

Before D. V. Sehgal, J.

SATGUR OIL MILLS AND OTHERS,—*Petitioners.*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1014 of 1988

July 25, 1988.

*Haryana General Sales Tax Act (XX of 1973) S. 13(1)—Promissory estoppel—Exemption from tax—Change of criterion—Earlier, exemption based only on capital investment limit of one lac—Exemption granted for two years from the date of grant of exemption certificate by the assessing authority—Subsequently only such tiny rural industries exempted whose turnover does not exceed Rs. Five lacs—Withdrawal of benefit—State—Whether estopped from withdrawing or curtailing concessions given under prior notification.*

*Held, that the tiny rural industrial units established when the notification dated 2nd June, 1979 was in force are entitled to avail of total exemption from payment of tax under the Haryana General Sales Tax Act, 1973 for a period of two years from the date of grant of exemption certificates in their favour by the Assessing Authority. The subsequent notification can only operate prospectively in the sense that it shall apply to the industrial units which are established after its coming into force on 31st December, 1987. The State is estopped from withdrawing or curtailing such concessions given earlier. The rule of promissory estoppel is fully applicable to their case. Hence it has to be held that the petitioners are entitled to the exemption from payment of tax on the basis of the exemption certificates in their favour issued by the Assessing Authority on the entire turnover irrespective of the fact whether or not it exceeds Rs. Five lacs in a year. Such exemption is to remain in force in the case of petitioners for a period of two years from the date of grant of exemption certificate. (Paras 7 and 11)*

*Petition under Articles 226/227 of the constitution of India praying that :—*

- (i) a writ in the nature of certiorari be issued quashing the impugned notification, Annexure P/2, dated 30th December, 1987 issued by respondent No. 1.*

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- (ii) *a writ in the nature of mandamus be issued directing the respondents and to hold that the petitioners are entitled to enjoy exemption under section 13 of the Haryana General Sales Tax Act, 1973 upto the period they have been granted exemption rightly granted by respondent No. 2.*
- (iii) *any other appropriate writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case be issued.*
- (iv) *filing of certified copies of Annexures P/1 and P/2 and issuance of prior notices to the respondents may kindly be dispensed with.*
- (v) *Records of the case may be called for.*
- (vi) *Cost of the writ petition be awarded to the petitioners.*

Jaswant Jain Advocate with Rajesh Bindal, Advocate.

S. C. Mohunta A.G. (Haryana) with S. K. Sood, Advocates.

#### JUDGMENT

This judgment will dispose of C.W.Ps. Nos. 1014, 1203, 1234, 1591, 1724, 1725, 1726, 1727, 1728, 3006, 3245 and 3804 of 1988. All these petitions are based on identical facts and involve similar questions of law.

(2) Reference to the facts and documents shall, however, be made from C.W.P. No. 1014 of 1988 unless otherwise specifically mentioned.

(3) The Government of Haryana issued a notification dated 2nd June, 1979 in exercise of the powers conferred on the Governor of Haryana by sub-section (1) of section 13 of the Haryana General Sales Tax Act, 1973 (for short 'the Act') to the effect that it was necessary and expedient in the interest of rural industries to exempt all tiny rural industrial units set up on or after the date of publication of the said notification in the Official Gazette whose capital investment on machinery and equipment does not exceed rupees one lac and in whose favour certificate of genuineness is issued by the Industries Department of respondent No. 1, from payment of sales tax under the Act on the purchase or sale of goods. The exemption was made subject to the following conditions:—

- (1) An exemption certificate in the form annexed to the notification was required to be obtained by the owners of the rural tiny industrial units from the Assessing Authority

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of the district concerned on an application made to such an authority in this behalf.

- (2) The exemption from payment of sales tax would be for a period of two years from the date of issue of the exemption certificate.

(4) All the petitioners set up their rural tiny units long after coming into force of the notification dated 2nd June, 1979. They were issued certificates of genuineness of their industrial units by the Director of Industries and after the Assessing Authority under the Act satisfied itself that the capital investment on machinery and equipment on the industrial unit did not exceed rupees one lac the exemption for a period of two years from the date of issuance of the exemption certificate was granted by it. However, before the period of two years exemption from payment of sales tax expired, respondent No. 1 issued a notification dated 30th December, 1987 published in the Haryana Government Gazette (Extraordinary) on December 31, 1987, Annexure P. 2, whereby exemption was granted with effect from 1st January, 1988 to all rural tiny industrial units set up on or after the 22nd June, 1979, whose capital investment on machinery and equipment does not exceed rupees one lac and in whose favour certificate of genuineness is issued by the Industries Department of Haryana State from payment of tax under the Act on purchase and sale of any goods within the State. It was further laid down, *inter alia*, that such units shall be entitled to exemption on the turnover not exceeding Rs. 5 lacs in a year. It is not in dispute that in the case of all the petitioners their turnover exceeds Rs. 5 lacs in a year and by the notification Annexure P. 2 they have been made liable to payment of tax under the Act on the turnover exceeding Rs. 5 lacs.

(5) The mainstay of the petitioners is that,—*vide* notification dated 2nd June, 1979 they were given complete holiday from payment of tax under the Act for a period of two years from the date of grant of exemption certificate by the Assessing Authority, but,—*vide* notification Annexure P. 2 they have been made liable to payment of tax on the turnover exceeding Rs. 5 lacs in a year. According to them, respondent No. 1 is estopped from withdrawing the exemption on payment of sales tax on turnover exceeding Rs. 5 lacs. Such an action on its behalf purported to be taken,—*vide* notification Annexure P. 2, is barred by the principle of promissory estoppel. They contend that they acted upon the notification dated 2nd June,

1979, established their tiny rural industrial units which were certified to be genuine by the Director of Industries and exemption certificates were also issued in their favour. By taking away the exemption from payment of sales tax on turnover exceeding Rs. 5 lacs the respondents are virtually going back on their promise which they cannot do.

(6) The petition has been opposed by respondents Nos. 1, 2 and 3 and a written statement on their behalf has been filed by the Excise and Taxation Officer-cum-Assessing Authority, Respondent No. 4 has filed a separate written statement. There is virtually no dispute on facts. It has not been denied that acting on the promise contained in the notification dated 2nd June, 1979 the petitioners established their tiny rural industrial units which are genuine as duly certified by the Industries Department and exemption certificates in terms of the aforesaid notification from payment of sales tax for a period of two years were issued in their favour by the Assessing Authority. It is, however, maintained that respondent No. 1 is well within its powers to modify the terms of the notification, dated 2nd June, 1979 by issuance of the impugned notification Annexure P. 2 and to withdraw the concession granted earlier in particular cases by imposing fresh conditions.

(7) I have heard the learned counsel for the parties. I am of the considered view that the tiny rural industrial units established by the petitioners when the notification dated 2nd June, 1979 was in force are entitled to avail of total exemption from payment of tax under the Act for a period of two years from the date of grant of exemption certificates in their favour by the Assessing Authority. The notification Annexure P. 2 can only operate prospectively in the sense that it shall apply to the industrial units which are established after its coming into force on 31st December, 1987. Respondent No. 1 is estopped from withdrawing or curtaining the concessions in the case of the petitioners by the notification Annexure P. 2. The rule of promissory estoppel is fully applicable in their case. I find support for this view from *Pournami Oil Mills etc. v. State of Kerala and another* (1) and *Assistant Commissioner of Commercial Taxes (Asst.), Dharwar and others v. Dharmendra Trading Co. etc., etc.* (2).

(8) Mr. S. C. Mohunta, the learned Advocate General, Haryana, raised two contentions which have not found favour with me but

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(1) AIR 1987 S.C. 590.

(2) AIR 1988 S.C. 1247.

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be noticed here. His first submission is that the notification Annexure P. 2 simply redefines a tiny rural industrial unit in that it takes away from the scope of its definition a rural industrial unit the turnover of which exceeds Rs. 5 lacs in a year. He contends that the Government is well within its powers to elaborate and explain what it meant by a tiny rural industrial unit when it issued the notification dated 2nd June, 1979. This contention has clearly no force. In fact for 8 long years the notification dated 2nd June, 1979 has remained in force. The turnover of numerous tiny rural industrial units must have exceeded Rs. 5 lacs in a year but at no stage did the Government consider it necessary to lay down that the turnover of such units exceeding Rs. 5 lacs shall not be exempt from payment of sales tax. Had such a position been made clear, many of the petitioners might not have set up their tiny industrial units in rural areas to avail of the exemption from payment of tax under the Act. The Government is virtually going back on its promise by issuance of the notification Annexure P. 2 which, as already observed, can operate only in respect of the units which are established after it has come into force.

(9) Mr. Mohunta also places reliance on *Shri Bakul Oil Industries and another v. State of Gujarat and another*, (3) to contend that the exemption granted by the Government was only by way of concession. Such a concession can be withdrawn at any time. In *Shri Bakul Oil Industries case* (supra) no such proposition has been laid down in clear terms. Their Lordships found on facts that the appellant had not established its industry in pursuance of the notification which had granted concession from payment of tax to industries established beyond 24 kilometers from the municipal limits. The position in this respect is clear when reference to the following part of the discussion in the judgment of the final Court is made:—

“The facts in the present case do not go to establish that the appellants had put up the new industry in question subsequent to and in pursuance of the promise held out by Notification dated 29th April, 1970 granting exemption. Putting it differently the appellant 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 29th April, 1970 while the oil mill constructed by the appellants came to be commissioned on 17th May, 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 29th April, 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 17th May, 1970. What is envisaged under the Notification is that 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 had 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 outcome of the Government's Notification granting tax exemption."

(10) The well established position of law as regards the rule of promissory estoppel was once again reasserted in *Shri Bakul Oil Industries Case* (Supra) thus :—

"No doubt the exemption granted by the Government 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. However, 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 it 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....."

(11) As a result of the above discussion, I allow these petitions and hold that the notification dated 30th December, 1987 Annexure

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P. 2 does not apply to the industrial units of the petitioners. They are entitled to the exemption from payment of tax on the basis of the exemption certificates granted in their favour by the Assessing Authority on the entire turnover irrespective of the fact whether or not it exceeds Rs. 5 lacs in a year. Such exemption is to remain in force in the case of the petitioners for a period of two years from the date of grant of the exemption certificates by the Assessing Authority.

(12) In the circumstances of the case, however, I make no order as to costs.

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*R.N.R.*

*Before V. Ramaswamy, CJ and G. R. Majithia, J.*

NIKKA SINGH AND OTHERS,—*Petitioners.*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents.*

*Civil Writ Petition No. 863 of 1982*

August 4, 1988.

*Northern India Canal and Drainage Act (VIII of 1873)—Ss. 3(3), 5, 33, 34 and 35—Northern Indian Canal and Drainage Rules, 1878—Rl. 21—Levy of water charges from right-holders for utilisation of rain water over flowing from Dam—Part II of the Act applied by notification to Cho in question—Demand by State for recovery of water charges—Whether legal and justified—Such cho—Whether ‘Canal’ within the meaning of Section 3(3)—Persons likely to be affected by imposition of charges—Whether have a right of hearing.*

*Held*, that once the State Government has applied the provisions of Part II of the Northern India Canal and Drainage Act, 1873 by notification to the natural collection of water or to the natural drainage channel, the work falls within the definition of clause (d) of Section 3(i) of the Act and is a ‘canal’ for the purpose of the Act for irrigation purposes. Therefore, the recovery of *abiana*/water charges by the State for the period after the notification i.e. after the provisions of Part II of the Act were made applicable to the work is legal. Hence the action of the State Government is perfectly legal and justified.

(Paras 6 and 8).