

SC delivers split verdict with respect to arbitrary withdrawal of sales tax exemption

7 June 2023



Summary

The division bench of the Supreme Court (SC) has rendered a split verdict on the question of an appellant being entitled to a sales tax exemption pursuant to an amendment to the West Bengal Sales Tax Act, 1994 (WBST Act), which withdrew the exemption. Justice M.R. Shah held that it is a settled position of law that no one can claim the exemption as a matter of right. Contrary to this, Justice Murari stated that the law cannot take away anything conferred by it in an arbitrary manner. Further, the amendment introduced in law in the present case did not demonstrate that it was for the advancement of public interest. He further stated that a mere claim of change of policy is not sufficient to discharge the burden of proof vested in the government. Therefore, the SC held that the benefit of exemption should be available to the appellant for the period promised by the Revenue.

Facts of the case

- M/s. K.B. Tea Product Pvt. Ltd. (the appellants) had set up new small scale industrial units for the purpose of carrying on the business of 'manufacturing blended tea' and enjoyed the benefit of exemption from the payment of sales tax.
- As per the provisions of the West Bengal Incentive Scheme 1999, the new industrial units were given an exemption from the payment of sales tax for a specified period.
- The appellant also obtained an eligibility certificate from the Sales Tax department for a period of seven years from the date of the first sale of the manufactured product.
- Later, the definition of 'manufacture' was amended by the West Bengal Finance Act, 2001, whereby the words 'blending of tea' was omitted. Consequently, the exemption from the payment of sales tax, which was granted to the appellants, came to be stopped, and even the eligibility certificate was required to be modified. Consequently, the exemption was withdrawn, and the appellants ceased to be the manufacturers.
- The aforesaid action / order was challenged before the Tribunal first and thereafter before the High Court (HC). The Tribunal dismissed the application, which has been confirmed by the HC by the impugned judgement and order. The appellants challenged the same before the Tribunal and thereafter before the HC. Both dismissed the applications.
- Aggrieved by the order passed by the HC, the appellants filed an appeal before the SC.

Issue before SC:

- Whether the appellants have a vested right in claiming exemption from the payment of sales tax

- under the WBST Act, as the vested right was accrued upon the appellants before the amendment, was made under Section 2(17) of the WBST Act?
- Whether the doctrine of legitimate expectation is applicable in the present case since the appellants had set up their industrial units based on the allurements of a tax holiday granted by the government?

SC observations and ruling [CIVIL APPEAL No. 2297 OF 2011 dated 12 May 2023]

A. Observations and opinion of Justice M.R. Shah:

- **Exemption cannot be claimed as a matter of right:** Exemption is always on the fulfilment of the conditions for availing the exemption and the same can be withdrawn by the state. To grant the exemption and/or to continue and/or withdraw the exemption is always within the domain of the state government and it falls within the policy decision. As per the settled position of law, unless withdrawal is found to be so arbitrary, the court would be reluctant to interfere with such a policy decision.
- **Not a case of 'vested right' but a case of 'existing right':** The HC has rightly held that this is not a case of 'vested right' but a case of 'existing right'. There cannot be any promissory estoppel against the statute as per the settled position of law.
- **Exemption subject to satisfaction of conditions:** The word 'manufacture' is very relevant and is a condition *sine qua non* to be satisfied for claiming exemption. Therefore, if a dealer ceased to be the manufacturer, he shall not be entitled to the benefit of exemption. Accordingly, pursuant to the impugned amendment by which 'tea blending' is excluded from the definition of 'manufacture', the assessee shall not be entitled for the exemption from the payment of sales tax.

B. Observations and opinion of Justice Krishna Murari:

- **Doctrine of legitimate expectation:** The doctrine of legitimate expectation, which flows from the doctrine of rule of law, and which stipulated that it is based on the idea of fairness and consistency in the decision-making processes of public authorities. When a legitimate expectation of a specific outcome is created by a public authority, then it is required to consider such expectation created by it when making a decision that affects the interests of the individual or the group concerned. If they fail to do so, the individual or group has a right to challenge the decision and seek a remedy. The SC drew reference from the case of M.P.Oil Extraction & Anr., wherein it had been held that this doctrine operates in the sphere of public law, and as such, is a substantive and enforceable right depending on the facts and circumstances of the case.
- **Every action of state should be guided by non-arbitrariness:** The SC drew reference from the case of Food Corporation of India vs. Kamdhenu Cattle Feed Industries, wherein it had been held that the duty of public authorities is to act in a reasonable manner, which entitles every person to have a legitimate expectation; it is imperative to ensure non-arbitrariness of state action.
- **Limitation of doctrine of legitimate expectation:** The SC drew reference from the case of MRF Ltd. Kottayam., wherein it had been held that public interest takes precedence over a legitimate expectation. Also, in other cases, it was held that this doctrine is rendered defunct in cases where the said expectation is rescinded by the public authority by way of a change in public policy due to public interest, and it was held that no right can be claimed on the basis of legitimate expectation when the said expectation is contrary to statutory provisions enforced in the public interest.
- **Principles for application of legitimate expectations:** The expectation must be reasonable and based on a clear representation. The representation must be made by an authorised person, and it must be legitimate. The public interest must be demonstrated. Public interest must supersede change in policy. The expectation must be based on a legitimate interest. The expectation must be protected.
- **SC allowed the civil appeals:** As no appropriate justification was provided by the government for the enactment of the amendment, the government must precisely show what the change of policy is, and why such a change of law is in furtherance of public policy and the public good. Accordingly, the Justice issued a direction to extend the benefits of the original amendment to the appellant, till the expiry of such a benefit as per the original amendment.

Our comments

The doctrine of legitimate expectation arises when a public authority makes a promise or acts in a manner that leads an individual or group to expect a particular outcome. The present case is also based on the legitimate expectation that the assessee had set up a unit under the assumption that the state authority would hold true to its promise, act in a fair manner and continue to grant the exemption. The said exemption was then withdrawn without any appropriate justification.

In the case of Navjyoti Coop. Group Housing Society, the SC elucidated that the presence of legitimate expectations can have different outcomes and one such outcome is that the authority should not fail 'legitimate expectation' unless there is some justifiable public policy reason for the same.

In the present case also, the SC has reiterated the principle that the doctrine of legitimate expectation cannot be invoked only when the changes/amendment is carried out in public interest.

This ruling may be relevant for businesses that have availed benefits/exemptions under the various state-specific industrial policies, but the same were subsequently rescinded or withdrawn. However, considering the divergent opinions by the division bench, it would be interesting to wait and watch for the larger bench's view.

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