IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.697 of 2005 (O&M)

OST Electronic Ltd

......Petitioner

Versus

State of Punjab & Anr

.....Respondents

Date of Decision: 21st.05.2024

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Sandeep Goyal, Advocate with
Mr. Ishaan Loomba, Advocate for the petitioner.

Mr. Saurabh Kapoor, Addl.AG, Punjab.

SUDEEPTI SHARMA, J

1. The petitioner in the present petition is asking for direction to the respondents to grant sales tax exemption to the petitioner without imposing any condition and in consonance with the Industrial Policy named "Special Package of Incentives to Information Technology Industry, 2000". He is further asking for quashing the condition imposed vide notification dated 16.09.2004 (Annexure P.16) whereby the exemption has been restricted to the units, who have taken the effective steps by 30th April, 2000.

2. Brief facts of the case are that the State of Punjab through its Industries Department issued a Notification No.15/4/99-52B/2174 dated 15.03.2000 (Annexure P.1) whereby Special Package of Incentives for Information Technology Industry was formulated for the defined new units and the policy was valid for a period of two years from the date of notification. The petitioner was granted Certificate of Registration dated 20.09.2000, which was valid from 07.09.2000. The petitioner applied for grant of Sales Tax Exemption under the Information Technology Policy on

12.07.2001. Vide Certificate dated 30.07.2001 (Annexure P.5), the petitioner was certified to be eligible for grant of incentives of Sale Tax exemption for a period of 120 (One hundred twenty only) months, in terms of Notification dated 15.03.2000.

3. Vide Certificate dated 26.09.2001, the petitioner was granted exemption from payment of tax in accordance with the provisions of the Punjab General Sales Tax (Deferment and Exemption, Rules, 1991) for the period from 07.09.2000 to 06.09.2010. The relevant portion of Exemption Certificate dated 26.09.2001 (Annexure P.7) is reproduced as under:

> *"It is hereby certified that the industrial unit in the name and style of M/s OST Electronics Ltd situated at D-90, Industrial Area address Phase VII, SAS Nagar (Mohali) under the Punjab General Sales Tax Act, 1948, Registration Certificate No.60791212 with date of validity from 07.9.2K and further holding eligibility certificate No.6625 dated the 30.7.01 is entitled to the deferment of or exemption from payment of tax in accordance with the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 for the period from 7.9.2K to 6.9.2010 subject to the maximum amount of tax exemption of Rs. Full."*

4. Vide order dated 28.06.2002, the Certificate issued by the department was withdrawn and the petitioner was directed to deposit the entire amount which was due as per the sales. Order dated 28.06.2002 (Annexure P.8) withdrawing the exemption is reproduced as under:

> *"As conveyed by the Head Office, Excise & Taxation Deptt Punjab Patiala, the Excise and Taxation Deptt has not notified the Policy for grant of Sales Tax Exemption. So exemption certificate issued by this Deptt is hereby withdrawn and you are directed to*

deposit the entire tax which was due as per your sales within Ten days from the receipt of this notice."

5. The petitioner challenged the order withdrawing the Exemption granted to it by way of filing writ petition bearing CWP No. 4309 of 2003 in this Court.

6. This Court vide order dated 15.05.2003 disposed of the writ petition, which reads as under:

"This is a petition for issuance of a writ of mandamus directing the respondents to make amendments in the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 so as to bring it in tune with Special Package of Incentives for Information Technology Industry.

At the hearing, Shri Bhardwaj placed before us a statement which shows that in principle the government has taken a decision to amend the Rules and appropriate action in this regard is likely to be taken within two or three months.

In view of the aforesaid development, the writ petition is disposed of as infructuous with the direction that till the amendment in the Rules, the order (Annexure P.8) shall not be given effect to.

7. Pursuant thereto, Notification dated 16.09.2004 (Annexure P.16) was issued by the Department of Excise and Taxation by making an amendment in the Rules whereby the exemption was restricted to the units, which had taken the effective steps by 30th April,2000. The same is impugned in the present petition.

8. Learned counsel for the petitioner contends that in terms of the Notification dated 15.03.2000, the petitioner applied for and was granted Certificate of registration on 20.09.2000. He submits that the petitioner was granted Certificate of exemption on 30.07.2001 but its exemption Certificate was withdrawn on 28.06.2002. He further contends that the Notification

dated 16.09.2004 is defective, since it is not in consonance with the Industrial Policy, 2000. He further submits that the action of the respondents in imposing a condition in the Policy restricting the exemption by fixing the date (30th April, 2000) by which the effective steps were to be taken, in the Notification dated 16.09.2004 is wholly unreasonable. He further submits that the impugned notification is in violation of Policy named as "Special Package of Incentives to Information Technology Industry, 2000" and therefore, the same is liable to be quashed. He relies on para 7 of judgment of Hon'ble Supreme Court reported as **State of Bihar and Others vs. Suprabhat Steel Ltd and Others (1999) 1 Supreme Court Cases 31.** The same is reproduced hereinbelow:

> *"Coming to the second question, namely, the issuance of notification by the State Government in exercise of power under Section 7 of the Bihar Finance Act, it is true that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the Incentive Policy itself. The Industrial Incentive policy is issued by the State Government after such Policy is approved by the Cabinet itself. The issuance of the notification under Section 7 of the Bihar Finance Act is by the State Government in the Finance Department which notification is issued to carry out the objectives and the policy decisions taken in the Industrial Policy itself. In this view of the matter, any notification issued by the government order in exercise of power under Section 7 of the Bihar Finance Act, if is found to be repugnant to the Industrial Policy declared in a government resolution, then the said notification must be held to be bad to that extent. In the case in hand, the notification issued by the State Government on 4.4.1994 has been examined by the High Court and has been found, rightly, to be contrary to the*

> *Industrial Incentive Policy, more particularly the Policy engrafted in Clause 10.4(i)(b). Consequently, the High Court was fully justified in striking down that part of the notification which is repugnant to sub-clause (b) of Clause 10.4(i) and we do not find any error committed by the High Court in striking down the said notification. We are not persuaded to accept the contention of Mr. Dwivedi that it would be open for the Government to issue a notification in exercise of power under Section 7 of the Bihar Finance Act, which may over-ride the incentive policy itself. In our considered opinion, the expression "such conditions and restrictions as it may impose" in sub-section (3) of Section 7 of the Bihar Finance Act will not authorise the State Government to negate the incentives and benefits which any industrial unit would be otherwise entitled to under the general Policy Resolution itself. In this view of the matter, we see no illegality with the impugned judgment of the High Court in striking down a part of the notification dated 4.4.1994.*

9. On the contrary, learned State counsel submits that the cut off date i.e 30.04.2000 is fixed as per the Notification dated 26.04.2000 vide which the Punjab Industrial Incentive Code under the Industrial Policy, 1996 notified on 01.06.1996 was amended. He further submits that the Notification dated 16.09.2004 (Annexure P.16) has been issued by the State Government by virtue of powers conferred by the State Legislature, therefore the Notification dated 16.09.2004 issued by the Department of Excise and Taxation is in consonance with the Notification dated 26.04.2000 issued by the Department of Industry and Commerce.

10. We have heard learned counsel for the parties and perused the paper book with their able assistance.

11. A perusal of Notification dated 15.03.2000 shows that the Special Package of Incentives to Information Technology Industry for development of Information Technology Industry in the State of Punjab was

formulated which was valid for a period of two years from the date of Notification. Relevant portion of the Policy is reproduced hereinbelow:

"Notification.

1. Definition

(I) & (ii) xxxx xxxx

2. I. (a) (b) xxxx xxxxx

II. Exemption/deferment from Sales Tax

a) Exemption/deferment from Sales Tax (including Punjab Sales Tax & Central Sales Tax & Purchase Tax wherever applicable) for a period of 10 years.

b) After expiry of 10 years sales tax would be charged @ 2% for hardware. 1% for packaged software and 0% for customized software for a period of next five years.

III to XI xxxx xxxxxx"

12. A perusal of the same shows that exemption/deferment under this Policy from sale tax is granted for a period of ten years. As per the record, the petitioner in view of the above mentioned Policy was granted exemption from payment of Sales Tax vide Exemption Certificate dated 26.09.2001. The same is reproduced hereinbelow:

"It is hereby certified that the industrial unit in the name and style of M/s OST Electronics Ltd situated at D-90, Industrial Area address Phase VII SAS Nagar (Mohali) under the Punjab General Sales Tax Act, 1948, Registration Certificate No.60791212 with date of validity from 07.9.2K and further holding eligibility certificate No.6625 dated the 30.7.01 is entitled to the deferment of or exemption from payment of tax in accordance with the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 for the period from 7.9.2K to 6.9.2010 subject to the maximum amount of tax exemption of Rs.full."

13. It would be relevant to repeat here that the exemption from payment of sales tax granted to the petitioner was withdrawn on 28.06.2002.

Relevant portion of the same is reproduced as under:

> *"As conveyed by the Head Office, Excise & Taxation Deptt Punjab Patiala, the Excise and Taxation Deptt has not notified the IT Policy for grant of Sales Tax Exemption. So exemption certificate issued by this Deptt is hereby withdrawn and you are directed to deposit the entire tax which was due as per your sales within Ten days from the receipt of this notice."*

14. A perusal of the above shows that the exemption was withdrawn only on the ground that the Excise & Taxation Department did not notify the Policy for grant of sales tax exemption. As mentioned above, the withdrawal was challenged by the petitioner and this Court specifically after observing and perusing the statement made by the State counsel that the Government had taken a decision to amend the Rules, disposed of the writ petition. Meaning thereby that, the Punjab Government was to amend the Rules in consonance with the *"Special package of Incentives for Information Technology Industry dated 15.03.2000"*. The State of Punjab in its reply has relied upon Notification dated 26.04.2000 by stating therein that in Notification dated 26.04.2000, the condition is imposed that the units which may take the effective steps as mentioned therein by 30.04.2000 will be eligible for grant of Sales Tax Exemption/deferment. The relevant portion of the notification dated 26.04.2000 is reproduced as under:

> *"Unit which may have taken following effective steps or which may take these effective steps by 30th April, 2000 will also be eligible for grant of Salex Tax Exemption/Deferment provided such units come into production by 30th June 2002."*

15. It would be relevant to reproduce Notification dated 26.04.2000, which reads as under:

> *"The Governor of Punjab is pleased to make the following*

amendments with regard to sales tax exemption or deferment under the "Punjab Industrial Incentive Code under the Industrial Policy, 1996" notified vide No.IncII/15/43/96-5/IB/4176 dated 01.06.1996, as under:

Sales Tax Exemption of Sales Tax Deferment

No sales tax based incentive i.e Sales Tax Exemption or Deferment from the Sales Tax will be granted to any new industrial unit or existing unit undertaking expansion except the following:

(i) Information Technology units shall continue to get sales tax exemption/deferment as provided in the Information Technology Policy notified vide No.15/4/99-51B/2174 dated 15.03.2000.

(ii) In case there are recommendations by BIFR regarding Sales Tax Exemption/Deferment, the same shall be considered by the Empowered Committee for adoption not withstanding the abolition of Sales Tax Exemption/Deferment.

(iii) Units which may have taken following effective steps or which may take these effective steps by 30th April, 2000 will also be eligible for grant of Sales Tax Exemption/Deferment, after coming into production:

(a) to (c) xxxx xxxxx

(iv) & (v) xxx xxxx

16. A perusal of the above shows that it is specifically mentioned that no sales tax based incentive i.e sale tax exemption or deferment from the sales tax will be granted to any new industrial unit or existing unit undertaking expansion except the following :

> *"Information Technology units shall continue to get sales tax exemption/deferment as provided in the Information Technology Policy notified vide No.15/4/99-51B/2174 dated 15.03.2000".*

17. Meaning thereby, the action of the respondents in withdrawing the exemption Certificate issued by the Department on 26.09.2001 vide order dated 28.06.2002 itself is contrary to the Notification dated

26.04.2000.

Before proceeding further, it is also relevant to reproduce the relevant portion of the impugned Notification dated 16.09.2004, which reads as under:

“Government of Punjab
Department of Excise and Taxation
Notification *The 16th September 2004*
xxxx *xxxx*

1. (1) These rules may be called the Punjab General Sales Tax (Deferred and Exemption) (first amendment) Rules 2004.

(2) They shall be deemed to have come into force on and with effect from 15th March 2000.

2. (xvii-a) to (xvii-e) xxxx
xxxxx

2. In the said rules in rule 4-A, in sub rule (1), after clause (iv), the following clause shall be added, namely:

(v) The Information Technology Units which are set up in the state irrespective of their location, manufacturing the goods specified in Annexure II-E shall be eligible for exemption/deferment from sales tax for a period of ten years. After expiry of ten years, sales tax would be charged at the rate of two per cent for hardware, one percent for packaged software and zero percent for customized for period of next five years.

Notwithstanding anything contained in any other provision of these rules.

(I) No sales tax based incentives that are sales tax exemption or deferment from the sales tax will be granted to any new industrial unit or existing unit undertaking expansion except the unit, which had taken the following effective steps by 30th April 2000.

(a) Registration with Department of Industries and Commerce or with any other designated Department

including in the case of licensed items, the obtainment of such industrial license.

(b) Purchase of land for the project.

(c) Submit loan application with the Finance Institution."

Provided such units had come into production by 30th June 2002."

18. A perusal of the above mentioned amendment shows that though the Rules were amended retrospectively w.e.f 15.03.2000 i.e the date of Notification regarding "Special package of incentives for Information Technology Industry" but a new condition with respect to the date (30.04.2000) for taking effective steps regarding registration etc has been imposed in sub para V of Rule 2 of the Amendment Rules.

19. A bare perusal of the record shows that after issuance of "*Special Package of Incentives for Information Technology Industry Policy dated 15.03.2000"*, the petitioner immediately took effective steps to get itself registered and was granted exemption Certificate on 26.09.2001 for a period of ten years i.e from 07.09.2000 to 06.09.2010.

20. In **Suprabhat Steel Ltd's case (supra),** it has been observed that issuance of such notifications entitles the industrial units to avail of the incentives and benefits declared by the State Government in its own industrial incentive policy. But in exercise of such power, it would not be permissible for the State Government to deny any benefit which is otherwise available to an industrial unit under the Incentive Policy itself. The Industrial Incentive policy is issued by the State Government after such Policy is approved by the Cabinet itself. Such notification is issued to carry out the objectives and the policy decisions taken in the Industrial Policy itself. If any notification issued by the government order in exercise of powers conferred in the Act, is found to be repugnant to the Industrial Policy

declared in a government resolution, then the said notification must be held to be bad to that extent.

21. As held by Hon'ble Supreme Court in **Suprabhat Steel Ltd's case (supra),** the State Government cannot deny any benefit which is otherwise available to an Industrial Unit under the Incentive Policy itself and in the present case, the benefit of exemption was available to the petitioner under the "*Special Package of Incentive for Information Technology Industry Policy*".

22. In view of the above discussion, condition imposed in Sub Para V of Rule 2 of Amendment Rules dated 16.09.2004 with respect to the date i.e 30.04.2000 by which effective steps are to be taken is struck down. Order dated 28.06.2002 withdrawing the exemption from payment of sales tax is quashed. Exemption Certificate granted to the petitioner on 26.09.2001 is ordered to be revived.

Accordingly, the petition stands allowed.

All the pending misc application(s), if any, shall stand disposed of.

(Sanjeev Prakash Sharma)
Judge

(Sudeepti Sharma)
Judge

May 21st, 2024
manoj

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No