Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others

Vs

Dharmendra Trading Company and Others

Civil Appeals Nos. 2204-2247 of 1980

(CJI R.S. Pathak, M.H. Kania JJ)

05.05.1988

JUDGMENT

KANIA J. –

1. These appeals arise from the decision of a Division Bench of the High Court of Karnataka in Writ Appeals Nos. 1101 to 1144 of 1979. It appears that the Government of Karnataka decide to adopt a policy to encourage rapid industrialisation. An Order No. CI 58 FMI 69 dated June 30, 1969 was issued which recited that the government, namely, the Government of Karnataka was committed to a policy of rapid industrialisation and that in pursuance thereof, the government had on November 30, 1966 issued directions indicating the incentives that would be given to entrepreneurs starting new industries, in the Mysore State. The material part of the said order, for our purposes, runs thus :

> Consequently, the Governor of Mysore is pleased to sanction the following incentives and concessions to the entrepreneurs for starting new industries in Mysore State :
>
> (1) Sales Tax - A cash refund will be allowed on all sales tax paid by a new industry on a raw material purchased by it for the first 5 (five) years from the date of the industry goes into production, eligibility to the concessions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce....

2. By an order dated August 11, 1975, the procedure was prescribed for obtaining the concessions given under the orders referred to earlier. On January 12, 1977, the Government of Karnataka issued another order which recited that the reasons for making the said order of January 12, 1977 were that the scheme of concessions adopted by the government earlier had given room for many types of misuse and the earlier orders had not prescribed any ceiling limits or restrictions on the quantum of refund of sales tax or concessions to be granted. The said order dated January 12, 1977, inter alia, provided as under :

> (i) The concession of refund of sales tax on raw materials used by new enterprises should be limited to 10 per cent of the cost of fixed assets per year, thus not exceeding the total of 50 per cent over a period of five years for which the concession is available. Where the annual sales tax paid on raw materials is less than 10 per cent of the cost of the fixed assets according to the original value, the concession will be limited to the actual sales tax paid....

3. Several persons claimed that they had started new industrial units in the State on the assurances extended or because of the concessions granted to them, inter alia, under the said order dated June

30, 1969. They filed writ petitions before the High Court of Karnataka claiming that the industrial undertakings started between June 30, 1969 when the order dated June 12, 1969 came into effect and before the order dated January 12, 1977 was issued could not be deprived of the concessions given to them by the former order as the said grant of concessions constituted a promissory estoppel against the government on the basis of which they had acted by stating new industries requiring investment of considerable funds and the government was not entitled to go back on that promise as it had sought to do by the order dated January 12, 1977. A learned Single Judge of the Karnataka High Court, before whom these writ petitions were filed, upheld the aforesaid contention of the petitioners urged before him relying mainly on the rulings of this Court in Union of India v. M/s Indo-Afghan Agencies Ltd. [(1968) 2 SCR 366 : AIR 1968 SC 718], Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582 : (1970) 3 SCR 854 : AIR 1971 SC 1021] and the ruling in Motilal Padampat Sugar Mills Co. Ltd. v. State of U. P. [(1979) 2 SCC 409 : AIR 1979 SC 621 : 1979 SCC (Tax) 144]. In the concluding portion of his judgment, the learned judge clarified that he had not examined the correctness of the individual claims made by the petitioners and that these claims would have to be examined by the competent authorities. He further clarified that the order dated January 12, 1977 would undoubtedly apply to industries started after that date. The learned trial judge allowed the writ petitions and granted relief on the basis set out earlier. An appeal preferred by the Assistant Commissioner of Commercial Taxes, Dharwar, Deputy Commissioner of Commercial Taxes and the Government of Karnataka before a Division Bench of the Karnataka High Court was dismissed by that court which agreed with the reasoning of the learned trial judge. It is from this decision that the present appeals arise.

4. The first contention of the learned counsel for the appellants is that the doctrine of promissory estoppel was not applicable in the present case because it was found by the Government of Karnataka that the concessions granted under the said order dated June 30, 1969 were being misused and undue advantage was being taken of the same. It was submitted by him that in view of this, it would not be proper to hold the government to the promises or the assurances it had given under the said order dated June 30, 1969. We are afraid it is not possible to accept this submission. No counter-affidavit was filed by the appellants before the trial court in the writ petition. Beyond the statement of counsel, there is nothing to show that any misuse was made of these concessions or undue advantage taken of the same. It is true that the preamble to the order dated January 12, 1977 does recite that the concessions given by the earlier order had given room for many types of misuse but such a recital by itself cannot establish that the concessions were, in fact, used. If that were so, it was the duty of the government and the concerned authorities to file a counter-affidavit and place the relevant facts establishing the misuse before the court. This they have totally failed to do. It is well settled that if the government wants to resile from a promise or an assurance given by it on the ground that undue advantage was being taken or misuse was being made of the concessions granted the court may permit the government to do so but before allowing the government to reside from the promise or go back on the assurance the court would have to be satisfied that allegations by the government about misuse being made or undue advantage being taken of the concessions given by it were reasonably well established. In the present case, there is nothing on record to show that any such misuse was being made or undue advantage taken of the said of concessions by the newly established industries. The government had, therefore, failed to establish the requisite ground or (sic on) the basis of which it might be allowed to go back on its promise. The first submission of the learned counsel for the appellants must, therefore, fail.

5. The next submission of learned counsel for the appellants was that the concessions granted by the said order dated June 30, 1969 were of no legal effect as there is no statutory provision under which such concessions could be granted and the order of June 30, 1969 was ultra vires and bad in law. We

totally fail to see how an Assistant Commissioner or Deputy Commissioner of Sales Tax who are functionaries of a State can say that a concession granted by the State itself was beyond the powers of the State or how the State can say so either. Moreover, if the said argument of learned counsel is correct, the result would be that even the second order of January 12, 1977 would be equally invalid as it also grants concessions by way of refunds, although in a more limited manner and that is not even the case of the appellants.

6. Although we are of the view that the contention set out in the foregoing paragraph is not open to the appellants at all, we propose to examine the merits of that contention because, in our view, even on merits the contention raised must be rejected. The ground on which it was submitted that the said order of June 30, 1969 was invalid is that there is no provision under the Karnataka Sales Tax Act, 1957 (referred to hereinafter as "the said Act") under which any refund could be granted. The learned counsel for the appellants pointed out that only relevant provision, in this connection, is Section 8-A of the said Act and that section empowers the State Government to notify exemptions and reductions in the levy of tax on sale or purchase of goods that are made exigible under the provisions contained in Chapter 3 of the said Act. Section 8-A expressly empowers the State Government to grant exemptions and reductions. Under the said order dated June 30, 1969 it has been inter alia provided that a cash refund will be allowed on all sales tax paid by a new industry on raw materials purchased by it for the first five years from the date the industry goes into production as set out in the said order. The only submission made on behalf of the appellants is that since the benefit given is called a refund, it cannot be said to be an exemption or reduction as permitted by Section 8-A. In our view, there is no substance in this submission at all. In order to test the validity of the order dated June 30, 1969, one has to see the substance of the concession granted under the order and not merely certain words used out of context. Although the benefit regarding sales tax granted to the new industries is by way of refunds of sales tax paid to the extent provided in the order, it is clear that, in effect, the benefit granted is in the nature of an exemption from the payment of the sales tax or reduction in the sales tax liability to the extent stated in the order. In view of this, there is no substance whatever in the contention that the State Government had no authority to provide for the grant of refunds. Again, the mere fact that the order of June 30, 1969 did not specify the power under which it was issued will make no difference because such a power is clearly there in Section 8-A and where the source of power under which it is issued is not stated in an order but can be found on the examination of the relevant Act, the exercise of the power must be attributed to that source. The second submission of the learned counsel for the appellants must, also, therefore, be rejected.

7. Although at one stage a faint doubt was raised by learned counsel for the appellants as to whether the Doctrine of Promissory Estoppel could be regarded as good law now, he conceded that that doctrine must be regarded as good law in view of the recent decision of this Court in State of Bihar v. Usha Martin Industries Ltd. [1987 Supp SCC 710 : (1987) 65 STC 430 : 1988 SCC (Tax) 116], where a Division Bench comprising three learned judges of this Court upheld and applied that doctrine.

8. In the result, there is no merit in the appeals and they are dismissed with costs.

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