

Wipro Infotech Limited Vs. Additional Deputy Commissioner of Commercial Taxes (Assessment-ii) and ors.

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Court : Karnataka

Decided On : Mar-13-1998

Judge : G.C. Bharuka and ;V. Gopala Gowda, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 8A

Appeal No. : Writ Appeal No. 3791 of 1997

Appellant : Wipro Infotech Limited

Respondent : Additional Deputy Commissioner of Commercial Taxes (Assessment-ii) and ors.

Advocate for Def. : D'Sa, Government Adv.

Advocate for Pet/Ap. : G. Sarangan, Senior Adv. and ;S. Parthasarathi, Adv.

Disposition : Appeal allowed

Judgement :

G.C. Bharuka, J.

1. The appellant-company is owning medium scale industrial units located at plot No. 146, Belogola Industrial Area, Metagalli and plot No. 312, Hebbal Industrial

Area, Mysore, which are registered with the Government of India vide CIL/145/88, dated June 20, 1988 for manufacture of computers and computer peripherals at Belogola and Hebbal Industrial Area, Mysore.

2. Admittedly, Expansion modernisation was carried out in the aforesaid industrial units twice during the financial year 1993-94 which are evidenced by the certificates dated September 27, 1993 (annexure 'B') and February 21, 1994 (annexure 'C') issued by the Joint Director (ID). As per the said certificates, the investments made in expansion are to the following effect :--

I. Certificate No. IDF/E2/ST/27/92-93,

dated September 27, 1993 Rs. 86,29,000-00

II. Certificate No. IDF/E2/ST/115/92-93,

dated February 21, 1994 Rs. 2,12,19,000-00

Total Rs. 2,98,48,000-00

3. At the time of assessment for the year 1993-94 under the [Karnataka Sales Tax Act, 1957](#) (in short 'the State Act') and the Central Sales Tax Act, 1956 (in short 'the Central Act'), the assessee, on the strength of the said certificates issued by the competent authority of the Industries Department, claimed exemption both from the State Sales Tax Act and Central Sales Tax Act to the extent of the investment made by it in expansion of its existing industrial unit but the same was disallowed by the assessing authority to the extent of Rs. 81,60,000 and Rs. 58,54,000 total being Rs. 1,40,14,000 on the ground that the investment made to the said extent cannot be treated as made in acquiring fixed assets. Accordingly, the entitlement of exemption from sales tax was limited to Rs. 1,58,84,000 which according to the assessing authority the only available qualifying amount.

4. The assessment orders dated April 21, 1997 passed under the Acts have been placed at annexures H and J respectively. The assessee company challenged the said assessment orders by filing the writ petition before this Court questioning the jurisdiction of the assessing authority to scale down the quantum of exemption entitlement by adopting its own measure for computing the quantum of qualifying investment contrary to the amounts certified by the authorities of the Industries Department, who are the only delegated authorities for the said purpose under the notification.

5. According to the learned single Judge, who heard the writ petition, the objection raised regarding part disallowance of the exemption can be raised before the appellate authority since the issue does not pertain to inherent lack of jurisdiction of the assessing authority and accordingly the writ petition was dismissed with liberty to the appellant to avail its alternative remedy by way of appeal under the Acts.

6. Sri Sarangan, learned senior counsel appearing before us, in support of appellant's case, has submitted that keeping in view the provisions contained in the Notification S.O.No. 1371 dated June 21, 1991 issued under Section 8A of the State Act, the Director of Industries and Commerce or his authorised nominee are the only competent authorities to certify the amount spent on investment for expansion/diversification/modernisation which will form the upper limit for quantum of exemption and the assessing authority has no competence or jurisdiction to sit in appeal over the said determination. According to him, in view of the provisions contained in the State Act and the said notification, the part of the assessment order by which the entitlement of the appellant for claiming exemption has been curtailed by the assessing officer by discarding the certificates issued by the competent authorities is bad for inherent lack of jurisdiction and therefore should have been interfered with in the writ jurisdiction. In support of his contention, he has relied on the judgments of the High Courts of Allahabad, Andhra Pradesh, Madhya Pradesh and Punjab and Haryana in the cases of *Kumar Fuels v. State of Uttar Pradesh* [1986] 63 STC 467, *P.P.P. Industries v. Commissioner of Industries* [1994] 92 STC 110, *Commissioner of Sales Tax v. Madhya Bharat Papers Ltd.* [1996] 103 STC 142, and in the case of *Maurya Timbers v. State of Haryana*

7. Keeping in view the question raised herein which pertains to day-to-day application of the exempting notification and it affects the competence of the tax authorities vis-a-vis those of Industries Department leading to wide ranging confusion in the administration of the State Act, we found it expedient to resolve the issue at the earliest and in an authoritative manner atleast to our level so that unnecessary litigation in future can be avoided. In order to resolve the issue, we, by our order dated July 22, 1997 called upon the Secretary, Department of Finance, Government of Karnataka, the Commissioner of Commercial Taxes, and the Director of Industries and Commerce to file their separate affidavit putting on record their views on the aforesaid issue which they have complied with. In the context of pleadings and the statutory provisions, we heard Sri G. Sarangan, learned senior counsel for the appellant and Sri D'Sa, learned Government Advocate, appearing for the respondents.

8. It is a matter of record that the notification dated June 21, 1991 was issued by the State Government as a follow-up action to effectuate the industrial policy of the State Government professed under Government Order No. CI/138/ SPC/90(P), Bangalore dated September 27, 1990. Clause (k) of Part XIV of the Government Order provides that :

'Separate guidelines for administration of these incentives and concessions will be issued for the guidance of the concerned agencies and officers. Interpretation of this G.O. and decision thereon of the State Level Co-ordination Committee, under the Chairmanship of the State Level Co-ordination Committee, under the Chairmanship of the Secretary, Commerce and Industries Department shall be final.'

9. Section 8A of the State Act empowers the State Government to notify exemptions and reductions of tax and Sub-section (2) thereof declares that any exemption from tax or reduction in the rate of tax notified under the section may be subject to such restrictions and conditions as may be specified in the notification.

10. Explanation II of the notification dated June 21, 1991 issued under Section 8A of the State Act providing for grant of exemption from tax to the existing industrial units is to the following effect :--

'(a) the amount of tax exemptions shall be limited to the amounts spent as investments for expansion/diversification/modernisation and the period of exemption shall be that which corresponds to the Sl. No. of the table which applies to the unit in question except where an investment is made by an existing unit to set up another separate unit situated in different premises for producing an entirely new and different product, such investment will be treated as a new unit and not a diversification or expansion.

(b) the Director of Industries and Commerce or his authorised nominee shall certify the amounts spent on investment for expansion/diversification/ modernisation.

(c) for the purpose of calculating the amount of tax exemptions, the amounts of tax exempted under this notification and Notification No. CI/138/SPC/90 dated 27th September, 1990 shall be included.

(d) for purpose of calculating the commencement of the period of tax exemption, the date of completion of expansion/diversification/modernisation, certified as such by the Director of Industries and Commerce or his authorised nominee shall be accepted.'

11. The exempting notification has also prescribed the procedure for claiming the exemption. Para 1(a) which is relevant for the present, reads as under:

'PROCEDURE

1. A new industrial unit which is claiming exemption under this notification shall produce at the time of the assessment of the first of the years for which exemption from tax is claimed.

(a) in the case of tiny/small-scale/medium/large scale industrial unit, a certificate in original issued by the Director of Industries and Commerce, or his authorised nominee certifying,--

(i) that it is a unit registered as such ;

(ii) that investment in the unit having been made on or after 1st October, 1990 it is eligible for exemption under this notification ;

(iii) that date of commencement of its commercial production ; and

(iv) the serial number of the table above under which it is eligible for exemption; and

(v) that no part of its plant and machinery at the time of commencement of its commercial production is old/used/second-hand, with the exception of imported second-hand machinery.

(b)_____'.

12. Under the Explanation II of the notification, an existing industrial unit, subject to fulfilment of other conditions, was entitled to avail the benefit of tax exemption to the extent of amounts spent as investment for expansion/diversification/modernisation as certified by the Director of Industries and Commerce or his authorised nominee. Under the procedure laid down for claiming exemption, it has been made mandatory that such exemption can be claimed only if the industrial unit produces a certificate at the time of assessment issued by the Director of Industries and Commerce or his authorised nominee, inter alia, certifying that the investment in the unit having been made on or after October 1, 1990, is eligible for exemption under the notification.

13. The notification by itself does not or has not laid down any guideline or criterion for ascertaining the amounts spent on investments by the existing units for expansion, etc., which has to qualify for exemption. But one thing is clear that an industrial unit can claim exemption only on the amount of investment which is certified by the Director of Industries or his nominee as being eligible for the said purpose. But the question, as noticed above, which has fallen for our consideration is as to whether the amount so certified by the Director of Industries or his nominee can be interfered with by either reducing or enhancing for any reason, good or bad, by the assessing authority as defined under Section 2(f) of the Act.

14. The Commissioner of Industrial Development-cum-Director of Industries, in his affidavit, has stated that for the purpose of computing the amount spent on investments, his department has been aggregating the value of land, building, plant and machinery and such other assets which are directly related to the production processes as prescribed in the manual issued by his department on the package of incentives and concessions, 1990-95, which have been duly approved by the State Level Committee. It has further been stated that the certificates containing necessary informations are issued to eligible units after making the necessary investigations and following the relevant rules as found in the related Government orders, notifications and State Level Committee decisions.

15. On the other hand, the Commissioner of Commercial Taxes, through his affidavit, has come on record taking the stand that it is very much within the competence of the assessing authority to verify the correctness of the fixed assets valuation certificate issued by the Industries and Commerce Department. His plea is that the certificate required to be issued by the Department of Industries and Commerce is intended only to cover the question of facts mentioned in the various clauses of the procedure prescribed under the notification but the question of applying the law to such factual matters lies within the exclusive jurisdictional domain of the assessing officers.

16. The Commissioner of Commercial Taxes has also highlighted that its department has come across various instances wherein the certificate issued by the Department of Industries and Commerce suffer from errors apparent on the face of the record and in such cases, the assessing officers have been constrained to take their own decisions even on the matters covered by such certificates mainly for want of relevant details in the certificates issued by the Department of Industries and Commerce. The Principal Secretary to the Government, Finance Department, has, on oath, in paras 7 and 8 of his affidavit stated that :

'7. This honourable Court, by its order dated July 22, 1997, had required me to make known the stand of the State Government on the binding nature of the certificates issued by the Director of Industries for the purpose of sales tax

assessments and further if not binding, why such a provision has been made which, for that very reason, would not satisfy the test of reasonableness under the Constitution of India. As no material is readily available to justify the requirement of the certificates as included in the Section 8A notification without also clarifying the binding nature of the contents of such certificates, I regret I am not in a position to authoritatively answer the question posed by this honourable Court. I submit that it was never the intention of the Government to create any avoidable difficulties for industrial units, the situation now obtaining having been wholly unforeseen.

8. Any guidelines or suggestions that this honourable Court may be pleased to issue in this connection will be given due regard by the authorities concerned.'

17. We have extracted above the conflicting stand taken by the three functional organs of the Government who were otherwise required to act with a better harmony and understanding for an effective implementation of incentives and benefits which were professed and promised with an avowed object to accelerate the process of industrialisation in the State. Instead of that, because of their rival claims of having a final authority to act under the notification, they have plunged the entrepreneurs and also the departments concerned in otherwise avoidable disputes and litigations.

18. Now, coming to the intendments of the Government under the notification, as noticed above, the amount which is eligible for exemption on account of expansion, etc., is what is factually spent in investments for the said purpose. The notification nowhere says that the amount will be either restricted to investment on fixed assets or it will take within its fold some other investment as well. As a matter of law, the entire amount spent by an industrial unit for expansion etc., is required to be taken as the eligible amount. But the expression 'amount spent on investment' has not been defined neither in the Government order pursuant to which the notification under Section 8A of the Act has been issued nor in the notification itself. Therefore, there is no occasion on the part of the authorities under the Act to undertake any exercise for interpretation of the said expressions. They have to merely abide by the amounts certified for the said purpose by the Department of Industries and Commerce who have already placed on record that

for ascertaining the said amount, they have been guided by the criterions approved by the State Level Co-ordination Committee which is final on the subject as per Clause (k) of the Government order which has been extracted above. In the case of Brooke Bond Lipton India Limited v. State of Karnataka (S.T.R.P. No. 55 of 1995, decided on November 21, 1997 Reported in [1998] 109 STC 265 (Kar)), wherein, we have, in a greater detail, dealt with the scope of the notification, keeping in view the aforesaid aspects and various judicial pronouncements. There the learned Advocate-General had fairly conceded that the sales tax authorities has no competence either to question the correctness of the contents of the eligibility certificate granted by the Director of Industries and Commerce or the authorised nominee nor it is permissible on their part to take a view contrary to the one taken by the certifying authorities in respect of the factual aspects which have been left to discretion of officers of the Industries Department for being certified.

19. In the case of Periyar and Pareekanni Rubbers Ltd. v. State of Kerala : AIR 1990 SC2192 , it has been held that :

'Any concession made by the Government Pleader in the trial court cannot bind the Government as it is obviously always unsafe to rely on the wrong or erroneous or wanton concession made by the counsel appearing for the State unless it is in writing on instructions from the responsible officer. Otherwise it would place undue and needless heavy burden on the public exchequer. But the same yardstick cannot be applied when the Advocate-General has made a statement across the bar since the Advocate-General makes the statement with all responsibility.'

20. Keeping in view the statutory provisions, the legislative intendment and the stand taken by the contesting parties, we hold that the assessing authority under the Act, for the purposes of determining the eligibility and the entitlement of an industrial unit to seek exemption under the notification, is legally bound to accept the factual aspects which are to be covered by a certificate required to be issued and produced before him as per the procedure laid down under the notification including the amount of investment which is certified to be eligible for the said purpose.

21. But, as stated by the learned Commissioner of Commercial Taxes, if the said certificate issued by the officers of the Department of Industries and Commerce is found to be lacking on any material factual aspect, then, it will be open for the assessing officer to reject the same after giving reasonable time to produce the certificate containing all necessary factual informations.

22. It is also necessary to be clarified that if the assessing officer discovers any factual error either apparent on the face of the record or even otherwise, then, he can request the concerned officers of the Industries Department to rectify the certificate after hearing the industrial unit concerned. We also find it advisable to observe that if the concerned officer does not take prompt or desired action in the matter, then the Commissioner of Commercial Taxes, at his level, can refer the matter to the State Level Committee whose decision has been given a finality under Clause (k) of the Government order reproduced above.

23. With the aforesaid observations and directions, we allow the present appeal to the extent indicated above leaving open to the appellant to agitate all other issues either of fact or law arising out of the impugned assessment orders before the appellate authority constituted under the Act. Anyhow, there will be no order as to costs.