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Court : Supreme Court of India

Decided On : Jan-16-1992

Reported in : 1993(67)ELT25(SC); JT1992(1)SC220; 1992(1)SCALE46; (1992)2SCC683; [1992]1SCR179; [1992]85STC432(SC)

Judge : S. Ranganathan,; V. Ramaswamy and; N.D. Ojha, JJ.

Acts : Jammu and Kashmir General Sales Tax Act, 1962 - Sections 5; Central Sales Tax Act, 1956 - Sections 6(1A), 8(2A) and 8(B); Constitution of Jammu and Kashmir - Sections 4(1), 4(5) and 45

Appeal No. : Civil Appeal Nos. 2309, 2310 of 1989

Appellant : Pine Chemicals Ltd. and ors.

Respondent : Assessing Authority and ors.

Advocate for Pet/Ap. : K. Parasaran,; D.D. Thakur,; M.H. Beg,;

Prior history : Appeal From the Judgment and Order dated September 23, 1988 of the Jammu & Kashmir High Court in Writ Petition No. 87 of 1981 and C.M.P. No. 2519 of 1988

Judgement :
ORDER

No. 54-IND OF 1983

Dated 26-2-1983

In supersession of all previous orders it is ordered that the package of incentives as per Annexure to this order will now be F applicable to the existing and new Large Medium/Small Scale and Tiny Industrial Units.

2. Such of the Industrial Units which have partly availed of the package of incentives, sanctioned under Government Order No. G 391-Ind. of 1972 dated 21.6.1972 and subsequent orders issued in amplification thereof, as well as such units which have become entitled to the availment of the earlier package of incentives, shall have the option to get benefit under the new package of incentives, sanctioned hereunder for the remaining period of their entitlement.

3. X X X 4. X X X 5. X X X 6. X X X By order of the Government of Jammu & Kashmir.

Sd. J.A. Khan

Secretary to Government Industries and Commerce Department.

45. The annexures to this order contain the incentives, benefits, privileges and priorities given to large, medium and small scale industries and tiny industries. So far as sales tax payable by large and medium scale industries which is relevant for our purpose paragraph XII/XIII states as follows:

XII/XIII. GST/CST/Additional Toll Tax on SSI Units and Medium/Large Units:

(i) No GST shall be charged on any raw material purchased by any industrial units except on items brought on a negative list.

(ii) X X X (iii) X X X (iv) An equivalent amount of loan would be granted interest free to Medium and Large Units for a period of 10 years against GST/CST paid in the State, each instalment of loan shall be recoverable in 7 years after a moratorium of 3 years, the total amount of tax-loan at any point of time not to exceed 33% of capital investment or Rs. 25 Lakhs whichever is less. Penal rate of interest may be prescribed for delay in repayment of loan.(v) X X X (vi) X X X

46. It may be seen that paragraph I of this order refers to 'supersession of all previous orders' and then speaks of package of incentives and then states as applicable to existing large and medium scale industries also. If SRO 80/82 had superseded G.O. 159 and 414 does it mean that this Government order has superseded SRO 80/82 and if that is so what are incentives available after SRO 80/82 to the existing industries? This Government order is thus consistent with the pattern followed and deals only with incentives to industries. In the second paragraph an option has been given to the industry which has not utilised the full benefit of the earlier exemption either to continue to enjoy the earlier exemption given by way of incentive or to opt for the scheme of incentive under the new Government order. Thus all, these provisions are consistent with the case of the appellants that neither SRO 80/82 superseded GO 159 and 414 nor Government order 54 dated 26.2.1983 took their right to continue to enjoy the exemption benefit for the total period of five years as provided in the said Government orders.

47. The learned Counsel for the appellants also contended that they are entitled to enjoy the benefit for the full period of five years both on law as also on the ground of estoppel. We have already noticed that in Bakhul Oil case (supra) this Court held that in the case of a grant of exemption without specifying any period for which the exemption is available the Government could withdraw the same at any time. Though in that case on facts no further question can arise since it was held that the dealer was not entitled to the benefit of the subsequent notification giving the exemption for a period of five years on the ground that the notification was prospective in operation and therefore not applicable to the dealer in that case, this Court made certain further observations to the effect that even in the case of exemption for a particular period it could be withdrawn at any time subject of course to the plea of estoppel. In Pournami Oil Mills case also the learned Judges appear to have given the benefit of exemptions for the full period even after the withdraw! on the basis that the industry was set up in pursuance of some representation made by the Government amounting to estoppel. In the present appeals also there are lot of materials to show that the Government made representations to industry that they would give tax exemptions and other incentives and invited entrepreneurs to establish their industries in J.& K. Relying on those representations each of these appellants have set up their industries. It is

not necessary to set out these factual details in the judgment. Suffice it to say that we have carefully considered all the materials and are of the view that the appellants acting on the representations had set up their industries. Therefore they are entitled to claim the benefit of the exemption for the entire period of five years calculated as per the terms of the Government orders, even if it were to be held that SRO 80/82 superseded the earlier exemption orders.

48. It was then contended by Mr. Verma learned Counsel appearing for the State that in the assessment order relating to Assessment Year 1981-82 for the period from 1.9.1981 to 30.8.1982 in the case of K.C. Vanaspati there is a finding that the assessee had collected sales tax in respect of their sales turnover for which the exemption is now claimed and that under Section 8-B of the J&K; General Sales Tax Act the said amount is refundable to the Government. As has already been seen there was an assessment order for the period covering from 2nd September, 1981 to 30th September, 1981 which was the subject matter of Writ Petition No. 52 of 1982. The same period merged in the assessment order 1.9.1981 to 30.8.1982 and consolidated assessment order was made and that was subject matter of Writ Petition No. 822 of 1984. Both these assessment orders were regular assessment orders and they are not Section 8-B orders of the Local Act. They were made on the findings that Government Orders 159 and 414 above referred to are not exemption orders and the assessee could not be said to have acted upon any representation by the Government that they are exemption orders on the ground that if they had relied on those orders as exemption orders they would not have collected any tax in respect of their sales and that therefore the Government was not precluded by any principle of promissory estoppel from assessing their sales turnover. The assessees had challenged these assessment orders mainly on the ground that the Government orders were exemption orders and that in any case the State is precluded from levying any sales tax on the ground of promissory estoppel. The learned Judges of the High Court held, as already stated that, the said Government orders were not exemption orders but were only in the nature of declaration of intention to exempt the said industries from payment of sales tax and that the assessee had also not established any right for nonpayment of tax on any ground of promissory estoppel. For holding that the assessees could not be said to have relied on any representation from the

Government that they would be exempted from payment of tax the learned Judges relied on the facts that the assessees had collected sales tax or the sales tax element had gone into the fixation of price of Vanaspati Ghee showing thereby that the appellants had not relied on any representation from the Government that their sales are exempt from payment of tax. Since the assessment orders were regular assessment orders on the ground that their sales are taxable sales the question of applicability of Section 8 B of the local Act does not arise. That question arises in view of our finding that their sales turnover are exempt but still under Section 8 B of the Local Tax they are liable to refund any money collected 'by way of a tax'. Since neither the High Court had any occasion to decide this question of applicability of Section 8 B of the Local Act on the basis that the sales turnover were exempt from payment of tax nor the assessing authorities had any opportunity to decide or made any order under Section 8 B of the Local Act separately, we think that the entire question relating to the applicability of Section 8 B of the Local Act and even the question whether there was any collection of sales tax will have to be left open. The learned Counsel Mr. Verma strenuously contended that there is a finding in the assessment orders that the appellants had collected tax and that finding had not been either challenged or set a side by the High Court and that therefore they should be directed to refund the amount collected. We are not able to agree with this contention of the learned Counsel. As already stated the assessment order itself was questioned in the writ petitions filed by the assessees. The High Court had proceeded on the basis that the Government orders are not exemption orders and that the Government also was not precluded from collecting tax on any ground of promissory estoppel and that therefore the question of applicability of Section 8B of the Local Act did not arise before the High Court. It may be mentioned it is not the case of the State that they had collected any amount in excess of the percentage of sales tax i.e. collectable in respect of taxable Vanaspati sales. In the light of our findings that the sales were exempt the question now arises whether the assessees had collected any tax and whether the amount was collected by way of tax and whether any element of sales tax has merged in the fixation of the price and that amounts to collection of sales tax. These questions will have to be decided if the State considers that the assessees had collected sales tax, in separate proceedings that may have to be initiated under Section 8 B of the Local Act or when the State demands payment of the money under Section 8 B of the Local ACL Suffice it so say that we are unable to agree with the observations of the learned Judges of the High Court that merely because in the balance sheet a reserve fund is made for payment of sales tax or on the basis of the letter of Kashmir Vanaspati giving a break up of the sales price of Rs. 238 it can be said to be conclusively established that sales tax had been collected. Any way we do not want to say anything because the matter will have to be considered by the authorities concerned in case they want to invoke Section 8 B of the Local Act on the basis that the said government orders gave exemption from payment of sales tax in respect of these assessees for a period of five years as we have held In this view we are also not going into the question as to the validity of Section 8 B of the Local Act and we leave open that question which was outlined before us. Thus interpretation of Section 8 B of the Local Act and the question of fact of collection and the liability to refund all have to wait till a demand is made by the competent authority for refund of the amounts in exercise of their power under Section 8 B of the Local Act The assessees have made some deposits in pursuance of interim orders made by this Court pending the appeals. It is also stated that during the pendency some other amounts were also paid by the assessees in addition to the amounts paid as per the directions given by this Court. The refunds of this money and the liability of the State Government to pay any interest while refunding the deposits will all have to await the demand, if any, that may be made by the Government under Section 8 B of the Local Act However, we make it clear that the stay of refund of money collected as aforesaid will be only for a period of six months by which time the Department should initiate proceedings, if any, under Section 8 B of the Local Act, if so advised.

49. To sum up : G.O. 159 Ind. dated 263.1971 and G.O. 414 dated 25.8.1971 are exemption from payment of sales tax orders referable to the powers of the Government under Section 5 of the J & K General Sales Tax Act and that exemption covers the entire series of sales of the goods comprehended within it but that the exemption was available only for a period of five years from the date of commissioning of the industries and not for ten years. The benefit of the exemption under the said Government orders are also available in respect of the inter-State sales of the same commodities for a period of five years from the

commencement of the commercial production. The appeals are accordingly allowed to the extent mentioned above. However, there will be no order as to costs.

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