

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2806 of 2009

M/s Dugar Tea Industries Pvt. Ltd ...Appellant

Versus

State of Assam & Ors.

...Respondents

WITH

CIVIL APPEAL NO.3246 OF 2009

CIVIL APPEAL NOS.3247-3253 OF 2009

CIVIL APPEAL NOS.3254-3262 OF 2009

CIVIL APPEAL NOS.3264-3266 OF 2009

JUDGMENT

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the common judgment delivered by the Gauhati High Court on 14th

November, 2006, the appellants have approached this Court by way of these appeals.

2. The facts giving rise to the present litigation, in a nutshell, are as under:

As the legal issues involved in all of the aforesaid appeals are same, for the purpose of convenience, we have taken facts from Civil Appeal No.2806 of 2009.

3. The appellant is a private limited company engaged in the business of blending and packing of tea. After some modernisation, it commenced its production in April, 1988. The case of the appellant-Company was with regard to availing sales tax concession declared by the respondent-State. Before going through the relevant provisions, we may record the fact that the respondent-State had notified its Industrial Policy in 1982, which had thereafter been revised in 1986. The said Policy had been framed so as

to increase economic and industrial growth in the State.

4. In pursuance of the aforestated Policy, the respondent-State enacted Assam Industries (Sales Tax Concession) Act, 1987 (hereinafter referred to as "the Act"). By virtue of the provisions of the Act, certain new industries, subject to certain conditions, were to be given exemption from payment of sales tax but the exemption was not to be given in respect of certain commodities.

5. The case of the appellant-Company was that the Company was made eligible for certain concessions in pursuance of the Industrial Policy framed by the government, which had been declared in 1982, but ultimately the benefits had been denied to the company under the Act.

6. The reason for not giving the benefits under the Act, as stated by the respondent-Authorities, was that 'tea' was a raw material,

in respect of which no exemption was to be given and the appellant-Company was merely blending and packing tea and was not having any manufacturing activity.

7. As the sales tax exemption had been denied to the appellant-Company, the appellant-Company filed petitions before the High Court challenging denial of the tax exemption but the petitions had been rejected by a common Judgment dated 9th September, 2003 and being aggrieved by the rejection of the petitions, the appellant-Company had also filed writ appeals, which have been dismissed by a common Judgment dated 14th November, 2006, and the said judgment has been challenged in these appeals.

8. The learned counsel appearing for the appellant-Company mainly submitted that the appellant-Company had been given an eligibility certificate dated 7th July, 1988 under the 1982 Incentive Scheme of Government of Assam as amended in 1986. By virtue of the said

certificate dated 7th July, 1988, exemption in respect of payment of sales tax had been granted to the appellant-Company w.e.f. 14th April, 1988 to 13th April, 1993, as the appellant- Company was eligible to get the exemption from payment of sales tax under the 1986 Incentive Scheme of Government of Assam.

9. The learned counsel further submitted that as per the exemption granted under the eligibility certificate, the respondent-State and the Sales Tax Authorities of the respondent-State were bound to give exemption from payment of sales tax to the appellant, but the appellant had been denied the exemption, which was neither fair nor legal. He further submitted that as per the conditions incorporated in the scheme, the appellant-Company had already made investments and had already employed local persons of the State of Assam in service. Having complied with all the conditions, the eligibility certificate had been issued to the appellant-Company and

therefore, the respondent-Authorities are estopped from denying the benefit which had been assured to it under the eligibility certificate dated 7th July, 1988. The learned counsel cited several judgments to substantiate his case that once an assurance was given to the appellant under the eligibility certificate that the appellant-Company would be enjoying exemption under the 1986 Incentive Scheme of Government of Assam, the exemption could not have been withdrawn by the respondent-Authorities.

10. On the other hand, the learned counsel appearing for the State Authorities supported the judgments delivered by the learned Single Judge as well as by the Division Bench of the High Court.

11. The learned counsel submitted that there cannot be any estoppel against legal provisions. He further submitted that as per Rule 2(f) of Assam Industries (Sales Tax Concession) Rules, 1988, 'tea' is not the raw material in respect of

which exemption from payment of sales tax is to be granted. In view of the aforestated statutory provision and in view of the fact that tea was the 'raw material' which was being used by the appellant-Company for the purpose of blending and packing, the appellant was not entitled to any exemption.

12. Moreover, he submitted that the appellant-Company was not involved in any manufacturing activity. It was merely blending and packing tea and blending as well as packing of tea was not a manufacturing activity and therefore, also the appellant was not entitled to the benefit claimed by it.

13. The learned counsel thereafter submitted that according to the provisions of Section 4 of the Act, Certificate of Authorisation should have been procured by the appellant for availing the benefit under the Act. Such a Certificate of Authorisation had never been issued to the appellant-Company and therefore, the appellant

was not entitled to the exemption in respect of payment of sales tax claimed by it.

14. For the aforestated reasons, the learned counsel submitted that the appeals deserved to be dismissed.

15. We have heard the learned counsel at length and have considered the relevant legal provisions and the judgments referred to by the learned counsel.

16. Upon perusal of the record and the law laid down by this Court in the light of the facts of the case, we are of the opinion that the view expressed by the Courts below cannot be said to be incorrect.

17. Rule 2(f) of the Assam Industries (Sales Tax Concession) Rules, 1986 reads as under:-

"2(f) 'Raw material' means any material or commodity capable of being used for manufacture of any other product specified in any authorisation certificate as intended by the holder for use by him as raw material in the manufacture of goods in the State for

sale by him but shall not include the following commodities namely :

(a) tea, (b) coal, (c) liquefied petroleum gas, (d) plywood, (e) petrol, diesel oil and lubricants."

In view of the aforestated Rule, it is crystal clear that tea is not to be included in "raw material" and therefore, no exemption could have been claimed by the Appellant Company in respect of 'tea' as a raw material for purchase as well as sale of tea. It is also pertinent to note that the appellant had earlier preferred Civil Rule No.4162 of 1991 before the High Court challenging validity of the aforestated Rule. The learned Single Judge, while rejecting the petition, vide order dated 17th August, 1988 held that Rule 2(f) of the 1988 Rules was legal and valid and the plea of promissory estoppel raised by the appellant was also not accepted. Against the said judgment, no appeal was filed by the appellant and therefore, the said issue had attained finality.

18. Another important thing is with regard to certificate of authorisation.

19. It is an admitted fact that so as to avail the benefit as per Section 4 of the Act, certificate of authorisation is a must. The said Section reads as under:

"4. Certificate of authorisation -

(1) A person undertaking to manufacture in the State such goods, as may be prescribed, may make an application in the prescribed form to the prescribed authority and within the prescribed time for a certificate of authorisation for the purposes of sub-section (1) of section 3.

(2) If the authority to whom an application is made under sub-section (1) is satisfied that the application is in conformity with the provisions of the Act and the rules made there under it shall grant to the applicant a certificate of authorisation in the prescribed form which shall specify the class or classes of goods for purposes of sub-section (1) of section 3 and the period for which it shall remain valid.

(3) A certificate of authorisation granted under this section shall remain valid for a period of five years from the date of completion of effective steps for setting up the industrial unit in respect of which the certificate is granted.

(4) No certificate of authorisation shall be granted under sub-section (2) except in

respect of such raw materials as may be prescribed.

(5) A certificate of authorisation granted under this section may:-

- (a) be amended by the authority granting it if he is satisfied either on the application of the holder or, where no such application has been made, after due notice to the holder, that by reason of the holder having changed the name, place or nature of his business or the class or classes of goods bought, sold or manufactured by him or for any other reason the certificate of authorisation granted to him required to be amended; or
- (b) be cancelled by the authority granting it, where he is satisfied after due notice to the holder that the holder has ceased to carry on business or for any other sufficient reason."

20. As stated hereinabove, it is an admitted fact that no certificate of authorisation, as provided under the Act, had ever been granted to the appellant-Company and therefore, in our opinion, the courts below were absolutely right to the effect that the appellant was not entitled to any sales tax exemption.

21. So far as the averments with regard to estoppel are concerned, it is a settled legal

position that there cannot be any estoppel against law. When there is a legal provision to the effect that when tea is used as raw material, no tax exemption would be available under the provisions of the Act, none can claim tax exemption in respect of sales tax payable on purchase or sale of tea. It is true that an eligibility certificate had been issued to the appellant-Company in pursuance of the 1986 Incentive Scheme of Government of Assam but when the said Scheme was given a statutory form under the Act, 'tea' had been excluded from the definition of raw material and therefore, on the basis of the eligibility certificate issued under the 1986 Incentive Scheme of Government of Assam, the appellant cannot claim any benefit.

22. It is also pertinent to note that the respondent-Authorities have rightly held that the appellant was not in the business of 'manufacturing' tea but was merely blending and packing tea, which does not amount to

'manufacturing' of tea. We find substance in the said stand taken by the respondent-Authorities as the said view has been fortified by a decision of this Court in Commissioner of Income Tax, Kerala v. Tara Agencies 2007 (6) SCC 429.

23. For the aforesaid reasons assigned by the State in the impugned order passed as well as in the judgments delivered by the High Court, we cannot find fault with the impugned judgment and therefore, these appeals deserve dismissal.

24. The appeals are accordingly dismissed. However, there shall be no order as to costs.

JUDGMENT

.....J.
(ANIL R. DAVE)

.....J.
(SHIVA KIRTI SINGH)

NEW DELHI;
OCTOBER 06, 2016.