

Shri Bakul Oil Industries and Another

Vs

State of Gujarat and Another

Civil Appeal No. 2061 of 1972

(M. P. Thakkar, S. Natarajan JJ)

11.11.1986

JUDGMENT

NATARAJAN, J -

1. In this appeal by certificate under Article 133(1)(c) of the Constitution two questions fall for consideration, viz;

(1) Whether the appellants had acquired a vested right of exemption from payment of sales tax under the Gujarat Sales Tax Act, 1969 (for short the 'Act') for a period of 5 years from the date of commissioning of their oil mill in respect of purchases and sales relating to the business of their oil mill ? and

(2) Whether in any event the appellants are entitled to claim tax exemption for a period of 5 years under cover of the doctrine of promissory estoppel ?

2. In order to achieve dispersal of industries to rural areas and to provide fillip to accelerate development of industries the Government of Gujarat ('government' in short) issued a notification on April 29, 1970 in exercise of its powers under Section 49(2) of the Act exempting wholly or partly from payment of sales tax or purchase tax, as the case may be, certain specified classes of sales and purchases described in the entries at Serial Nos. 1 to 52 in the Schedule. The said notification was subsequently amended by another notification dated November 11, 1970 and a new entry, Entry No. 53, was added in the Schedule below entry at Serial No. 52. The new entry consisted of two parts, one part giving exemption from purchase tax and the other, from the sales tax. The notification provided that subject to the conditions specified therein a manufacturer who establishes a new industry would be given exemption of "the whole of purchase tax under Section 15 of the Act" in respect of "purchase of raw materials, processing materials, machinery or packing materials from a person who is not a registered dealer". It was similarly provided that subject to the conditions prescribed in the notification a manufacturer who establishes a new industry would be given exemption of the whole of sales tax leviable under the Act in respect of "sales of raw materials, and processing materials by a registered dealer". One of the conditions imposed was that the new industry should have been commissioned on or after April 1, 1970 in areas beyond 24 kilometers from the municipal limits of the cities of Ahmedabad and Baroda and 16 kilometers from the municipal limits of Surat, Bhavnagar, Rajkot and Jamnagar and that the manufacturer should obtain an eligibility certificate from the Industries Commissioner, Gujarat State certifying the fulfilment of these conditions. The notification provided that a certified manufacturer "shall be entitled to the exemption for a period of five years from the date of commissioning of the industry as certified by the Industries Commissioner in the eligibility certificate". There was an explanation

in the notification to define what a "new industry" means and it was in the following terms :

For the purpose of items (1) and (2) above 'new industry' means and includes an industry which has been commissioned at any time during the period from April 1, 1970 to March 31, 1975 (both days inclusive); but shall not include such industrial undertaking established by transferring or shifting or dismantling an existing industrial unit.

The appellants had set up a plant for decorticating and crushing cotton and groundnut seeds for manufacture of oil at a place called Kadi beyond 24 kilometers from Ahmedabad and commissioned the plant on May 17, 1970. On the strength of the location of the oil mill at a place more than 24 kilometers from the municipal limits of Ahmedabad and the commissioning of the plant on May 17, 1970, the appellants applied to the Industries Commissioner for an "eligibility certificate" for claiming exemption from payment of sales tax as per notification dated November 11, 1970. The Industries Commissioner rejected the application giving certain reasons therefor. The appellants thereupon filed Special Civil Application No. 562 of 1971 under Article 226 of the Constitution for an order directing the Industries Commissioner to grant them an eligibility certificate in terms of the notification.

During the pendency of the petition, the State Government issued another notification dated July 17, 1971 amending the explanation contained in the notification dated November 11, 1970. The amendment provided inter alia that "new industry" shall not include "any of the industries, whether so commissioned or not, mentioned in the table appended hereto". The table set out some 14 industries of which the twelfth was "decorticating, expelling, crushing, roasting, parching, frying of oilseeds and colouring, decolouring and scenting of oil". It would appear that the effect of the exemption was reviewed by the government and on such reconsideration "the government was satisfied that certain industries and the oil industries in particular were sufficiently dispersed in rural areas, in respect of which the existing capacity of the existing industries was also more than adequate" and "the government reached the conclusion that certain industries required to be excluded from the purview of the Act". As the oil mill commissioned by the appellants fell within the denotified industries the appellants obtained the leave of the court and amended their petition suitably in order to contend that the notification dated July 17, 1971 would have no effect on the eligibility already acquired by them to claim exemption from payment of sales tax in the light of the provisions contained in the second notification dated November 11, 1970.

The appellants' petition and a connected matter, viz. Special Civil Application No. 1307 of 1971 filed by a third party came to be considered together by a Division Bench of the Gujarat High Court. The High Court, by its judgment dated March 8/9, 1972, held that the notification dated July 17, 1971 was only prospective in operation and not retrospective, that it did not affect the exemption enjoyed by the petitioners under the notification dated November 11, 1970 in respect of purchases and sales effected prior to July 17, 1971 that the notification dated November 11, 1970 created only existing rights and not vested rights and such existing rights could be taken away by the notification dated July 17, 1971. The High Court, therefore, ruled that the appellants were entitled to exemption from payment of tax only for the period anterior to July 17, 1971 and for the period thereafter they had no right to claim exemption. Being aggrieved by the non-grant of relief of tax exemption for the full period of 5 years the appellants have preferred this appeal after obtaining a certificate under article 133(1)(c) of the Constitution.

6. Mr. Desai, learned counsel for the appellants formulated his arguments under three heads to

contend before us that the High Court ought to have granted relief to the appellants to the full extent of their claim and it should not have restricted the relief of tax exemption only for the period May 17, 1970 to July 17, 1971. The propositions put forward were in the following terms :

1. By virtue of the notifications dated April 29, 1970 and November 11, 1970 the appellants had acquired a vested right to a tax holiday for a period of 5 years and the government, acting in exercise of its delegated powers did not have competence to nullify the exemption by giving retrospective effect to its notification dated July 17, 1971.
2. The High Court was not justified in drawing a fine distinction between vested rights and existing rights and holding that the notifications created only existing rights and such rights are subject to defeasance by means of subsequent notifications.
3. In any event the appellants are entitled to the benefit of tax exemption for a period of five years on the ground of promissory estoppel and the government is obligated to give tax exemption for the full period of claim.

Elaborating the first two contentions Mr. Desai argued that the government by virtue of the first and second notifications had irretrievably committed itself to grant exemption from payment of sales tax and purchase tax to the notified industries commissioned at any time after April 1, 1970 and before March 31, 1975 at place beyond the prescribed distances from the municipal limits of the cities named in the notification. Inasmuch as the appellants had established their oil mill at a place more than 24 kilometers away from the municipal limits of Ahmedabad City and had commissioned the plant on May 17, 1970 Mr. Desai argued that the appellants had acquired a vested right of exemption and it was not, therefore, open to the government under law to nullify the exemption by issuing the notification dated July 17, 1971 in exercise of its delegated powers.

8. The merit of these contentions has to be determined with reference to the date of commissioning of the appellants' oil mill as well as the dates of the notifications and their contents. Admittedly, the appellants' oil mill was commissioned on May 17, 1970 and, therefore, it follows that the oil mill was commissioned after the first notification but long before the second notification. It is indisputable that the first notification, though it provided for exemption of tax under the Act, did not provide for any period of exemption. In other words, the notification did not stipulate as to how long the exemption from sales tax would remain in operation. The position emerging therefrom is that the exemption granted under the notification was to have operative force only till such time that the exemption was allowed to remain before being withdrawn by a subsequent notification. The second notification no doubt set out that the exemption granted would be for a period of five years from the date of commissioning of the industry at any time during the period from April 1, 1970 to March 31, 1975 (both days inclusive). But this provision cannot be invoked by the appellants for claiming the benefit of tax exemption for five years because the second notification was prospective in operation as has been rightly pointed out by the High Court in its judgment. Since the second notification was prospective in operation the period of 5 years mentioned therein would apply only to those new industries which were commissioned subsequent to the issuance of that notification. As admittedly, the appellants' unit was commissioned several months before the second notification was made the second notification cannot afford a basis to the appellants to raise a claim for exemption for a period of 5 years from the date of the commissioning of their plant.

Viewed from another perspective, it may be noticed that the State Government was under no obligation to grant exemption from sales tax. The appellants could not, therefore, have insisted on the State Government granting exemption to them from payment of sales tax. What consequently follows is that the exemption granted by the government was only by way of concession. Once this position emerges it goes without saying that a concession can be withdrawn at any time and no time limit can be insisted upon before the concession is withdrawn. The notifications of the government clearly manifest that the State Government had earlier granted the exemption only by way of concession and subsequently by means of the revised notification issued on July 17, 1971, the concession had been withdrawn. As the State Government was under no obligation, in any manner known to law, to grant exemption it was fully within powers to revoke the exemption by means of a subsequent notification. This is an additional factor militating against the contentions of the appellants.

Much of the arguments of the appellant's counsel proceeded on the assumption that the appellants had acquired a vested right under the notification issued by the government on November 11, 1970 to claim exemption from payment of sales tax for a period of five years and, consequently the government had no right to take away the appellants' vested right. The contentions are untenable because of the fallacy contained in them viz. the wrong assumption that the appellants had acquired a vested right. The High Court has rightly repelled the plea that the appellants had acquired a vested right and were, therefore, entitled to claim exemption from payment of tax for a period of five years notwithstanding the revocation of the exemption under the notification date July 17, 1971. The High Court has further taken the view that the earlier notifications granting exemption of tax only created existing rights and such existing rights can always be withdrawn by means of a revocation notification and that is exactly what has happened in this case.

For the purposes of this appeal we do not think it necessary to go into the question whether the earlier notification had created existing rights and whether the impugned notification had the effect of only taking away the existing rights. We are taking this view because we have already pointed out that the State Government was under no obligation to grant exemption and that the granting of tax exemption was only by way of a concession. Having regard to this conclusion, there is no need for any probe to be made to determine whether the notification had created vested rights or only existing rights. The exemption granted by the government as already stated, was only by way of concession for encouraging entrepreneurs to start industries in rural and undeveloped areas and as such it was always open to the State Government to withdraw or revoke the concession. We must, however, observe that the power of revocation or withdrawal would be subject to one limitation, viz. the power cannot be exercised in violation of the rule of promissory estoppel. In other words, the government can withdraw an exemption granted by its earlier if such withdrawal could be done without offending the rule of promissory estoppel and depriving an industry entitled to claim exemption from payment of tax under the said rule. If the government grants exemption to a new industry and if on the basis of the representation made by the government an industry is established in order to avail of the benefit of exemption, it may then follow that the new industry can legitimately raise a grievance that the exemption could not be withdrawn except by means of legislation having regard to the fact that promissory estoppel cannot be claimed against a statute. In the present case the appellants had not raised the plea of promissory estoppel before the High Court. This is understandable because the principle of promissory estoppel had not found crystallised acceptance by courts of law when the special civil application came to be heard by the High Court in the year 1972. Be that as it may, we find that the appellants have not made out any case of promissory estoppel either on the basis of the averments made in their petition or with reference to the facts which have emerged from the affidavits filed in the case. In order to claim the benefit of

promissory estoppel the appellants must establish :

(i) that a representation was made to grant the exemption for a particular period to a new industry established in view of the representation held out by the State Government; and

(ii) that the appellants had established the new industry acting upon the representation made by the State Government.

The facts in the present case do not go to establish that the appellants had put up the new industry in question subsequent to an in pursuance of the promise held out by a notification dated April 29, 1970 granting exemption. Putting it differently the appellants have not proved that but for the concession offered in the first notification, they would not have established the industry in question and that the entire venture was attributable only to the inducement offered by the government. From the facts set out supra it may be seen that the first notification was made on April 29, 1970 while the oil mill constructed by the appellants came to be commissioned on May 17, 1970 itself. It is not the appellants' case and indeed it can never be so contended that they launched the project and commenced the construction of the oil mill only after the notification of April 29, 1970 was made and that the entire construction was completed in about two weeks' time so as to enable the appellants to commission the plant on May 17, 1970. What is envisaged under the notification is the project must have been undertaken and construction work itself should have been started in response to and acting on the notification. It is not sufficient to rely on the commissioning of an industry after completion of construction work which has been commenced long before the notification was made by the government. In respect of such an industry as the present one, the issuance of a notification granting tax exemption would only constitute a fortuitous circumstance and by no stretch of imagination can it ever be said that the commissioning of the industry was directly the outcomes of the government's notification granting tax exemption. The concession offered by the government under the first notification dated April 29, 1970 did not prescribe any period or time limit, and hence the appellants cannot claim anything more than the benefit of the notification for such period the exemption was in force. Once the government decided, for such period the exemption was in force. Once the government decided, in exercise of the powers vested in it, to revoke the original notification, the benefit of exemption from sales tax enjoyed by the appellants came to an automatic end. The period of five years mentioned in the second notification will have no reference to the appellants' oil mill commissioned much earlier because the notification had only prospective effect. We have, therefore, to affirm the view of the High Court that the appellants will be entitled to the benefit of tax exemption only for the limited period during which the concession was offered by the Government.

12. We find no merit in the appeal and accordingly it stands dismissed. No order as to costs.

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