

(2011) 02 CAL CK 0001

Calcutta High Court

Case No: W.P.T.T. No. 54 of 2010

Anvil Investments Pvt. Ltd.

APPELLANT

Vs

Assistant Commissioner
Commercial Taxes and Others

RESPONDENT

Date of Decision: Feb. 4, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226
- Sales Tax Act, 1994 - Section 39
- West Bengal Sales Tax Rules, 1995 - Rule 98(3), 99
- West Bengal Taxation Tribunal Act, 1987 - Section 17(3), 8

Citation: (2011) 2 CALLT 72 : (2012) 54 VST 522

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: B. B. Bhandari and Satyanarayan Dokania, for the Appellant; Seba Roy, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.

This application under Article 226 of the Constitution of India is at the instance of a manufacturer and is directed against order dated 9th July, 2010, passed by the West Bengal Taxation Tribunal in case No. R.N.638 of 2009 thereby dismissing the application filed by the writ-Petitioner wherein they challenged the order of rejection of the application for issue of Eligibility Certificate (E.C.) filed u/s 39 of the West Bengal Sales Tax, Act, 1994.

2. The following facts are not in dispute:

a) The writ-Petitioner was granted registration under the West Bengal Sales Tax Act, 1994 ("1994 Act") as a manufacturer of aluminum utensils at its factory located at

Panchpara, P.O. Radhadasi, Dist. Howrah and according to the writ-Petitioner, the production in the factory commenced in December, 1999 and the first sale of manufactured goods was made in the factory on December 17, 1999.

b) The Directorate of Cottage &, Small Scale Industries, Government of West Bengal, registered the manufacturing unit of the writ-Petitioner provisionally and had granted provisional certificate on January 2, 1998. The writ-Petitioner applied issue of an Eligibility Certificate u/s 39 of the 1994 Act on December 21, 1999. The application was rejected by the Assistant Commissioner of Sales Tax, Special Cell, by an order dated August 7, 2008. While passing the said order, the Assistant Commissioner of Sales Tax made the following observations:

i. In the provisional certificate issued on January 2, 1998 proposed location of the factory was shown as 20C, Belur Road, Block No. 1, Lilloah, Howrah;

ii. Subsequently, the factory was shifted to Panchpara, P.O. Radhadasi, Dist. Hooghly;

iii. Petitioner's registration under 1994 Act was cancelled on April 4, 2003:

iv. The Petitioner used the land and factory shed of another dealer namely M/s. Chandana Property on monthly rent;

v. Power connection was taken from another dealer namely Sri Pradip Chemical Works; and

vi. No permanent registration certificate incorporating the changed address of the factory could be produced by the Petitioners.

c) The writ-Petitioner challenged the said order before the Deputy Commissioner of Sales Tax, Special Cell and the said revision petition was disposed of by the Senior Joint Commissioner of Sales Tax, Special Cell on March 9, 2009 due to failure of the writ-Petitioner to produce permanent registration certificate issued by the District Industries Centre, Howrah.

d) The writ-Petitioner filed a second revision before the Additional Commissioner of Commercial Taxes, West Bengal on the ground that because of the provision of Micro, Small and Medium Enterprises Development Act, 2006 it was not necessary for a small scale industry to get itself registered with the registering authority and the applicant was only required to file memorandum in two parts - one before starting and the other after starting. The Additional Commissioner of Commercial Taxes, however, dismissed the said revisional application by order dated May 29, 2009 by affirming the orders of the authorities below.

3. Being dissatisfied, the writ-Petitioner filed an application u/s 8 of the West Bengal Taxation Tribunal Act before the Tribunal below and by the order impugned herein the said Tribunal has affirmed the orders passed by the authorities below.

4. Being dissatisfied, the present writ-application has been filed.

5. The learned advocate appearing on behalf of the writ-Petitioner has strenuously contended before us that the writ-Petitioner having filed memorandum under Micro, Small and Medium Enterprises Act, 2006, is not required to obtain permanent registration certificate from the Directorate of Cottage and Small Scale Industries, West Bengal and as such, the confirmation of the order rejecting the application for issue of Eligibility Certificate u/s 39 of the 1994 Act was, therefore, illegal. According to the learned advocate for the writ-Petitioner, his client having obtained provisional registration certificate from the Directorate of Cottage and Small Scale Industries, obtaining of permanent registration certificate from the said Directorate was not mandatory but directory. He contends that the rejection of application of the writ-Petitioner for issue of Eligibility Certificate and denying exemption from payment of sales tax as provided u/s 39 of 1994 Act was against the principle of the doctrine of promissory estoppel. According to him, his client relying on the promises reflected from the enactment altered his position and set up a small scale industrial unit for manufacture and sale of aluminum utensils on the promise of the State Government of exemption from payment of sales tax on the sale of finished products and by rejecting the application for Eligibility Certificate the Respondents have violated the principle of promissory estoppel.

6. Therefore, the only question that arises for determination in this writ-application is whether in the facts of the present case the writ-Petitioner is entitled to get benefit of Section 39 of 1994 Act.

7. In order to appreciate the question involved herein, the provision of Section 39 of the 1994 Act is quoted below:

Section 39. Tax Holiday for New Small Scale Industrial Units - (1) Subject to such conditions and restrictions, as may be prescribed. no tax shall be payable by a dealer for such period as may be prescribed in respect of its sales of goods manufactured by him in his newly set up small scale industrial unit situated in the prescribed area, and in calculating its taxable turnover of sales under Sub-section (3) of Section 17, that part of its turnover of sales which represents the turnover of sales of such goods shall be deducted from its gross turnover of sales under Sub-clause (viii) of Clause (a) of Sub-section (3) of that section.

(Emphasis supplied by us).

8. At this stage, it will also be relevant to refer to Rule 99 of West Bengal Sales Tax Rules, 1995 prescribing a period of tax holiday for new small scale industrial unit for five years from the date of its first sale of manufactured goods in the newly set up small scale industrial unit, if such area is situated in the district or area of Calcutta Metropolitan Area as described in the first schedule to the West Bengal Town and Country (Planning & Development) Act, 1979. The opening word of Section 39, 1994 Act provides that the tax holiday for new small scale industrial unit should be

conferred "subject to such condition and restriction as may be prescribed". Therefore, the State Government has promised tax holiday subject to fulfillment of such conditions and restrictions as may be prescribed by rules. According to the explanation given under Sub-rule (3) of Rule 98 of the 1995 Rules which defines "newly set up Small Scale Industrial Units", one of the conditions set forth therein is that the unit is to be registered with the Directorate of Cottage and Small Scale Industries as provided in Clause II of the Explanation, Therefore, in order to get the benefit of tax holiday registration with the Directorate of Cottage and Small Scale Industries is mandatory. It appears that the order dated April 4, 2003 rejecting registration under the 1994 Act has not been challenged by the writ-Petitioner and thus, has attained finality.

9. As regards the other plea, that in view of Micro. Small and Medium Enterprises Development Act, 2006, it was not necessary to obtain a registration with the Directorate of Cottage and Small Scale Industries, is equally devoid of any substance. The said Act came into force with effect from October 2, 2006 and the State Government has framed West Bengal Incentive Scheme, 2007 with effect from April 1, 2007. The writ-Petitioner's case was, however, considered on the basis of provision of the 1994 Act. Thus, in order to get the benefit under the provision of Section 39 of the 1994 Act, the writ-Petitioner must comply with the requirement of the said Act and the Rules framed thereunder. The learned Tribunal below rightly concluded that no exemption could be granted ignoring the provision of 1994 Act or the Rules framed thereunder.

10. We, therefore, find no merit in this application and the same is consequently dismissed.

In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti-I agree.