HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 9059/2022

APM Industries Ltd., (Unit: Orient Syntex) SP-147, RIICO Industrial Area, Bhiwadi - 301019, Dist. Alwar (Raj.) Through Rajesh Saraswat S/o Shri K.C. Saraswat, Aged About 51 Years, Manager (Legal And IR)

----Petitioner

Versus

1. State of Rajasthan, Through Its Principal Secretary, Energy Department, Jaipur (Raj.)
2. The Department of Commercial Taxes Through The Commissioner, Kar Bhawan, State Govt., Near Bhawani Singh Circle, C-Scheme, Jaipur (Raj.)
3. Rajasthan Renewable Energy Corporation Ltd., (A Government of Rajasthan Undertaking), Through Chairman, E-166, Yudhishthir Marg, C-Scheme, Jaipur (Raj.)
4. Jaipur Vidyut Vitran Nigam Ltd. (JVVNL), Through The Superintending Engineer (Commercial), JVVNL, Vidyut Bhavan, Janpath, Jaipur - 302005 (Raj.).

----Respondents

For Petitioner(s)	:	Mr. Sanjeev Johari, Sr. Advocate with Mr. Lalit Parihar, Advocate, Mr. Ranvijay Singh, Advocate & Mr. Shubhankar Johari, Advocate
For Respondent(s)	:	Mr. M.S. Singhvi, AG with Mr. Darsh Pareek, Advocate Mr. Mirza Faisal Baig, Advocate Mr. Ayush Singh, Advocate for Mr. Punit Singhvi, Advocate

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HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Judgment / Order

24/04/2023

Heard on application for stay.

In the present case, while issuing notices to the respondents, this Court passed interim order in favour of the petitioner.

With some modification, interim order continued on 29.07.2022. The interim order continued on 23.08.2022 awaiting service of notice on Respondent No.3. On 30.08.2022, interim order was again continued. On 14.09.2022, 30.09.2022, 15.11.2022 & 16.12.2022 interim order was again continued. On 16.03.2023, this Court observed that ex parte interim order is continuing. When this case again came up for consideration on 29.03.2023, learned Advocate General opposed the continuation of interim order. On such objection, the case has been listed today for consideration on the issue of continuation of interim order.

Learned Senior Counsel appearing for the petitioner would submit that the interim order was granted by this Court on strong prima facie case made out because the petitioner had undertaken industrial venture involving financial input by investing huge amount, acting on the written policy of the State regarding grant of exemption for a period of seven years. However, subsequently the exemption was restricted by carrying out amendment in the policy vide impugned notification dated 10.05.2022. He would submit that the State has not come out with any justification much less any public interest as to why the policy of exemption declared operative for seven years was restricted. It is next submitted that though the statutory notification of exemption was issued on 10.07.2019 continuing exemption upto 31.03.2020, the State Solar Energy Policy published in November 2019 clearly made representation for continuing exemption for seven years. Therefore, the interim order which has been granted in favour of the petitioner be made absolute.

On the other hand, learned Advocate General would argue that as the statutory notification issued by the Government on 10.07.2019 in exercise of powers of exemption under the relevant Act was only upto 31.03.2020, a subsequent executive declaration could not be made a basis to enforce continuation of exemption beyond 31.03.2020. Learned Advocate General would further argue that in public interest, the policy of 2019 granting exemption for a period of seven years has now been curtailed and restricted for the period stated in the notification regarding exemption, vide impugned notification dated 10.05.2022. Therefore, merely because the period of exemption of notification has now been curtailed and reduced to a lesser period, no indefeasible right of exemption could be claimed by the petitioner.

Learned counsel for the parties placed for perusal of this Court several decisions of the Hon'ble Supreme Court, namely, **Kasinka Trading and Another Versus Union of India and Another [1995 (1) SCC 274], MRF LTD., Kottayam Versus Asstt. Commissioner (Assessment) Sales Tax and Others [2006 (8) SCC 702], Shree Sidhbali Steels Limited and Others Versus State of Uttar Pradesh and Others [2011 (3) SCC 193], Kothari Industrial Corporation Limited Versus Tamil Nadu Electricity Board and Another [2016 (4) SCC 134], Manuelsons Hotels Private Limited Versus State of Kerala and Others [2016 (6) SCC 766] and The State of Jharkhand and Others Versus Brahmputra Metallics Ltd. and Others in Civil Appeal Nos. 3860-3862 of 2020 (Arising out of SLP (C) Nos. 14156-14158 of 2020) decided on 01.12.2020.**

While protecting the promisee against promisor resiling its promise in the matter of application of principle of promissory estoppel, where State succeeds in justifying with material on record that withdrawal of promise was based on overwhelming public interest, claim of exemption/concession as originally promised has been negated.

However, in the absence of there being any valid justification and cogent material to substantiate overwhelming public interest behind withdrawing or curtailing period of exemption/concession, promisee has been protected where the promisee has acted upon the promise, altering his position to his detriment.

In view of the above consideration, a serious question as to whether withdrawal of exemption is legally sustainable needs to be tried in this petition. The petitioner, however, has made out a strong prima facie case because the State had issued a policy in November, 2019 that it would be granting exemption for a period of seven years. The petitioner undertook industrial venture and altered its position to its detriments by making huge investments and now in 2022 the said promise has been withdrawn and limited only to the period of statutory notification i.e., 31.03.2020. The reply of the State does not come out with a clinching and cogent material to substantiate overwhelming public interest warranting withdrawal of exemption.

Therefore, we are not inclined to discontinue the interim order passed in favour of the petitioner and the interim order is made absolute. The petitioner, however, will be required to submit an undertaking before this Court within a period of one month that petitioner will not claim any equity in the event of remaining unsuccessful and will deposit the entire amount under demand with interest at the rate prevailing in the market.

Application for Stay is accordingly disposed off.

(ANIL KUMAR UPMAN),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

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