
2013 eGLR_HC 10006889,2014 (1) GCD 776

Before the Hon'ble MR RAVI R TRIPATHI, JUSTICE

SAURASHTRA CHEMICALS LTD. PREVIOUSLY KNOWN AS AND 1....PETITIONER Vs. CHAHYA NAGAR PALIKA AND 4....RESPONDENT

SPECIAL CIVIL APPLICATION No: 1332 of 2004 , Decided On: 21/12/2013

K.S.NANAVATI, KUNAL NANAVATI, NANAVATI ASSOCIATES, NIRAD D.BUCH, RASHESH A. RINDANI

MR. RAVI R.TRIPATHI

1. Saurashtra Chemicals Ltd., previously known as Birla VXL Limited along with one Mr.V.N.Vyas, describing himself to be the shareholder of M/s.Birla VXL Limited is before this Court being aggrieved by action of the respondent Chhaya Nagarpalika and other respondents, i.e. District Collector, Deputy Secretary (Nagarpalika) and State of Gujarat in the matter of non-grant of exemption under the Gujarat Gram and Nagar Panchayats Taxes and Fees Rules, 1964 ("the Rules" for short) for their co- generation Power Plant which is in the nature of Captive Power Plant, meaning thereby the power generated is going to be used necessarily for running business of the company.

2. At the outset, it is required to be stated that it is not the case of either Nagarpalika or the State authorities that the company in question has now diverted itself from manufacturing of Soda Ash and Soda Bicarb. It is also not the case of the Nagarpalika or the State authorities that the company is selling the power generated by its newly established power plant (Captive Power Plant). In fact, the very term Captive Power Plant is suggestive of the fact that one who is generating power is using the same for its own use. Despite that, only because it is a public money which is to be spent by way of litigation that Nagarpalika as well as the State authorities are out to contest the petition tooth and nail. Be that as it may, the Court has to consider only the merits of the case as placed before it.

3. The case of the petitioners is that the company applied for permission from Gujarat Electricity Board, which was granted by communication dated 15.03.1996 for installation of Captive Power Plant of 20 MW capacity at Porbandar Plant. A copy of communication dated 15.03.1996 is at Annexure-D to the petition. Simultaneously, the petitioner company had also asked for the permission to put up new construction vide its letter dated 27.02.1995. A copy of communication dated 27.02.1995 is produced at Annexure-E. The petitioner company then applied for giving recognition to its new Power Plant - Unit as a new industry by application dated 16.11.1995. It appears that, this application was filed because of the words used in sub-rule (2) of

Rule 36, which pertains to Exemption from octroi. Sub-rule (2) of Rule 36 of the Rules reads as under:-

"(2) Subject to the provisions of sub-rule (4) building materials, plants, machinery, store, spare parts, raw materials, finished goods or any other article brought within the limits of gram or nagar nor for sale but for use thereof in the manufacture of any goods or in creating any factory, by any new industry shall be exempt from the payment of octroi."

3.1 It appears that taking clue from the term by any new industry that the application was filed seeking exemption from payment of octroi by saying that the new Power Plant in the factory be given recognition as new industry. The request was rejected and that gave rise to litigation which is going on since then. The matter has already visited the Honble the Apex Court and once again the matter is before this Court.

4. The matter involves a short question - whether establishment of a new Power Plant - Captive Power Plant can be said to be a new industry or if not new industry then whether it will fall within Clause-(iii) of sub-rule (3) of Rule 36. For ready reference, Clause-(iii) is reproduced:-

"(iii) in the case of an industry which has been established before the 1st May, 1960 but which has undergone or which undergoes expansion after that date of the expanded part of the industry:

Provided that an industry shall not be deemed to undergo expansion merely on account of replacement or overhauling of any existing machinery."

4.1 In fact, there is no dispute about the facts of the case, viz. the petitioner company has established a new Power Plant - Captive Power Plant; it is not brought on record either by Nagarpalika or by the Government that the company has any other opening using this power for other than the business in which it is at present working. It is also not the case that this power which is generated in this new Power Plant - Captive Power Plant is sold by the company to anybody else. In view of that, the only question which is required to be considered by this Court is whether can it be said to be a replacement or overhauling of its earlier existing plant.

4.2 It is not the case of the Nagarpalika or the Government that the company has scraped old Power Plant and has replaced the same by new Power Plant and so far as term overhauling is concerned, that is not at all in picture and therefore, if the company has added in its capacity to generate power as per the increased requirement, why should it not be given benefit of exemption from paying octroi under the relevant Rules.

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5. Learned Senior Advocate Mr.K.S.Nanavati for the petitioners invited attention of the Court to the order passed by the Collector in an appeal filed by the company before it. The Collector, for no valid reasons and convincing grounds, has dismissed the appeal, which gave rise to revision. The Revisional Authority, without adding or even reiterating the reasons and grounds given by the Collector, has rejected the revision.

6. This Court is of the opinion that normally such course of action is adopted by the authorities only when they do not have anything substantial to set out in the order. On perusal of the order passed by the Collector, this Court is of the opinion that the Collector is not correct in denying exemption from paying octroi to the petitioner company.

6.1 So far as establishing new Power Plant - Captive Power Plant in addition to the old Plant is necessarily an expansion of its capacity to generate power. New power is required to be generated only because the industry which the company is running requires more power and that will happen only when the production of the company increases and that is why necessarily the present expansion and its capacity to generate power is meant only for its industry because as stated before, the company has not diverted itself from its earlier business to any other business. Secondly, it is not selling this power to anybody. Therefore, the authorities were expected to take a constructive approach in the matter and ought to have held that the establishment of Power Plant is nothing but expansion of power generating capacity, which in turn was going to be used for the purpose of its business activity and therefore, it was part of expansion of its present business activity.

6.2 The authorities having no material to say that there was replacement of the old Power Plant or that there was overhauling of anything, there was no reason for the authorities to reject the appeal /revision of the petitioner company. One can understand that Nagarpalika in its enthusiasm of collecting more octroi (in the present case, total octroi to be collected was Rs.67 lacs), rejected the application filed by the petitioner company, but then, the Collector was expected to act in a more rational manner and was required to look into the facts of the case independently and impartially. On perusal of the order, this Court is of the opinion that the Collector failed in its duty to do that. Not only that, even the Revisional Authority was not able to maintain its independence and impartiality and therefore, only treating the dispute between a local authority on one hand and the commercial concerned (petitioner company) on the other, the Revisional Authority has also endorsed the view expressed by the Collector without appreciating it that the Collector was not able to provide any convincing reasons for not granting exemption from payment of octroi to the petitioner company.

7. At this juncture, learned Senior Advocate for the petitioners invited attention of the Court to a decision of this Court in the matter of Ahmedabad Mfg. & Calico Printing Co. Ltd. Vs. Kalol Municipality, Kalol & Ors., reported in 1979, GLR 46. A well considered judgment, examining all possible angles of the matter and holding as under in para-15:-

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"15. In that view of the matter, therefore, I am of the opinion that this petition should be allowed and the impugned resolution No.99 of July 9, 1970 should be quashed and set aside and the respondent-Municipality is directed to grant exemption according to the correct principles of law, as stated above, on the goods and articles mentioned in Clause-A of By-law 9(1) brought within the municipal limits in connection with the First and Second Installations and make a refund of the octroi duly already collected on such articles and goods as may be determined by its after giving the Company an opportunity to satisfy the respondent-Municipality as to its claim in the matter. Subject to this clarification that since the first Installation was over before the Bye-law in question came into force, that is 7th, October 1964, the Company would not be entitled to any exemption from octroi duty on spindles, looms and spare-parts imported within the municipal limits for purposes of the First Installation as rightly conceded by Mr.Daru, learned Advocate for the Company. Rule is made absolute accordingly with no order as to costs.

7.1 Learned Senior Advocate for the petitioners submitted that an amount of Rs.6 lacs is already paid to the respondent Nagarpalika and additional amount of Rs.25 lacs is deposited with the Nagarpalika pursuant to direction of this Court by order dated 24.02.2004.

7.2 The relevant part of order dated 24.02.2004 reads as under:-

"Looking to the said fact, the petitioners are directed to deposit a sum of Rs.25 lakhs in five equal installments. The first installment shall be paid on or before 3rd March, 2004 and the second installment shall be paid on or before 15th March, 2004. The remaining three installments shall be paid before 15th day of April, May and June respectively.

If, ultimately, the petitioners succeed in the petition, the respondent Panchayat shall repay the said amount immediately.

In view of the above order, interim relief in terms of paragraph 32(C) is granted."

7.3 In view of the contents of the aforesaid order dated 24.02.2004, it will be obligatory on the part of the Nagarpalika to repay the amount. However, taking into consideration the fact that the respondent Nagarpalika is a Local Authority, the Court deems it proper not to impose liability of interest on the aforesaid amount. Besides that, as there is similar order with regard to earlier amount of Rs.6 lacs, the Court allows the Local Authority-Nagarpalika to appropriate that amount as the same is going to be used for the public purpose. The amount of Rs.25 lacs, which was deposited pursuant to order dated 24.02.2004, is directed to be paid immediately to the petitioner company. The petition is allowed. Rule is made absolute. No order as to costs.

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8. At this juncture, learned Advocate for the respondent Nagarpalika requested that this direction of repayment be stayed for a period of six weeks.

9. The request cannot be acceded to for the reason that the direction is issued pursuant to earlier order of this Court dated 24.02.2004.

Petition allowed.

