

SUPREME COURT OF INDIA

Lloyd Electric and Engineering Limited

Vs.

State of Himachal Pradesh & Anr.

C.A.No.6838 of 2015

(Anil R.Dave,J., and Kurain Joseph and Adarsh Kumar Goel,JJ.,)

03.09.2015

JUDGMENT

Kurain Joseph,J.,

SLP(Civil)No.26751/2013

1. Leave granted.

2. Whether the appellant is liable to pay Central Sales Tax (hereinafter referred to as "CST") @ 2 per cent on the inter-State sales for the period 01.04.2009 to 17.06.2009 or @ 1 per cent in view of the Industrial Policy of the State, is the dispute arising for consideration in this case. It is not in dispute that as per the Industrial Policy of the State of Himachal Pradesh, the appellant had been enjoying the concessional rate in CST @ 1 per cent upto 31.03.2009. It is also not in dispute that the Cabinet had taken a policy decision to extend the period of concession upto 31.03.2013 or till the CST is phased out. Still further, it is not in dispute that the Department of Industries had, accordingly, issued a notification extending the concessions from 01.04.2009 to 31.03.2013 or till the time the CST is phased out. The dispute arose on account of the Notification dated 18.06.2009 issued by the Excise and Taxation Department granting the concessional rate of the CST @ 1 per cent wherein the expression "... with immediate effect for the period ending 31.03.2013" was used.

3. The High Court, as per the impugned judgment, took the view that the expression "... with immediate effect" has to be given a plain meaning, and therefore, the appellant is not entitled to the concession which it had been enjoying upto 31.03.2009 till the Notification dated 18.06.2009 is issued by the Excise and Taxation Department.

4. Heard Shri M.P. Devanath, learned Counsel appearing for the appellant and Shri Suryanarayana Singh, learned Additional Advocate General appearing for the respondent-State.

5. In order to appreciate the contentions advanced by the parties, it is necessary for us to refer to the background of the dispute. Industrial Policy-2004 was notified by the State of Himachal Pradesh, providing for, inter alia, at Clause 10.3 concessional rate in Central Sales Tax:

"10.3 Central Sales Tax at a concessional rate of 1% shall be leviable on the goods manufactured by new and existing industrial units (as defined under these Rules) unless provided otherwise elsewhere under these Rules, upto 31-03-2009. This incentive will not be provided to industrial unit engaged in the production of breweries, distilleries, non-fruit based wineries and bottling plants (both for country liquor and Indian made foreign Liquor)."

6. It is not in dispute that the appellant was found eligible for the said concession since it satisfied the parameters prescribed in the notification till 31.03.2009. It is seen from the Cabinet Note on extension of the incentive of concessional rate of CST @ 1 per cent beyond 31.03.2009 to industrial enterprises of the State of Himachal Pradesh prepared on 19.05.2009, the issue whether the concession should be extended beyond 31.03.2009 for some more time, was specifically addressed. To quote the relevant discussion:

"3. The State Government has been vigorously pursuing at various levels with Government of India the case for the extension of the Special Package for our State announced in January 2013 till at least March 2013 as it expires in March 2010. In the absence of any decision or any positive indications so far, it is imperative that the State Government also at its own level considers taking such initiatives by way of which Industrial Enterprises being set up in our State could be provided some basic attraction in the form of tax incentives and a facilitating environment. Availability of such incentives in the neighbouring State such as Uttarakhand where the incentive of 1% CST is available to the industrial units till March, 2014 renders our State uncompetitive and Unattractive to industrial investors. During the year 2007-08 the Industrial Enterprises of the Ste had contributed a sum of Rs.113.47 Crores to State exchequer through 1% CST. In case the incentive of 1% CST is not restored till the time the CST is phased out by Central Government it will affect the viability of units adversely and majority of big Enterprises may resort to branch transfer/consignment sales outside the State to avoid 2% CST to maintain their competitiveness. It is therefore proposed that the incentive of concessional rate of Central Sales Tax @ 1% be allowed to be continued beyond 31st March, 2009 till March 2013 or till the time CST is phased out.

4. With this proposal there would be no adverse financial implication and State will continue to earn the same rate of revenue through CST sale as Industrial Enterprises will prefer to pay 1% CST instead of resorting to branch transfer of goods.

5. The Department of Excise & Taxation and Finance Department have concurred with proposal.

6. Permission of the Hon'ble Chief Minister has been obtained through the Chief Secretary to place the matter before the Council of Ministers.

POINTS FOR CONSIDERATION

Whether to extend the incentive of concessional rate of CST @ 1% for all the Industrial Enterprises beyond 31st March 2009 till 31st March 2013 or till the time the CST is phased out by the Central Government?"

7. The Council of Ministers, in the Meeting held on 20.05.2009, approved the above proposal and, accordingly, the State Government through Principal Secretary (Industries) issued the following Notification on 29.05.2009:

"Government of Himachal Pradesh, Department of Industries (A)
No. Ind.A(F) 6-3/2008 Dated Shimla - 02,29th
May, 2009
NOTIFICATION

In partial modification of this department notification No. Ind.A(F)6-7/2004 dated 30th December, 2004 notifying Industry Policy 2004 regarding grant of Incentives, Concessions and Facilities to Industrial Units Himachal Pradesh - 2004, the Governor, Himachal Pradesh is pleased to extend the incentive of validity of concessional rate of CST @ 1% upto 31.03.2013 in Rules 10.3 of Industry Policy, 2004 or till the time CST is phased out, whichever is earlier.

By Order Sd/-
Pr. Secretary (Inds.) to the Govt. of Himachal Pradesh."

(Empyhasis supplied)

8. Thereafter, the Excise and Taxation Department of the State Government issued statutory Notification under Section 8(5)(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act"). The relevant portion of the Notification reads as follows:

"2. Now, therefore, in exercise of the powers conferred by clause (b) of sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the Governor of Himachal Pradesh is pleased to direct that in respect of the sale in the courses of inter-State trade or commerce of the goods (other than those manufactured by the breweries, distilleries, nonfruit/vegetable based wineries and bottling plants (both of country liquor and Indian made foreign liquor) manufactured by the dealers running any existing industrial unit or new industrial unit (other than those new industrial units which are located in the tax free industrial zone) in the State of Himachal Pradesh, and are registered as dealer with Excise and Taxation Department, Himachal Pradesh, the tax levied under sub-section (1) of section 8 of the said Act

shall be calculated and payable at the rate of 1% of the taxable turnover of such goods with immediate effect for the period ending 31.03.2013."

(Emphasis supplied)

9. The whole thrust of the contention advanced by the State is that since the notification under the Act providing for tax concession was issued only on 18.06.2009 wherein it was specifically mentioned that the notification would have immediate effect and would operate for the period ending on 31.03.2013, the appellant is not entitled to the CST concession @ 1% for the intervening period between 01.04.2009 to 18.06.2009. The appellant, however, submits that in view of the policy decision taken by the State Government extending the tax concession beyond 31.03.2009 to 31.03.2013, the Excise and Taxation Department of the State Government cannot take a different view and deny the tax concession for the period between 01.04.2009 to 18.06.2009-the date of the notification issued under Section 8(5)(b) of the Act. Heavy reliance is also placed on the decision of this Court in *State of Bihar and others v. Suprabhat Steel Limited and Others*¹

10. We do not think it necessary to go into the various contentions raised by the parties in view of the undisputed factual position we have referred to above. The State Government cannot speak in two voice. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31.03.2009, upto 31.03.2013, and the Notification dated 29.05.2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the Government policy and not their own policy. Once the Council of Ministers has taken a decision to extend the 2004 Industrial Policy and extend tax concession beyond 31.03.2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification. It has to be noted that the Finance Department of the State Government had concurred with the proposal of the Department of Industries to extend the tax concession beyond 31.03.2009 till 31.03.2013 and the Council of Ministers had accordingly taken a decision also. No doubt, the statutory notification issued by the Excise and Taxation Department under Section 8(5)(b) of the Act on 18.06.2009 has stated that the eligible units will be entitled to the concession with immediate effect. Merely because such an expression has been used, it cannot be held that the State Government can levy the tax against its own policy. The State Government is bound by the policy decision taken by the Council of Ministers and duly notified by the Department concerned, viz., Department of Industries.

11. That apart, it appears, the Excise and Taxation Department itself has not actually intended the notification to take effect from 18.06.2009. The definition given to the new and the existing industrial units in the Notification dated 18.06.2009 would indicate so. To quote:

"Explanation I:- For the purposes of this notification,-

(i) 'new industrial unit' means an industrial unit located in Himachal Pradesh which commenced/commences production on or after 31.01.2004, but will not include any industrial unit which is formed as a result of reestablishment, mere change of ownership, change in the constitution, re-structuring or revival of an existing industrial unit;

(ii) 'existing industrial unit' means an industrial unit which commenced production before 31.12.2004;"

12. Even otherwise, it is not altogether a new concession that has been notified by the Excise and Taxation Department in the impugned Notification dated 18.06.2009. As we have noted above, it is an extension of the 2004 Industrial Policy and the resultant tax concession to the eligible units which was available upto 31.03.2009. Therefore, for all purposes, what is notified by the Excise and Taxation Department on 18.06.2009 is an extension of the said concession beyond 31.03.2009 and that is why the notification has used the expression "... for the period ending 31.03.2013" without otherwise indicating the concession already being enjoyed by the eligible units till 31.03.2009.

13. The High Court, with great respect, has gone wrong in not appreciating the background of the case and the decision of the Council of Ministers to extend its own Industrial Policy announced in 2004 and the tax concession beyond 31.03.2009. Once the Council of Ministers takes a policy decision, the implementing Department cannot issue a notification contrary to the policy decision taken by the Government. The High Court also erred in analyzing and understanding the Notification dated 18.06.2009 as if it introduced the CST concession @ 1 per cent with effect from the date of issuance of notification. As we have already clarified, it is not the introduction of a new policy but an extension of the benefits under the extended policy. It is in this context, the decision of this Court in *Suprabhat Steel Limited (supra)* and *State of Jharkhand and others v. Tata Communications Limited* and another become relevant.

14. Accordingly, the appeal is allowed, the impugned judgment is set aside. It is declared that the appellant shall be entitled to the concessional rate of CST @ 1 per cent with effect from 01.04.2009 till 31.03.2013 until it is duly varied by the State Government.

15. There shall be no order as to costs.

September 3, 2015.

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