
(1998) 11 GUJ CK 0045
In the Gujarat High Court
Case No : Sales Tax Reference No. 4 of 1997

Ardeec Engineering (Saurashtra) Pvt. Ltd.	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 23-11-1998

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 49(2)

Citation : (1998) 11 GUJ CK 0045

Hon'ble Judges : Rajesh Balia, J; Anil R. Dave, J

Bench : Division Bench

Advocate : Nayan Sheth, for R.D. Pathak, for the Appellant; Kamal Mehta and H.V. Chhatrapati, for the Respondent

Judgement

R. Balia, J.—The Gujarat Sales Tax Tribunal has submitted a statement of the case and referred the following question of law for the decision of this court arising out of its order in Second Appeal No. 162/90 decided along with other cognate matters vide its order dated 5th September 1992.

"Whether, on the facts and in the circumstances of the case, the sales made against the certificate in Forms Nos. 17-A and 19 after the date of receipt of exemption certificate under entry 118 of the Government Notification under Sec. 49(2) of the Act even before that date would be liable to be discarded and the tax applicable thereto would be required to be taken into consideration for the computation of the aggregation of tax exemption limit?"

2. The question relates to assessment of the tax payable by the assessee for the period between 1.7.85 to 30.6.86 under the Gujarat Sales Tax Act, 1969. The applicant is a private limited company and is engaged in the business of manufacture and sale of auto diesel engine spare parts. The assessee had set up a new industrial unit in a backward area which was a designated area under the scheme then prevailing governing exemption of sales tax to new industrial units and was issued eligibility certificate certifying that the assessee is entitled to exemption from payment of sales tax with effect from 21.11.85. The eligible

amount upto which the assessee could claim exemption from payment of sales tax was quantified at Rs. 2,04,832. During the period in question the assessee, who is a registered dealer, has effected some of his sales to other registered dealers under the Gujarat Sales Tax Act against Form Nos. 17-A and 19. In terms of sec. 7(iii) of the Gujarat Sales Tax Act, 1969, sales against such forms to another registered dealer is to be deducted from taxable turnover of the seller dealer.

3. By a notification issued under sec. 49(2) of the Gujarat Sales Tax Act, Entry 118 was inserted in Schedule appended to notification u/s 49(2). Subject to conditions mentioned therein, sales by a specified manufacturer of goods manufactured by him were exempted from payment of whole of tax during the period specified in the eligibility certificate. This was in furtherance of package of incentives for promotion of industries in rural and backward areas to achieve balanced growth and avoid decongestion of developed areas under Government Resolutions from time to time. The incentives at the relevant time under consideration included sales tax benefits in terms either of exemption from sales tax or deferment of payment of sales tax as per the new scheme of sales tax incentives effective with effect from 1.6.1980. As the name suggests, it envisaged two types of incentives for new industrial units established by a dealer. In one case assessee was to be exempted from payment of tax during the operation of scheme altogether. Under the other scheme, though the assessee was not exempted from payment of tax, but the payment of sales tax due from assessee was deferred under the scheme though such tax has been collected by him. In other words, the assessee was allowed to retain the tax collected by him for a specified period before he was required to pay the same to public exchequer. In either case the limit of maximum amount of tax upto which the assessee can claim benefit and period during which such exemption could be availed were the same. The assessee is not entitled to avail tax incentives beyond the period during which he is so exempted, nor is he entitled to avail exemption of tax, either from payment or for deferred payment, beyond the maximum limit of tax determined and certified in his eligibility certificate.

4. In order to control and regulate this part of the scheme that an assessee does not avail more benefit than allowed under the scheme, both as to tax limit and time limit, liability of assessee to tax is required to be determined also for the period during which exemption operates.

5. To give effect to this scheme Entry 118 was inserted exempting a specified manufacturer from purchase tax on his purchase of raw material, processing materials, consumable stores and packaging material from unregistered dealer which he was otherwise liable u/s 15 of the Gujarat Sales Tax Act and for sales tax on sale of goods in the manufacture of goods by such new industrial unit. He was also given exemption from tax liability which he was otherwise to pay when purchasing raw materials, processing materials, consumable stores and packaging materials from another dealer by exempting such sales from tax in the

hands of seller burden of which otherwise would have been borne by such manufacturer.

6. The Entry also envisaged a general condition that as soon as the aggregate of amounts of tax which would have become leviable from the specified manufacturer but for the exemption under this entry or under Government Notification No. (GHN-12) (ST-1081-5-8(5) (32) TH dated the 5th February 1981 issued under sub-sec. (5) of sec. 8 of the Central Sales Tax Act, 1956 or under any drawback, set off or refund during the period commencing on and from 1st June, 1980 or as the case may be the date of commissioning the new industry become equal to the amount specified in the certificate as the eligible quantum of tax exemption.

7. The assessee claimed that sales effected to registered dealers who had furnished Form Nos. 17-A and 19 are liable to be deducted from taxable turnover of the assessee for determining tax leviable from him. In other words, on the sales effected by the assessee to registered dealers under Form Nos. 17-A and 19 were sales in respect of which no sales tax was leviable from the assessee and therefore the same could not have been included in computing sales tax liability of the assessee for the period in question to be adjusted against the exemption limit which the assessee was entitled to enjoy.

8. This contention of the assessee was rejected by the assessing authority. The contention in that respect was rejected by the tribunal also on the ground that it is voluntary on the part of the assessee to opt for the scheme but once having opted for this scheme it would not be proper to try to obtain benefits under other schemes or notification also because admittedly the government has set a pecuniary limit and if, as contended on behalf of the assessee, he can also claim exemptions under other provisions of the Act and rules and/or notification, then the amount of tax saved therein would not be taken into consideration for the purpose of aggregation. So to that extent the limit would be extended indirectly. Obviously, that could not be the intention of the government. For the same reason the sales against Forms 17-A, and 19 also should not be permitted. So, even if there is no specific exclusion, the very scheme itself would show exclusion of sales against any other forms. The tribunal after referring to the criterion on the basis of which the limit of eligible amount of tax upto which the assessee could claim exemption from its payment has stated,

"This is precisely how in the eligibility certificate granted by the Industries Department, the amount as worked out on the footing of such per centage has been specified and it is on the basis of such eligibility certificate only that the exemption certificate is granted by Sales Tax Department under this entry. This would go to suggest and supply an internal indication by the entry itself that the sales and purchases of the goods made by the industries concerned would have to remain within the compass of the said exemption limit itself and it would not be permissible to them to remain within the same compass for a particular portion of their business and to get out of it for any other portion at their sweet will, by

claiming deduction/exemption under any other provisions of Act, Rules or Notifications. When the totality of tax exemption limit has been circumscribed after keeping in view the fixed capital investment (the details of which have been duly supplied by they themselves on their own voluntary action to the Industries Department) and it is on the basis of the same that the Industries Department has, after due scrutiny thereof, fixed up the amount of such limit as per the fixed percentages as aforesaid, they would not be entitled to get out of that limit for any portion of their business during the operation of the said limit, for one reason or the other."

9. We have heard the learned counsel for the parties. It has been urged by learned counsel for the assessee that once eligibility certificate has been granted after examining the claim of assessee to exemption under the relevant provisions of the scheme framed by the State and notifications issued in that regard, the question that the assessee is entitled to exemption is well established and is not in dispute. The question relates to the realm of determining how in implementing the exemption granted to the assessee the actual exemption availed by the assessee has to be worked out in accordance with the provisions of the Act and the scheme read together. There is no room to travel beyond the provisions of the Act and the scheme to find the intention of the framers of the scheme. It was urged by the learned counsel that the period during which the assessee is entitled to claim exemption the quantum of tax upto which he is entitled to claim exemption having been fixed there is no room for availing any extra tax exemption. The assessee's exemption from liability to pay whole of the tax on sales upto that limit is also not a matter in dispute. The only question that calls for consideration is how it is to be found out at the end of each assessment period that how much tax benefit has been availed of by the dealer and how much balance remain upto which he can avail the exemption. The working out of such adjustment has been provided in general condition attached to entry 118 in the Schedule 1 itself. The tribunal has rightly underlined the words which calls for interpretation which are reproduced hereinbelow.

"as soon as the aggregate of amounts of tax which would have become leviable from the specified manufacturer but for the exemption under this entry or under Government No.(GHN-12) (ST-1081-5-5(5) (32) TH dated the 5th February 1981 issued under sub-sec. (5) of sec. 8 of the Central Sales Tax Act, 1956 or under any drawback, set off or refund during the period commencing on and from 1st June, 1980 or as the case may be the date of commissioning the new industry."

The argument continues that the method provided for working out this adjustment is to determine the tax which would have been leviable from but for the exemption under entry 118. On this premise a duty is cast on the assessing officer to carry out regular assessment in terms of the provisions of the Act without reference to exemption under entry No. 118 except to the extent which affects the general provisions of assessment to the contrary. If that is so, then in terms of sec. 7(iii), tax is levied on turnover of sales of goods after deducting

therefrom sale of goods to a registered dealer against Form 17-A or 19 if the said registered dealer is also a recognised dealer in terms of sec. 32 of the Act. If the said sales are to be deducted from the taxable turnover, the amount of tax which would become leviable from the assessee could not be determined by including the said turnover in the taxable turnover by refusing to allow deduction thereof.

10. It has been urged by the learned counsel for the Revenue reiterating the view taken by the tribunal firstly that if the assessee has chosen to get exemption under the incentive scheme, he is not entitled to claim any other exemption and secondly that if the construction suggested by the learned counsel for the assessee is accepted, it would render sub entry (2) of entry No. 118 redundant.

11. At the outset, we may state that we are neither called upon to decide the question whether any provision of the Act brings into the incidence of tax on the assessee or that assessee is entitled to claim exemption. We are to consider on the premise that assessee is entitled to claim exemption, what is the mode and scope of the provisions under which the limit of exemption availed is to be worked out with reference to different provisions of the Act.

12. The principle governing the taxing statutes in all these three aspects are well established. While construing a fiscal legislation imposing a tax liability, the principle is that the statute must be strictly construed. Unless the liability to pay tax can be brought strictly within the four corners of law, no liability can be fastened by travelling beyond the scope. In case of any ambiguity rendering the statute capable of more than one meaning, one in favour of the subject must be adopted. However, if the language of the statute is clear and unambiguous, there is no room for invoking the doctrine of intendment. In the familiar words of Lord Wensleydale as referred in *Tendant v. Smith* (1892) A.C. 150 "The subject is not to be taxed without clear words for that purpose."

13. Succinctly put in the words of Lord Simonds in *Russel vs. Scott* (1948) 2 All E.R. 1 "the subject is not to be taxed unless the words of taxing statute unambiguously impose the tax on him."

14. Supreme Court in *A.V. Fernandez Vs. The State of Kerala*, speaking through Bhagwati, J. adhered to principle when it said,

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to strict letter of the law. If revenue satisfies the court that the case falls strictly within the provisions of law, the subject can be taxed. If on the other hand the case is not covered within the four corners of the provisions of the taxing statute, no bar can be imposed by inference or by analogy or by probing into intentions of the legislature and by considering what is the substance of the matter."

Considering the question of importing legislative intent in fiscal statute, the Apex Court in *Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax*

and Another, stated,

"If the language is clear and explicit, effect must be given to it, for in such a case the words best declare the intention of the law-giver. It would not be right to refuse to place on the language of the statute the plain and natural meaning which it must bear on the ground that it produces a consequence which could not have been intended by the legislature. It is only from the language of the statute that the intention of the legislature must be gathered, for the legislature means no more and no less than what it says. It is not permissible to the court to speculate as to what the legislature must have intended and then to twist or bend the language of the statute to make it accord with the presumed intention of the legislature."

While saying so, the court approved the dictum of Lord Reid in *Black-Clawson International Ltd. v. Papierwerke Waldhof-Aschaffenburg*, (1975) 1 All E.R. 810,

"We often say that we are looking for the intention of Parliament, but that is not quite accurate. We are seeking the meaning of the words which the parliament used. We are not seeking what parliament meant but the true meaning of what they said."

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15. Thus, before bringing in the consideration of intendment, the first principle is to look at the words used by the law making authority. If the words are clear and are unambiguous, there is no room to search for intendment by assuming foundations for it. However, if the words are not so clear, the meaning of the words used giving expression to legislature's intention has to be interpreted in the light of object to the provision and context of the statute. The intention of legislature is to be searched in the context of words used and not by exploring outside the expression. While interpreting the statutory provisions substantively levying tax on a subject as distinguished from machinery provisions, the principle is firmly rooted "If the interpretation of a fiscal enactment is open to doubt, the construction most beneficial to the subject is to be adopted." That was the principle enunciated by House of Lords in *Atkinson v. Goodlass Wall & Lead Industries Ltd.*, 31 TC 447 and *Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others*, . We need not refer to catena of decisions in this regard.

16. This is also well settled that rule of strict construction equally applies while construing the provisions granting exemption to a subject once the incidence of tax is established. In *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, , the court said,

"There is a support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. It is an equally well-known principle that a person who claims an exemption has to

establish his case."

Thus, when the question arises whether a person is entitled to an exemption though he is covered by incidence of tax again the rule of strict construction is to be followed. In case of doubt, to be resolved in favour of Revenue. Principle has been thus stated in Craies on "Statutory Law" quoting from Hogg v/s Parochial Board of Auchtermuchty: (1880) 7R (Sc) 986 opinion of Lord Young,

"I think it proper to say that, in dubio, I should deem it the duty of the court to reject any construction of a modern statute which implied the extension of a class privilege of exemption from taxation, provided the language reasonable admitted of another interpretation."

17. The third stage reaches after incidence of tax and eligibility to exemption, both having been established, the question comes of determining the measure of exemption under the relevant scheme. The principle was explained by the Supreme Court in Union of India and others v. Wood Papers Ltd. and another, 83 STC 25. While agreeing that exemption provisions, unlike charging provisions, have to be tested on different touchstone in resolving ambiguity to bring home charge or exemption, the court observed, "in fact the exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."

18. The question again fell for consideration before Their Lordships in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, . The court after considering Mangalore Chemicals & Fertilizers" case as well as Wood Papers"s case observed,

"The principle that in case of ambiguity a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz. each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed

by a Constitution Bench of this Court in *Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others*, that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

19. Applying the above principles to the controversy at hand, we find ourselves at stage three. There is no dispute that but for exemption claimed the petitioner is a dealer is subject to incidence of sales tax under Gujarat Sales Tax Act 1969 and his transactions in question are liable to be dealt with in accordance with the provisions of the Act. There is no dispute also about the applicability of exemption on sales made by him as the new industrial unit and he is entitled to avail exemption. No issue is about the measure of exemption that can be availed by the petitioner. Issue is only how the exemption availed by assessee is to be measured to match the entitlement.

20. Under the scheme a new unit has two options, either to opt for deferment of payment of tax which is leviable on him or to claim exemption from payment of tax. The extent of exemption is also determined namely a fixed percentage of capital investment by the assessee is the maximum amount of benefit offered in respect of tax deferment or tax exemption which can be claimed by the assessee. A further limitation on availing of that benefit is the period within which the same has to be availed, that is to say, by 17.10.89. All these three limits have been fixed. Limit of period has not expired. The question now arises is to determine the tax liability which the petitioner has incurred during the period in question which but for exemption he will be liable to pay and to see whether such amount does not exceed the maximum limit of tax exemption permissible under the scheme. The scheme a fortiori assumes that the deferment of tax or exemption from payment of tax is in respect of those transactions which constitute taxable event and but for exemption tax is payable by the assessee on it, it does not impose any liability to pay tax in addition to what there is otherwise under the charging provisions of the statute itself. Nor do we find any other mode specified for computation of exemption availed. On these precincts if one is to read general condition No. 1 reproduced earlier it carries in clear terms answer to the question.

21. The key words are "as soon as the aggregate of amounts of tax which would have become leviable from the specified manufacturer but for the exemption under this entry (118). Entry 118 envisages three taxing events on which exemption is granted. Firstly, sub-entry I exempts purchase of raw material, processing materials, consumable stores or packing materials from a person who is not a registered dealer by a specified manufacturer. Such purchases under the general provision are liable to pay purchase tax under sec. 15 of the Act. Secondly, sales of raw materials, processing materials, consumable stores or

packing materials by a registered dealer to a specified manufacturer have been exempted from tax under sub-entry II. Such sales under the provisions but for the exemption are liable to tax in the hands of seller. The general law also envisages that in case a registered dealer purchases raw materials, processing materials, consumable stores or packing material from another registered dealer and the purchasing dealer is a recognised dealer under sec. 32, on a declaration given under prescribed form by said recognised dealer to the vendor, vendor is not liable to pay tax on such sales but is entitled to deduct such turnover from his taxable turnover under sec. 7(iii). Such sale does not remain a taxable event in the hands of vendor as dealer. At the same time such purchaser-recognised dealer is liable to purchase tax at a specified rate under sec. 15A of the Act. Thus sale of raw materials, processing materials, consumable stores and packing material by a registered dealer to another registered dealer, either results in tax in the hands of vendor at general rate or the commodity in the hands of buyer at the specified rate depending upon the operation of sec. 32 read with sec. 13 and 7(iii). In case of such sales by a registered dealer to a specified manufacturer the latter possibility is excluded by conditioning the entry with stipulation that specified manufacturer is a registered dealer not holding recognition under sec. 32 of the Act or where he holds such certificate he surrenders the same within 60 days of the notification or of commencement of production with effect from which he can claim exemption under the entry. Thus on the transaction which is exempted from tax under entry 118(II) tax under the charging section is payable at general rate applicable to commodity sold and is subject to levy at that rate but for exemption under entry 118. There is no dispute that the amount of sales tax payable by the seller is includible in the aggregate of tax exemption availed by the dealer concerned and is to be adjusted against the exemption limit enjoyed by the specified manufacturer during the operation of the exemption period. Lastly, sales by a specified manufacturer of goods manufactured by him have been exempted under sub entry (iii). It is aggregate of tax which would otherwise be liable but for exemption from the specified manufacturer whether as a purchaser or as a seller is to be ascertained. It is only on ascertainment of such tax liability leviable on the respective transactions envisaged under entry 118 that the aggregation of the amount of tax to be adjusted against the exemption limit can take place. The language in itself is clear indication to ascertain the tax liability as if the benefit of exemption under entry 118 does not exist. In arriving at such liability exemption granted under notification dt. 5.2.81 under sec. 8(5) of the Central Sales Tax Act is also not to be considered. That relates to the exemption from payment of sales tax under Central Sales Tax Act to a specified manufacturer under the same scheme. For that purpose any drawback, set off or refund to which an assessee is entitled in respect of such liability is not to be taken into account for the purpose of finding the aggregate sum of tax to be adjusted against exempted limit on the fulfillment of which the operation of entry 118 shall cease to be effective qua the specified manufacturer. It is further to be seen that a specified manufacturer means a person in the State of Gujarat who establishes a new industry after 1st June 1980 in any of the

designated areas and is a registered dealer not holding recognition under sec. 32 of the Act or where he holds such recognition surrenders it for cancellation within 60 days from the date of coming into force of this notification or of commencing the production or has not already obtained any exemption under entry 94 and is certified by the Commissioner of Sales Tax, Gujarat State for this purpose had issued all necessary certificate specifying the date on which new industry is commissioned or from the date specified by the Commissioner of Sales Tax in the certificate as may be opted in writing by the person commissioning the new industry. These conditions make it abundantly clear that a person who is a registered dealer who enjoys exemption under the deferred payment scheme/ exemption scheme and to whom entry 118 is applicable, is a person liable to purchase tax on raw materials, processing materials, consumable stores or packing materials, he is a person who is not entitled to hold recognition under sec. 32 as recognised dealer for the purpose of purchasing the raw materials from the registered dealer without payment of tax and become liable to pay purchase tax and that he is a registered dealer who is liable to pay tax in respect of goods sold by him under the Act. Tax on all these turnover have to be determined in accordance with the provisions of the Act as if this exemption does not apply through a regular assessment. Applicability of provisions of sales tax act to regular assessments have not been relaxed or dispensed with in any manner either under entry 118 or under any other provision. No special mode for determining the tax liable to be paid by the specified manufacturer as dealer has been provided for the purpose of working out exemption availed independent of determining the tax liability arising on the transactions under the three sub entries of entry 118.

22. To us, the language appears to be fairly clear and unambiguous indicating, that for the purpose of operating this condition, all the three turnovers under three sub-entries of entry 118 have to be subjected to regular assessment as per the provisions of the Act as if entry 118 does not exist and whatever the tax is assessed on such assessment under each of the sub-entries has to be aggregated and adjusted against the assessee's exemption limit. As per plain meaning of terms "tax leviable from specified manufacturer", actual liability of dealer to tax has to be worked out under the provisions of the Act or rules or notification other than entry 118 as per the existing state of events. Say for example, the goods manufactured by specified manufacturer is cooked food. The tax leviable on cooked food enjoys exemption under entry 3 of Schedule u/s 49(2) relating to transaction below a particular limit. Therefore, while finding out the tax leviable from a specified manufacturer but for exemption under entry 118 from the total turnover of cooked food, the taxable events which are exempt under said entry 3 has to be excluded. If we read the condition 1 in its plain expression, it cannot be said that if assessment has to be made without reference to entry 118 from the total turnover of the assessee, such exempted sales will not be excluded to find out the tax liability of the assessee on his turnover. Or a dealer manufacturers a product which has been included in

Schedule I of the Act u/s 5 of the Act, sales of such goods does not not result in any tax leviable from the dealer. Can it be said that for the purpose of working out the exemption availed under entry 118, such sales be treated as taxable and hypothetical tax liability of dealer in respect of such sales will have to be assumed to have arisen for the purpose of entry 118. To accept such plea will be to strain the language used in the notification and to read something like to compute tax leviable from specified manufacturer as if the same is subject to tax notwithstanding any other provisions of the Act and notwithstanding any provisions relating to determining taxable turnover of such dealer. As noticed above, such an interpretation of statute at any stage of interpretation is not permissible. It will be straining the plain meaning to restrict the operation of an exemption on the assumed intendment spelt out not from words used by the author of the scheme but with one's own view. If that be so, there cannot be any reason to consider that where an assessee has sold goods to other registered dealer for whom the assessee's goods constitute raw material or processing material or consumable stores or packing material and who may be a recognised dealer furnishes a declaration under sec. 13 to his vendor, sales to him is deductible from taxable turnover under sec. 7(iii). While computing the tax liability of such seller effect would have to be given to these provisions operation of which have not been excluded under any of the conditions incorporated in entry 118 or for any other reasons. The question is not of enhancing the limit of exemption nor of giving any double benefit. The question is, once limit of exemption is given, how that milestone of exemption is reached. If the mode for arriving at that milestone has been prescribed to be "as per the tax liability arising for the assessee" in respect of the assessee's turnover or his vendor's turnover, as the case may be, the question of determining such liability can only be under the provisions of the Act for regular assessment of such liability and no other. No specific mode of assessment can be envisaged or invented for the purpose of working out the exemption. There is no room for any intendment or considering giving extended meaning to the exemption scheme. One fails to appreciate the argument that this would result in enhancing the exemption limit. We have not been able to comprehend how the process of finding tax liability of assessee in a regular manner and set off the same against existing limit upto which a dealer can avail exemption to which has been found entitled to can result in enhancing of exemption limit. As a matter of fact accepting contention of revenue would result in assuming income tax leviable from the assessee than it would have been leviable from him but for exemption under entry 118 for which there is no warrant anywhere in the scheme or exemption as was in force at the relevant time. Unless any specific mode is prescribed for calculating the exemption availed for the purpose of computing the exemption availed liability of tax arising under the Act will have to be determined in accordance with the provisions of the Act according to existing facts and not by assuming facts to the contrary. It cannot be said that anything in excess thereof has been availed as exemption by the specified manufacturer. The question of availing exemption in excess thereof under the scheme simply would

not arise.

23. It has been urged, notwithstanding this clear import of the general condition No. 1 appended to entry No. 118, the operation of it in the manner noticed above would render sub-entry (2) otiose, an argument which has also been noticed by the Tribunal with favour. We do not find any such consequence so as to import any ambiguity in the expression used in the notification. What has been exempted under sub-entry (2) is the sales of raw materials by a registered dealer to a specified manufacturer and not the purchases made by a specified manufacturer. We may first notice the provision as to taxability on purchases made from a registered dealer under the provisions of the Act. In ordinary course when a registered dealer sells raw materials, processing materials, consumable stores or packing material to another registered dealer, he is liable to pay sales tax over his sales and it becomes part of the cost of the purchaser. Purchaser is not concerned with the sales made by the vendor registered dealer and his liability. However, if the purchaser does not want to burden his purchases with tax liability which his vendor may be subjected to and which he is entitled to recover from the buyer, he may obtain a recognition certificate under sec. 32 of the Act. That entitles him to issue a certificate to selling dealer as per rule 24 of the Gujarat Sales Tax Rules 1970. Section 7 sub-sec. (iii) provides that ""there shall be levied a sales tax on the turnover of sales of goods specified in Part A of Schedule II at the rate set out against each of them in column 3 thereof, but after deducting from such turnover sales of goods, or resales of goods to which clauses (i) and (ii) do not apply to a recognised dealer or to a commission agent holding a permit who purchases on behalf of a principal, who is a recognised dealer, upon such dealer or commission agent as the case may be, furnishing in the circumstances and subject to the conditions specified in sub-clause (B) and item (ii) of sub-clause (C) of section 13, a certificate as provided therein." That is to say, on giving a certificate in the form prescribed under the rules in the manners specified in sec. 13, the sales of such goods to a registered dealer do not carry the incidence of tax. When such vendor does not carry the incidence of tax as a result of operation of sec. 7, correspondingly, the purchaser registered dealer is subject to liability of purchase tax under sec. 15A. However, it is to be seen that while sales are subject to tax at rate specified in Schedule II, purchase tax to which the recognised dealer becomes liable under sec. 15A is subject to tax at a much lower rate. But for sub-entry (2) read with its conditions in the absence of the tax leviable from a specified manufacturer would have been purchase tax leviable under sec. 15A if specified manufacturer was free to hold recognition certificate and if the transaction was otherwise taxable. By inserting sub-entry (2) with a condition denuding a specified manufacturer of his status as a recognised dealer by prohibiting him from holding a recognition certificate under sec. 32 and taking away his option to furnish form under rule 24, he is precluded from making his purchases, free of vendor's sales tax liability thereon. Since this tax liability at a higher rate has been envisaged to be aggregate for the purpose of adjustment against exemption limit, sub-entry (2) has been made

under entry 118 by denuding the specified manufacturer of his status as recognised dealer and benefit of purchasing raw materials etc. without payment of tax subjecting himself to liable to pay tax at lower rate but at the same time exempting the same also from the payment of tax under entry 118 only so as to make it part of aggregation to be made for the purpose of adjustment against exemption limit. Thus, for the purpose of finding the tax to be adjusted against the exemption limit, tax leviable in all the transactions envisaged under entry Nos. 1, 2 and 3 has to be taken in accordance with the provisions of the Act and the aggregation of tax liability assessed is to be adjusted against the exemption limit. In fact, sub-entry (2) has been inserted only for the purpose of providing a mode of computing "tax leviable from" specified manufacturer different from the one under the Act insofar as it relates to purchases of raw materials made by him from another registered dealer by envisaging that only one state of affairs as to taxability exists in the case of a specified manufacturer purchasing raw material, processing material, consumable stores or packing material from registered dealer and exclude operation of sec. 15A on purchases made by specified manufacturer. It can neither be said that it was not required to be there nor can it be said that the operation of condition 1 by subjecting the turnovers to regular assessment without reference to entry 118 would render any part of entry No. 118 nugatory or otiose. Sub entry (2) can be rendered otiose only if the sales tax payable by the vendor under sub entry (2) is excluded from computation, by not treating the same to be liability of tax leviable from the specified manufacturer.

24. This may be viewed from another point of view. With effect from 23.12.86 entry 175 was inserted granting exemption to purchases of raw materials from unregistered dealer, sales of raw materials etc. by a registered dealer to a specified manufacturer and sales by specified manufacturer of goods manufactured by him. Unlike entry 118 which was governing the computation of tax for the period in question it is specifically provided in condition 9 attached to entry "as sales of the specified manufacturer are wholly exempted as per the sub-entry (3) of this notification, deduction against any of the certificate u/s 12 or 13 or other entries of the notification issued under sub-sec.(2) of sec. 49 of the Act, shall not be granted." This is another piece of specific legislation having no surrounding ambiguity leading to a different conclusion. Where entry 175 governs the benefit of computing exemption, there is no difficulty in accepting the plea of revenue that for the purpose of computing exemption and tax liability to be set off in terms of entry 175 during the operation of exemption limit and the period of exemption with effect from the date entry 175 has been inserted the sales of a specified manufacturer though may have been covered by the certificates under sec. 12 or 13 or other entries of the notification shall not be deducted from taxable turnover for the purpose of computing exemption enjoyed. This is far from saying that notwithstanding this condition being not there under entry 118, the same should be read for the purpose of interpreting general condition No.1 as suggested by learned counsel for the revenue and as

has been considered by the Tribunal. We are of the opinion that, where the language of general condition No.1 itself is clear, as we think it is, there was no room for referring to a subsequent subordinate legislation to give it a different meaning. The Tribunal has seriously erred in first searching for the intention of the scheme by referring to various clauses which determine the exemption limit and the object of granting exemption and then to take the exercise of interpreting the words employed in the notification in a strained manner, looking beyond what plain language conveyed in unambiguous manner. As pointed out earlier in our discussion, there is no room for searching for intention of the legislature dehors the words used by it and if the words used by it are clear and unambiguous, the plain meaning must be given effect to. In the case of ambiguity at the stage at which interpretational tools are to be employed namely the working out of exemption emanating from an exemption scheme which is to be applicable to assessee, it must be allowed its full play as per the ordinary meaning of the expression used under the scheme without trying to restrict it with the supposed intendment.

25. The law is also settled that if on plain reading a larger relief is granted on a subject, the same cannot be restricted merely on the ground that it results in obtaining a double advantage though, as will be presently seen, that the interpretation which has commended us does not result in any double advantage. On the contrary, if any other view is taken, it would result in creating two different classes with different advantage under the incentive scheme which was not even envisaged. Under Sales Tax Incentives envisaged under Resolution No. INC-1580-1766/PPD of Industries, Mines & Power Dept. dated 27.8.1980, vide its clause 6 to all industrial units eligible as per its terms had option to choose one of the two sales tax incentives (i) sales tax exemption incentive (ii) sales tax deferment incentive. Common feature apart from eligibility is that incentive under both the schemes is available to a maximum limit of amount fixed under it and such limit is to be fixed with reference to prescribed percentage of fixed capital investment in the case of new industrial undertaking or in case of expansion or diversification with reference to new investment in fixed assets and that a time limit is fixed within which such incentive is available. If a unit reaches the admissible amount before the time limit fixed, it will not be eligible for incentive thereafter. With these common conditions, it is for the eligible industrial unit to exercise option in writing before availing the incentive benefit. The eligibility and the conditions of tax advantage has been equally envisaged on the same basis in the case whether the assessee opts for deferment scheme or for exemption scheme. The extent of advantage offered in both the scheme is the same except that in one case the assessee collects the tax payable by him on the transactions, keeps it with him and hands over the same to public exchequer at a later stage at a point of time envisaged under the scheme without interest charge thereon whereas in the case of exemption scheme the assessee is not subjected to tax leviable on him and he cannot collect the same. In either case dealer enjoys benefit to the extent tax collected by him or tax leviable from him.

Assuming other factors to be same, result cannot lend to different extent upto which exemption is availed by the dealer on the basis of option exercised by him.

26. We may examine the issue from yet another angle. The assessee has either to accept a tax deferment scheme or exemption from tax payment. In case he opts for exemption, the assessee enjoys exemption from payment of tax altogether and he cannot collect the tax on taxable events until reaching exemption limit. However, in the case of deferment scheme assessee does not enjoy exemption from payment but merely enjoys the benefit of retaining the amount of tax collected by him on his turnover for eligible period and thereafter he has to hand it over to the public exchequer as per the installments contemplated under the scheme. Conditions which make a dealer eligible for benefit of incentive scheme are the same in either case. If he opts for deferment scheme, his regular assessment takes place and tax leviable from him is determined in accordance with provisions of the Act. But the same is not collected from him immediately. He is granted exemption only in respect of tax leviable and collected by him in accordance with regular assessments. Any benefit enjoyed by him during that period whether by way of permissible deductions from the taxable turnover or exemptions under various notifications, the same are duly taken into account and are not left out of consideration for the purpose of computing what is the amount of tax found to be paid by the assessee. That is the tax leviable from a specified manufacturer on his turnover without considering exemption under entry 118. It cannot be said that for the purpose of computing benefit under deferment scheme, tax leviable from the specified manufacturer on his sales would be different in the case of an assessee who has opted for deferment scheme than the one who has opted for tax exemption scheme by treating in the course of assessment turnover covered u/s 7(iii) differently. This will lead to a situation where benefit limit availed will differ in two cases in same set of facts concerning turnover of sales of specified manufacturer. The result emanating from accepting the Revenue's contention would be to make the two exemptions operating on the same plain differently in the case of two different assesseees in the manner of computing the adjustment of taxable income depending on exercise of their option, when there is no such foundation for different treatment in the scheme itself. That obviously cannot be the outcome of a fair and harmonious interpretation of a statute. On principle, unless there is clear provision, a construction which leads to such dichotomy has to be avoided.

27. As a result, we answer the question referred to us in the negative, that is to say, in favour of the assessee and against the Revenue, by holding that for the period in question the sales made against the certificate in Form No. 17-A and 19 after the date of receipt of exemption certificate under entry 118 of the Government Notification under sec. 49(2) of the Act or even before that date are not liable to be discarded and the provision applicable thereto would be required to be taken into consideration and tax liability in respect of such transactions has to be determined in accordance with the provisions of parent act requiring

computation of taxable turnover in accordance with law without reference to exemption under the scheme under entry 118.

There shall be no order as to costs.