

Court No. - 2

Case :- MISC. BENCH No. - 27146 of 2018

Petitioner :- K.R.Foods Ltd.Thru Its Director

Respondent :- U.O.I.Thru Secy.Min.Of Finance (Revenue Dept.) And 6 Ors.

Counsel for Petitioner :- Madhav Chaturvedi

Counsel for Respondent :- C.S.C.,A.S.G.,Dipak Seth

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Rang Nath Pandey,J.

Heard Shri Jaideep Narain Mathur, learned Senior Advocate, assisted by Shri Madhav Chaturvedi, learned counsel for the petitioner, Dr. Deepti Tripathi, learned counsel representing the respondent nos.1 & 2, Shri Dipak Seth, learned counsel representing the respondent nos.3 & 4 and learned Standing Counsel representing the respondent nos.5, 6 and 7.

Under challenge in this petition is an order dated 09.05.2018 passed by the Additional Commissioner (Law), Commercial Tax, Headquarters, Lucknow, whereby the facility of deferment of payment of the Value Added Tax granted earlier by the State Government vide its order dated 10.02.2014 has been declared to be not available, as a result of which the petitioner which is a sick unit declared, as such under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the Act') is faced with the demand to pay the taxes.

The petitioner is a producer of Vanaspati Ghee i.e. edible oil. However, for certain reasons, an application was moved under the Act by the petitioner-unit in the year 2001 for declaring it to be a sick unit with a prayer for formulation of rehabilitation scheme. On the said application, the Board of Industrial and Financial Reconstruction (BIFR) declared the unit to be sick on 07.06.2006 and further proceeded to frame Rehabilitation Scheme under section 17(3) of the Act. As per the said rehabilitation scheme sanctioned by the BIFR, the Value Added Tax dues were deferred for a period of five years, however, the said Rehabilitation Scheme sanctioned on 07.08.2012 by the BIFR was modified vide another order of the BIFR passed on 24.09.2013, according to which the deferment for payment of Value Added Tax was made defective for a period of five years w.e.f. 24.09.2013. Thus, as a result of modified Rehabilitation Scheme sanctioned by the BIFR in respect of the petitioner-unit, the benefit of deferment of paying the Value Added Tax dues was available to the petitioner w.e.f. 24.09.2013 till 23.09.2018 which meant that the dues pertaining to the year

2013-14 were payable in the year 2018-19 and henceforth. In terms of the modified Rehabilitation Scheme sanctioned by BIFR on 24.09.2013, the State Government passed an order on 10.02.2014, which has been annexed as annexure-3 to the writ petition, providing therein the deferment of payment of Value Added Tax dues against the petitioner-unit from 24.09.2013 till 23.09.2018. The order dated 10.02.2014 provides for the said deferment and further clarifies that the dues of Value Added Tax shall be payable starting from the 6th years from the date of sanction of the modified Rehabilitation Scheme. Accordingly, in terms of the said Government Order dated 10.02.2014 the benefit of the said deferment was enjoyed by the petitioner-unit.

In the meantime, U.P. Value Added Tax was repealed on 01.07.2017 on enforcement of U.P. Goods and Services Tax Act.

Section 174 of U.P. Goods and Services Tax Act provides for repeal and saving clause which is quoted hereunder:

"174.Repeal and Saving

1. Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (1 of 1944) (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), and the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (32 of 1994) (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts:

Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in

respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 (10 of 1897) with regard to the effect of repeal."

Sub section 2(c) of Section 174 of U.P. Goods and Services Tax Act saves the rights, privileges, obligations or liability acquired, accrued or incurred under the amended Acts or under the repealed Acts or orders under such repealed or amended Acts. The order dated 10.02.2014 was issued under section 71 of U.P. Value Added Tax Act which as on today stands repealed on enforcement of U.P. Goods and Services Tax Act with effect from 01.07.2017. Thus, the order dated 10.02.2014 under which the deferment of the Value Added Tax dues was granted to the petitioner's unit in terms of the Rehabilitation Scheme formulated by the BIFR on 24.09.2013 is also saved.

However, it appears that while passing the impugned order dated 09.05.2018 whereby the Government Order dated 10.02.2014 has virtually been declared to be inoperative, the authority concerned does not appear to have taken into account the effect of the repeal and saving clause contained in section 174 of U.P. Goods and Services Tax Act, specially sub section 2(c) of section 174 of the said Act. The impugned order dated 09.05.2018 only states that under section 71 of the then prevalent U.P. Value Added Tax Act, the powers were vested in the State Government to defer the liability of payment of Value Added Tax in case of the sick units declared as such under the Act. It further states that on repeal of U.P. Value Added Tax Act, w.e.f. 01.07.2017, U.P. Goods and Services Tax Act has come into force which does not contain any provision for deferment.

What is, thus, noticeable here is that the authority concerned while passing the said order dated 09.05.2018 has clearly ignored the provisions of section 174(2)(c) of U.P. Goods and Services Tax Act.

In the aforesaid view of the matter, we **allow** the writ petition.

Accordingly, the impugned order dated 09.05.2018, as is contained in annexure-1 to the writ petition, is hereby quashed. The State Government is directed to take a decision afresh. The decision by State Government under this order shall be taken, expeditiously, say within a period of six weeks from the date of production of certified copy of this order.

We further provide that till fresh decision in the matter is taken by the State Government under this order, the recoveries against the petitioner for the Value Added Tax dues shall not be made.

Order Date :- 20.9.2018

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[Rang Nath Pandey, J.] [D. K. Upadhyaya, J.]