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Court : Sales Tax Tribunal STT Rajasthan

Decided On : Aug-14-1997

Reported in : (2003)133STC410Tribunal

Judge : M C Bansal, R Nair

Appellant : De

Respondent : Hree Cement Ltd.

Judgement :

1. These writ petitions have been filed for quashing the notification dated January 11, 1990, amending the earlier notification dated May 23, 1987, issued under Section 4(2) of the Rajasthan Sales Tax Act, 1954 (in short, "the RST Act") reducing the exemption of tax from 100 per cent to 50 per cent with retrospective effect from August 6, 1988, the assessment orders (annexure 2 in each case) and the demand notices (annexure 3 in each case). Their particulars are as follows : On the establishment of the Tribunal, these writ petitions stood transferred to it under Section 15, Rajasthan Taxation Tribunal Act, 1995.

2. It has been averred in the writ petitions, in short, as follows : After filing writ petitions Nos. 3136 of 1992, 1124 of 1992, 1959 of 1992, 5083 of 1992, 5865 of 1993, 1888 of 1993, 1887 of 1993 and 5869 of 1993 against the respondents, the petitioner was granted eligibility certificate under the Sales Tax Incentive Scheme for Industries, 1987 with effect from June 28, 1988 (the date of application). On January 11, 1990, notification annexure 1 was issued under Section 4(2) of the Act

reducing the exemption from the payment of tax from 100 per cent to 50 per cent with retrospective effect, i.e., from August 6, 1988. As a consequence thereof, aforesaid assessment orders were passed and the demand notices were issued. The said notification, assessment orders and demand notices are illegal and deserve to be quashed.

3. In their replies, the respondents have admitted almost all the aforesaid averments made in the writ petitions except that the notification annexure 1, assessment orders and demand notices are illegal.

4. It has been contended by the learned counsel for the petitioner that the said notification dated January 11, 1990 (annexure 1) is illegal, exemption from payment of tax granted earlier could not be withdrawn with retrospective effect, the provisions of Section 4(2) of the RST Act and Section 8(5) of the Central Sales Tax Act, 1956 (in short, "the CST Act") did not empower the State Government to withdraw the exemption with retrospective effect, the petitioner did not recover any sales tax from its customers during the aforesaid periods and in pursuance of the assessment orders the petitioner has been made liable to pay the aforesaid huge amounts. He further contended that under Section 4(2) of the RST Act and 8(5) of the CST Act exemption could be granted with retrospective effect but the exemption granted could not be withdrawn with retrospective effect. Such an order is hit by Article 14 of the Constitution of India, being unreasonable. He lastly contended that the petitioner would suffer an irreparable loss if the assessment orders and the demand notices are not quashed.

5. The learned counsel for the respondents contended that when an exemption could be granted with retrospective effect under Section 4(2) of the RST Act and 8(5) of the CST Act, it could also be withdrawn with retrospective effect.

6. Admittedly, by notification dated January 11, 1990 (annexure 1), exemption of 100 per cent granted earlier was reduced to 50 per cent with effect from August 6, 1988. Thus the notification annexure 1 was passed with retrospective effect. By virtue of the earlier notification of exemption, the petitioner did not recover any tax from its customers on the sale of cement during the aforesaid periods. By the impugned notification dated January 11, 1990 annexure 1, the petitioner has been

made liable for payment of tax at half the prescribed rate with effect from August 6, 1988. It is very harsh and unreasonable. Exemption granted under the provisions of Section 4(2) of the RST Act and Section 8(5) of the CST Act could not totally or partially be withdrawn with retrospective effect. Initial liability of the payment of sales tax is upon the customers. The dealer is required to collect from his customers and deposit the same in the Government treasury. As a consequence of the said notification annexure 1, the petitioner has been made liable for the payment of huge amount without charging a single paisa from its customers. Exemption can well be granted with retrospective effect as it does not adversely affect either a customer or a dealer. In case of grant of exemption with retrospective effect, the tax collected by the dealer had stood deposited in Government treasury.State of Madhya Pradesh v. G.S. Dal and Flour Mills [1991] 80 STC 138 (SC) at page 165, that subsequent notification cannot take away with retrospective effect exemption granted by an earlier notification. The aforesaid notification dated January 11, 1990 has also been the subject-matter of dispute in Sales Tax Revision 94 of 1996, Bhatnagar Cement Co. v. State of Rajasthan, decided by this 'Tribunal on July 19, 1996 Reported in [1996] 103 STC 146. It has been observed in para 29.2, page 14 as follows : "29.2. The granting of an exemption and the withdrawal of an exemption cannot be viewed as the same process in reverse. It is not a two-way street and the fact that Section 4(2) of the RST Act authorises the grant of exemptions with retrospective effect cannot be said to authorise their withdrawal with retrospective effect.

Neither the RST Act nor the CST Act, in terms, provide for withdrawal of exemptions." "35. If the cement plant in question is taken to be a mini cement plant of the type specified in the amendments then too the cement plant in question would remain unaffected. For the period from September 12, 1989 to January 11, 1990/February 22, 1990 it would because an exemption granted and availed of cannot be withdrawn with retrospective effect and the applicant cannot be required to deposit sales tax which he was hot required to collect and which he did not collect. For the period after January 11, 1990/February 22, 1990 the principle of promissory estoppel shall apply with full force. The promise extended to the applicant in response to which the investment was made was that he would be entitled to 100 per cent exemption of sales tax subject to a ceiling of 100 per cent

of investment in fixed capital or seven years whichever was earlier.

The promise made by the non-applicants was not in conflict with law or contrary to public policy. It was acted upon in good time by the applicant. The essential ingredients of promissory estoppel exist.

This promise cannot be broken and has to be kept. The State Government is free to alter the Incentive Schemes but that would only be with prospective effect for those who respond to the modified schemes." As such it is very difficult to sustain the notification dated January 11, 1990 (annexure 1) so far its operation with retrospective effect is concerned. Its prospective operation will remain unaffected. It will be effective so far the industries set up after January 11, 1990 are concerned. The aforesaid assessment orders and the demand notices deserve to be quashed.

8. Accordingly, the writ petitions are allowed. The notification dated January 11, 1990 annexure 1 so far it is retrospective in effect is quashed. Its prospective operation will remain unaffected. The assessment orders (annexure 2 in each case) and demand notices (annexure 3 in each case) are quashed.

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