

State of Rajasthan

Vs

Mahaveer Oil Industries

Civil Appeal No. 669 of 1997

(Sujata V. Manohar, D.P. Mohapatra, R.C. Lahoti JJ)

22.04.1999

JUDGMENT

Mrs. Sujata V. Manohar, J.

1. At all material times the respondent was an industry engaged in the business of oil extraction and manufacture in the State of Rajasthan.
2. By a notification dated 23rd of May, 1987 issued in the exercise of its powers under Section 4(2) of the Rajasthan Sales Tax Act, 1954, the appellant - State of Rajasthan notified a Sales Tax Incentive Scheme for Industries, 1987 (hereinafter referred to as the "Incentive Scheme") under which it exempted (inter alia) new industries, 1987 (hereinafter referred to as the "Incentive Scheme") under which it exempted (inter alia) new industrial units from payment of tax on the sale of goods manufactured by them for sale within the State of Rajasthan in the manner and to the extent and for the period as specified in that notification. The operative period of scheme under that notification was from 5th of March, 1987 to 31st of March, 1992. It was subsequently extended to 31st March, 1997. The incentive scheme was applicable, inter alia, to new industrial units set up in areas mentioned in Annexure-A to the notification. Annexure-B sets out a list of industries which not eligible for the benefit of the said notification. Oil extraction or manufacture was not listed in appendix-B. Hence this industry was eligible for benefits under the scheme of 23rd of May, 1987.
3. By another notification dated 23rd of May, 1987 issued under Section 8(5) of the Central Sales Tax Act the State Government notified another sales tax incentive scheme for industries exempting (inter alia) new industrial units from payments of central sales tax on the inter-state sale of goods manufactured by them within the State of Rajasthan. Under this notification also it was provided that industries listed in appendix-B would not be eligible for the benefit of the scheme. Oil extraction or manufacture was not listed in appendix-B to this notification. Hence oil extraction units were eligible for exemption from central sales tax in respect of inter-state sale of their goods.
4. By a notification dated 6th of July, 1989 issued under Section 4(2) of the Rajasthan Sales Tax Act, 1954 the appellants notified Sales Tax New Incentive Scheme for Industries, 1989, to exempt industrial units from payment of tax on sale of goods manufactured by them within the State of Rajasthan in the manner and to the extent and for the period covered by that notification. The new Incentive Scheme of 1989 was deemed to have come into operation with effect from 5th of March, 1987 and was to remain in force upto 31st of March, 1992. A similar notification of the same date was issued in respect of the central sales tax exemption for the said units under Section 8(5) of the Central Sales Tax Act. Under this notification also appendix-B contained a list of industries not eligible for benefits under the said notification. Once again oil extraction or manufacture was not

listed in appendix-B in either of the two notifications.

5. By two notifications dated 7th of May, 1990 - once issued under the Rajasthan Sales Tax Act, 1954 and the other issued under the Central Sales Tax Act, the notifications of 23rd of May, 1987 were amended. As a result, by amendment of Annexure-B, oil extracting or manufacturing industry was added as an entry, thus withdrawing the benefits of the incentive scheme from oil extracting and manufacturing industries both in respect of Rajasthan Sales Tax as also Central Sales Tax. Thereafter by further notifications dated 10.9.1990 issued under the Rajasthan Sales Tax Act, 1954 and the Central Sales Tax Act, it was further notified, inter alia, that whenever an industry is included on any date during the period of operation of the scheme in Annexure-B, the units of such industry which have started commercial production and whose applications for benefit under the scheme are pending on the said date before the appropriate screening committee will be entitled to claim full benefit of the scheme.

6. Thus by reason of the notifications issued on 7.5.1990 the benefit of the incentive scheme was withdrawn from oil extracting and manufacturing industries. Thereafter the position was reviewed by the Finance Department and the Industry Department of the State of Rajasthan. Ultimately by a notification dated 26.7.1991 the benefit of exemption from Central Sales Tax was restored to oil extracting and manufacturing industry to the extent of 75% in the cases of new industries and to the extent of 60% in the case of industries going for expansion or diversification. Thus new industrial units established after 7.5.1990 and before 26.7.1991 alone were not entitled to the benefit of the Incentive Scheme under the Central Sales Tax Act in respect of inter-state sales of their goods.

7. The respondents commenced commercial production on 17th of February, 1991. Prior thereto, on 2.4.1991 they applied for an eligibility certificate. The appellants sent a reply dated 29.4.1991 pointing out that they were not eligible for the benefit of the incentive schemes since the benefit of the said schemes had been withdrawn with effect from 7.5.1990 in respect of their industry. The application of the respondents was finally rejected on 30.11.1991. The respondents thereupon filed writ petition NO. 2529 of 1992 before the High Court challenging the two notifications of 7.5.1990 issued under the Rajasthan Sales Tax Act, 1954 and the Central Sales Tax Act. Several such petitions were filed between the years 1990 and 1992 by various oil industries challenging the two notifications of 7.5.1990. When the writ petition of the respondents came up for hearing before a learned Single Judge, one such petition in the case of Govardhan Oil Mills had already been decided by the same High Court by a Single Judge quashing the notifications of 7.5.1990. Relying on the said judgment the Single Judge granted relief to the respondents setting aside the notifications of 7.5.1990 and directing the appellants to issue an eligibility certificate to the respondents within six weeks. An appeal filed by the appellant before the Division Bench of the High Court has been dismissed by the impugned judgment dated 14.8.1995.

8. During the pendency of the appeal before the Division Bench in the present case, six other writ petitions filed by various oil industries including Gopal Oil Mills were heard by a Division Bench of the same High Court and decided on 12.1.1993. By the said judgment the High Court held that the notifications of 7.5.1990 cannot be given effect to where all necessary acts for setting up the new industry had been done prior to 7.5.1990 and production had also started. The High Court invoked the doctrine of promissory estoppel and gave relief to the six industries before it, as also new industries set up before 31.3.1992.

9. The appellants in those cases filed a special leave petition before this Court in which this Court on 4.4.1994 granted an interim stay of the judgment of the High Court dated 12.1.1993. Thereafter

the appeals of Gopal Oil Mills and other appeals were decided by this Court on 21.3.1995. Before this Court, the respondents in those appeals only pressed their claim for exemption from Central Sales Tax for the period 7.5.1990 to 26.7.1991. This Court came to the conclusion that there was no public interest in withholding the benefit in respect of