

State of Rajasthan and Others

Vs

Bhatnagar Cement Co. (P) Ltd.

Civil Appeal No. 507 of 1997

(S. P. Bharucha, V. N. Khare JJ)

07.01.1999

ORDER

1. The order under challenge was passed by the Rajasthan Taxation Tribunal, Jaipur on an application made to it by the respondent under Section 8 of the Rajasthan Taxation Tribunal Act. The application challenged the assessment order dated 24-3-1995 of the Commercial Taxes Officer, Bhiwadi Circle, Alwar under the Rajasthan Sales Tax Act, 1954 and the Central Sales Tax Act, 1956.

2. The application made by the respondent to the Tribunal has been produced before us. It is clear that the only thrust of that application was that the respondent was a small-scale unit entitled to 100% exemption from sales tax under the provisions of the Sales Tax Incentive Scheme, 1987 and that it was not a mini cement plant entitled only to exemption limited to 50%.

3. The Tribunal, however, formulated the following questions for determination :

(i) Could the amendments of 11-1-1990 and 22-2-1990 be given retrospective effect ?

(ii) Does the doctrine of promissory estoppel apply in the facts and circumstances of this case, so as to prevent the amendments from even having prospective effect in the case of the present applicant ?

(iii) Is the cement plant in question a small-scale unit to which the proviso to sub-clause (a) of clause 4 of the 1987 Incentive Scheme does not apply or is it a mini cement plant to which the proviso applies ?

4. It then said :

"Obviously in the present case the third question would arise only if the first two questions are answered in the affirmative. The third question is however a question of fact which cannot be determined on the basis of the material on record in this case."

Having considered the position, the Tribunal found that at the time when the respondent's cement plant was established, it was found eligible for the benefits under the Scheme and entitled to 100% exemption of tax liability for a period of 7 years or 100% of fixed capital investment, whichever was earlier. By amendments of 11-1-1990 and 22-2-1990, the benefit under the Scheme in the case of mini cement plants of a certain category was sought to be restricted with effect from 6-8-1988 to

50% exemption of tax liability for a period of 7 years. The Tribunal then concluded :

"35. If the cement plant in question is taken to be a mini cement plant of the type specified in the amendments, then too the cement plant in question would remain unaffected. For the period from 12-9-1989 to 11-1-1990/22-2-1990 it would because an exemption granted and availed of cannot be withdrawn with retrospective effect and the applicant cannot be required to deposit sales tax which he was not a required to collect and which he did not collect. For the period after 11-1-1990/22-2-1990 the principle of promissory estoppel shall apply with full force. The promise extended to the applicant in response in which the investment was made was that he would be entitled to 100% exemption of sales tax subject to a ceiling of 100% of investment in fixed capital or seven years, whichever was earlier. The promise made by the non-applicants was not in conflict with law or contrary to public policy. It was acted upon in good time by the applicant. The essential ingredients of promissory estoppel exist. This promise cannot be broken and has to be kept. The State Government is free to alter the Incentive Scheme but that would only be with prospective effect for those who respond to the modified schemes.

36. In this view of the matter the third question does not arise.

37. The application is accepted. The impugned assessment order of 24-3-1995 is set aside. It is declared that as long as the applicant is not in breach of the conditions on which the eligibility certificate was granted he would be eligible for 100% exemption of sales tax subject to a ceiling of 100% of investment in fixed capital or for seven years, whichever is earlier."

5. It will be seen that for the period from 12-9-1989 to 22-2-1990, the Tribunal found that the respondent was required to deposit sales tax which he was not required to collect and did not in fact collect. We are, therefore, in any event, not inclined to make any order contrary to that of the Tribunal for this period.

6. However, for the period subsequent to 22-2-1990, the Tribunal proceeded only upon the basis of promissory estoppel. Promissory estoppel has to be pleaded and established. We find nothing in the application made by the respondent to the Tribunal which can be said to be a plea of promissory estoppel supported by the necessary factual particulars. It is only if these factual particulars are pleaded that the other side has an opportunity to answer the same. We think also that before applying the doctrine of promissory estoppel as it did, the Tribunal should have reached a finding as to whether or not the respondent's plant qualified as a small-scale industry or as a mini cement plant within the meaning of the amended scheme. This was the respondent's only case before it. If the particulars in this behalf were not, as it stated, before the Tribunal, the Tribunal should have called for the same or sought a finding on this aspect from the tax authorities.

7. In these circumstances, it is appropriate that the appeal should be allowed insofar as it relates to the period subsequent to 22-2-1990 and that the order of the Tribunal should, to that extent, be set aside. The application made by the respondent to the Tribunal under Section 8 of the Rajasthan Taxation Tribunal Act (Sales Tax Revision No. 94 of 1996) shall now stand restored to the file of the Tribunal to be heard and decided afresh to the aforesaid extent in the light of what has been stated in this judgment.

8. Appeal allowed accordingly. No order as to costs.