**(1989) 12 P&H CK 0047**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 11162 of 1988

Chief Administrator, Faridabad Complex Administration — APPELLANT

Vs

Niky Tasha India (Pvt.) Ltd. and Others — RESPONDENT

**Date of Decision :** 18-12-1989

**Acts Referred:**
Faridabad Complex (Regulation and Development) Act, 1971 — Section 21

**Citation :** (1990) 78 STC 229

**Hon'ble Judges :** S.S. Sodhi, J

**Bench :** Single Bench

**Advocate :** H.L. Sibal and S.C. Sibal, for the Appellant; V.P. Arya, Senior Advocate, K.B. Bhandari, Pradeep Bhandari and C.M. Sharma, for the Respondent

**Final Decision :** Allowed

## Judgement

S.S. Sodhi, J.—The controversy here pertains to the exemption from payment of octroi claimed by Messrs. Niky Tasha India Private Limited, by virtue of the notification of 5th April, 1985 (annexure P-3), issued by the Governor of Haryana under Sub-section (3) of Section 21 of the Faridabad Complex (Regulation and Development) Act, 1971 (hereinafter referred to as "the Act").

2. Messrs. Niky Tasha India Private Limited is located in the area of the Faridabad Complex. It was registered as a small-scale industrial unit on 27th June, 1981. To begin with, the business of the company consisted of the assembling of gas stoves and the manufacture of gas stoves with electrical panels. Later, it took to the manufacture of electronic goods including television sets.

3. There is a tax payable on the entry of goods into the Faridabad Complex under the Notification of 7th April, 1972 (annexure P-1) issued by the Governor of Haryana under Clause 6 of Section 22 of the Act. The Schedule set out therein indicates the items leviable to tax and the amount and surcharge chargeable thereon. According to item 76 thereof, the octroi payable on "televisional apparatus and goods" being 2 paise per rupee with a surcharge thereon, which is

presently 100 per tent. The Faridabad Complex has been charging octroi at this rate from Messrs. Niky Tasha since more than four years now.

4. Exemption from payment of octroi was, however, later granted to industrial units set up in the Faridabad Complex, fulfilling the conditions laid down in the subsequent notification issued by the Governor of Haryana on 5th April, 1985 (annexure P-3) under Sub-section (3) of Section 21 of the Act. It is the case of Messrs. Niky Tasha that in terms of this notification, it is entitled to exemption from payment of octroi on electronic goods and the television sets manufactured by it. Its requests for such exemption, were, however, declined by the Administrator, Faridabad Complex Administration, first by his letter of 30th July, 1985 (annexure P-4) on the ground that as their capital investment was more than Rs. fifty lakhs, no exemption could be granted to them and again, by his letter of 31st August, 1985 (annexure P-5) on the additional ground that their unit had not been set up or come into production on or after 1st November, 1983. Aggrieved by these orders, Messrs. Niky Tasha went up in appeal to the Commissioner, Ambala Division, who, by his impugned order of 18th August, 1988 (annexure P-6) not only upheld the claim of Messrs. Niky Tasha for the exemption claimed, but also directed that they would be entitled to refund of the octroi paid along with interest at the prevailing bank rate from the date of the deposit of the octroi amount till the date of the actual refund of it by the Faridabad Complex Administration. It is the correctness and legality of this order which is now under challenge, in this petition under Article 226 of the Constitution of India.

5. The main and significant question that thus falls for determination is whether Messrs. Niky Tasha are in terms of the Notification of 5th April, 1985 (annexure P-3) entitled to exemption from payment of octroi on components brought into the Faridabad Complex for manufacture by it of electronic goods and television sets.

6. A reference to the Notification of 5th April, 1985 (annexure P-3) would show that exemption from payment of octroi has been granted to industrial units falling in the categories mentioned therein, namely, industrial units :

(a) in the backward area of Faridabad where their capital investment is up to Rs. one crore ; and

(b) in any other part of the Faridabad Complex where the capital investment is up to Rs. 50 lakhs.

7. Messrs. Niky Tasha is admittedly not located in any backward area of the Faridabad Complex and does not, therefore, qualify for exemption under the first category. Counsel for the respondent-company, however, sought to assert that its capital investment was less than Rs. 50 lakhs and adverted in this behalf to the letter of the General Manager, District Industries Centre, Faridabad of 24th March, 1988 (annexure R-3) wherein the investment of Messrs. Niky Tasha, on plant, and machinery has been shown to be of Rs. 31.56 lakhs. In dealing with

 

this matter, it would be pertinent to note that this estimate of "capital investment" does not include the price of the land. The term "capital investment" has been defined in the letter of the Secretary to Government, Local Government Department, Haryana of 17th February, 1977 (annexure P-7), in the context of exemption from payment of octroi granted to industrial units. According to this letter, "capital investment" would comprise investment on land, building, plant, machinery and equipment including the cost of carriage, erection and installation thereof. Calculated on this basis, counsel for the respondent was unable to show how Messrs. Niky Tasha could be said to have a "capital investment" of less than Rs. 50 lakhs. Indeed, according to the certificate of the respondents'' chartered accountant, now placed on record, by the counsel for the petitioner, the "capital investment" of Messrs. Niky Tasha, which includes the price of the land, is over Rs. 62 lakhs.

8. Faced with this situation, Mr. V.P. Arya, counsel for Messrs. Niky Tasha sought to press in aid the claim for exemption under Clause 6 of the Notification of 5th April, 1985 (annexure P-3) which reads :

"6. All the new industrial units set up within the Faridabad Complex for capital equipment, building material and raw material for a period of five years."

"New industrial units" have been defined in the explanation given thereunder as--

"The new industrial units means the industrial units which have been set up or have come into production on or after 1st November, 1983".

The case sought to be set up on behalf of Messrs. Niky Tasha being that though it had started its industrial activity in the Faridabad Complex, earlier by establishing a factory for the manufacture of gas stoves, for which a certificate of registration had been issued to it by the Department of Industries, Haryana on 27th June, 1981, registering it as a small-scale industrial unit for the manufacture of gas stoves and gas stoves with electrical panels, this registration was valid only and specifically for the factory located at plot 38, Sector 6, Faridabad. Later in 1983, it acquired a new premises at plot 36, Sector 6, Faridabad where it established its new industrial unit for the manufacture of television sets. This new television manufacturing unit went into production in December, 1983 and on applying for the registration of this unit, the Department of Industries made an endorsement on 2nd December, 1983, on its earlier certificate of registration of 27th June, 1981. This new industrial unit was thus set up and it went into production after 1st November, 1983 and consequently it became entitled to exemption from payment of octroi under Clause 6 of the Notification of 5th April, 1985 (annexure P-3).

9. The contention raised though attractive on the face of it cannot, however, stand scrutiny as a reference to the letter of Messrs. Niky Tasha of 10th November, 1983 (annexure P-8) to the Regional Director, Employees State Insurance Corporation would show that the date of the starting of the factory/ establishment, as mentioned by it there, was 3rd October, 1983. Besides this, it

must be appreciated that Messrs. Niky Tasha is but one entity and will remain so even when it extends its manufacturing activities to taking on new items for manufacture. In other words, by merely adding such new items for manufacture the identity of the company or the industrial unit known as Messrs. Niky Tasha does not change. Exemption is thus clearly not available to it even under Clause 6 of the notification (annexure P-3).

10. Turning now to the impugned order of Shri B.D. Dhalia, Commissioner, Ambala Division, of 18th August, 1988 (annexure P-6), this indeed makes sad reading, inasmuch as, when called upon to deal with the contentions raised regarding the entitlement of Messrs. Niky Tasha to the exemption claimed under the Notification of 5th April, 1985 (annexure P-3), the appellate authority proceeded to observe :

"....The best person/authority to interpret any law/notification is the person/ authority who issues the notification or frames the law. Because it is this authority who has the full knowledge of the background of bringing out the notification/legislation and its purpose and objectives it intends to achieve through the notification/legislation......"

and declined therefore either to go into the arguments raised by the parties or to arrive at his own conclusion and instead proceeded to decide the appeal in favour of Messrs. Niky Tasha solely on the ground that the State Government in the concerned department, after examining the issue, had reached the conclusion that it was entitled to the exemption claimed. This cannot but be branded as a wholly unwarranted abdication of judicial functions. Such an approach must reflect adversely upon the legal acumen of the officer called upon to discharge judicial or quasi-judicial functions. The impugned order of the Commissioner, Ambala Division (annexure P-6), is thus clearly contrary to law and cannot, therefore, be sustained and is accordingly hereby set aside.

11. No exemption from payment of octroi in terms of the Notification of 5th April, 1985 (annexure P-3) is consequently available to Messrs. Niky Tasha. This writ petition is, for these reasons, hereby accepted with costs. Counsel fee Rs. 1,000.