on the question of promissory estoppel the Supreme Court observed :

11. For the purposes of this appeal we do not think it necessary to go into the question whether the earlier notification had created existing rights and whether the impugned notification had the effect of only taking away the existing rights. We are taking this view because we have already pointed out that the State Government was under no obligation to grant exemption and that the granting of tax exemption was only by way of a concession. Having regard to this conclusion there is no need for any probe to be made to determine whether the notification had created vested rights or only existing rights. The exemption granted by the Government as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation, viz., the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the Government can withdraw an exemption granted by it earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the Government grants exemption to a new industry and if on the basis of the representation made by the Government an industry is established in order to avail the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn, except by means of legislation, having regard to the fact that promissory estoppel cannot be claimed against a statute. In the present case the appellants had not raised the plea of promissory estoppel before the High Court. This is understandable because the principle of promissory estoppel had not found crystallised acceptance by courts of law when the special civil application came to be heard by the High Court in the year 1972. Be that as it may, we find that the appellants have not made out any case of promissory estoppel either on the basis of the averments made in their petition or with reference to the facts which have emerged from the affidavits filed in the case. In order to claim the benefit of promissory estoppel the appellants must establish :

(i) that a representation was made to grant the exemption for a particular period to a new industry established in view of the representation held out by the State Government; and

(ii) that the appellants had established the new industry acting upon the representation made by the State Government.

7. On examining the facts of the case the Supreme Court found that the appellants had not established that they had set up the new industry subsequent to and in pursuance of the promise held out by the State Government and that they would not have established the industry but for the concession offered by the State. The facts of the present case are, however, clearly distinguishable. In the present case the petitioner has established that a representation was made to grant the exemption for a period of five years to the new industry established by the petitioner in view of the representation held out by the State Government under Notification No. 8244 dated 30th September, 1982 and that the petitioner had established its new unit acting upon the aforesaid representation made by the State Government. Hence the doctrine of promissory estoppel is attracted to the facts of this case on the strength of the principles decided by the Supreme Court in the Pournami Oil Mills' case AIR 1987 SC 590.

8. It is pointed out by the learned counsel for the petitioner that the decision of the Supreme Court in Pournami Oil Mills' case AIR 1987 SC 590 has been affirmed by a larger Bench of the Supreme Court in the case of State of Bihar v. Usha Martin Industries Ltd. reported in [1987] 65 STC 430, wherein reduction of the period of exemption from ten years to seven years was not permitted on the ground of estoppel. Thus, we hold that the petitioner who had set up its industry in response to Notification No. 8244 dated 30th September, 1982 is entitled to exemption for a period of five years with effect from 12th March, 1984.

9. As regards the second point, on examining the records we find that as per the contents of annexure 1 dated 2nd April, 1984, the General Manager, District Industries Centre, Agra, had certified that the total investment of the petitioner was Rs. 3,09,005.22. Further, in course of the subsequent enquiry the Joint Director of Industries reported, vide annexure 3 dated 7th March, 1987, that the investment of the petitioner was more than Rs. 3 lacs. It seems the reason why the investment of the petitioner has subsequently been held to be less than Rs. 3 lacs is that the bill in respect of the motors purchased by the petitioner was dated 10th March, 1984,

while, as stated in' annexure 4, the petitioner was entitled to exemption from 9th March, 1984 and as such by the date of production the petitioner's investment was less than Rs. 3 lacs. It appears there is no basis for this finding. The petitioner has filed the receipt dated 9th March, 1984, annexure R.A. 5, issued by the suppliers of the motors to the petitioner indicating that they had already received payment by 9th March, 1984 for the motors which were to be delivered to the petitioner on 10th March, 1984. This receipt makes it clear and in the counter filed by respondent No. 2 it has been admitted that payment for the motors was made by the petitioner by a bank draft dated 8th March, 1984. The receipt shows that the payment was received by the suppliers by 9th March, 1984. Therefore, it must be held that even by 9th March, 1984, the petitioner's investment was more than Rs. 3 lacs.

10. For the reasons stated above the writ petition is allowed. The order dated 30th May/1st June, 1987 passed by the Joint Director of Industries, Agra Region, Agra, annexure 4, is hereby quashed and proceedings, if any, pursuant to the aforesaid order pending before the Assistant Commissioner, Assessment, Sales Tax VI, Agra, respondent No. 3, are also quashed. The petitioner shall be entitled to exemption from payment of sales tax for a period of five years with effect from 12th March, 1984. There shall be no order as to costs.

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