

Parth Rasayan Pvt. Ltd. Vs. State Appellate Forum and anr.

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Court : Madhya Pradesh

Decided On : Jul-08-2008

Reported in : (2009)23VST218(MP)

Judge : Viney Mittal, J.

Appellant : Parth Rasayan Pvt. Ltd.

Respondent : State Appellate Forum and anr.

Advocate for Pet/Ap. : Shri. P.M. Choudhary

Disposition : Petition allowed

Judgement :

Viney Mittal, J.

1. This order shall also dispose of two writ petitions being W.P. No. 825 of 2005 and W.P. No. 826 of 2005 as controversy involved in these two writ petitions is identical. For the sake of convenience facts are borrowed from W.P. No. 825 of 2005.

2. The petitioner-company set up a new industrial undertaking in the district of Jhabua, which is concededly a backward area declared by the State Government, for the purpose of establishment of new industries. As per the industrial policy of the State Government, a new industrial unit set up in a backward area, engaged in

the manufacturing activity, except the classified goods mentioned in the notification dated October 6, 1994, is entitled to exemption from commercial tax. The petitioner-company is engaged in blending of chemicals for manufacturing of industrial solvents. Consequently, it applied to the competent authority of the department for the grant of eligibility certificate to claim exemption. The said certificate was declined by the competent authority vide order dated October 8, 2002, annexure P2. An appeal was preferred by the petitioner-company before the State Level Committee. The State Level Committee confirmed the decision of the competent authority and in the meeting held on May 23, 2003, rejected the claim of the petitioner. The petitioner-company still felt aggrieved by the order passed by the State Level Committee and preferred a further appeal before the State Appellate Forum. The detailed grounds were taken to claim that the petitioner-company was entitled to the exemption claimed by it. While filing the written submissions before the State Appellate Forum, the petitioner-company also appended opinion/reports of various technical experts who opined that the product of the petitioner-company did not involve any refining process, but was only a blending of certain chemicals. The State Appellate Forum, vide order dated February 28, 2004 rejected the appeal filed by the petitioner-company and the order passed by the appellate authority was upheld. The order of rejection passed by the Appellate Forum is appended as annexure P7 with the present petition.

3. The petitioner approached this Court earlier through a writ petition being W.P. No. 410 of 2004. The writ petition filed by the petitioner was allowed by this Court vide order dated September 2, 2004 (Parth Rasayan Pvt. Ltd. v. State Appellate Forum) and the order passed by the Appellate Forum was set aside. Directions were issued to Appellate Forum to decide the matter afresh in accordance with certain directions issued by the court in the said writ petition. A copy of the order dated September 2, 2004 passed in W.P. No. 410 of 2004 (Parth Rasayan Pvt. Ltd. v. State Appellate Forum) has been appended as annexure P8 with the present petition.

4. According to the petitioner-company the matter was reheard by the State Appellate Forum, but again vide an order dated May 3, 2005, the appeal filed by the petitioner/company has been rejected. The order of rejection has been

appended as annexure P10 with the present petition.

5. It is in these circumstances, that the petitioner/company has approached this Court yet again.

6. At the outset Shri P.M. Choudhary, learned Counsel for the petitioner, has argued that in the grounds of appeal/written submissions before the State Appellate Forum, it was specifically brought to its notice that various other establishments, which were similarly situated and carrying on similar activities, as the petitioner-company, had been exempted by the Department, whereas the petitioner-company had been singled out for a different treatment. On that basis Shri Choudhary maintains that the petitioner-company has been a victim of hostile discrimination. Shri Choudhary has also argued that the petitioner-company while filing its written submissions, had submitted the reports of various technical experts, to show that there was no process of refinery involved in the blending of chemicals by the petitioner-company and therefore the product of the petitioner-company could not be treated to have been included in the notification in question, wherein the exclusion from exemption had been mentioned. Shri Choudhary has raised a grievance that both the aforesaid questions, though specifically raised before the Appellate Forum had not been taken into consideration by the Appellate Forum.

7. On the other hand, Shri Umesh Gajankush, learned Government Counsel for the Department, has supported the order, annexure P10, passed by the State Appellate Forum. It has been maintained that the specific stand taken by the Department before the Appellate Forum as well as before this Court would reveal that the matter had been gone into in deep details and therefore the petitioner could not raise any grievance with regard to rejection of its claim. However, Shri Gajankush has not been able to point out any discussion in the order, annexure P10, which would show that the reports of the experts submitted by the petitioner-company had been taken into consideration by the State Appellate Forum.

8. I have also minutely perused the order, annexure P10 and have considered the rival contentions raised by both the learned Counsel for the parties. A perusal of the order, annexure P10, does show that factum of exemption having been

granted to some other units, which was relied upon by the petitioner-company, was noticed by the Appellate Forum and it was observed that the aforesaid cases would be reviewed, but during the course of arguments, Shri P.M. Choudhary, learned Counsel for the petitioner, has maintained that the exemption granted to the said units had never been withdrawn and as of date, after a lapse of such a long time, same cannot be withdrawn retrospectively. It further appears from the order, annexure P10, that various technical reports submitted by the petitioner-company have not been adverted to at all by the Appellate Forum.

9. Although it is correct that as whether or not the activities of the petitioner-company are entitled to exemption or not is a matter which is to be left to the technical experts and it is not for this Court to opine in the matter, but the fact cannot be lost sight of that the petitioner-company had relied upon certain technical reports to support its claim. In these circumstances, the Appellate Forum could have examined the aforesaid technical reports, and if so required, the departmental authority could have submitted any counter-technical report in the matter. This has not been done. In fact, the technical reports had not at all been adverted to. There appears to be a non-application of mind in this regard.

10. Consequently, the present petition is allowed to the extent that the order dated May 3, 2005, annexure P10, passed by the State Appellate Forum is set aside. The appeal filed by the petitioner-company before the State Appellate Forum is restored to its original number and shall be decided afresh by the State Appellate Forum, in accordance with law, by passing a detailed and speaking order, within a period of six months from the date parties put in their appearance. The petitioner-company as well as the industries department shall be at liberty to submit reports/submissions before the State Appellate Forum and file such other documents/reports, as may be deemed appropriate by them. The State Appellate Forum shall also afford an opportunity of personal hearing to the parties before passing final order in the matter.

11. Parties through their learned Counsel are directed to appear before the State Appellate Forum on August 18, 2008.

12. Till the matter is finally decided by the State Appellate Forum, the protection granted to the petitioner-company vide order dated December 4, 2006, shall continue to operate.

13. C.C. as per rules.

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