
(2000) 05 RAJ CK 0031

In the Rajasthan High Court

Case No : Sales Tax Revision No. 669 of 1999

Commercial Taxes Officer

APPELLANT

Vs

Aditya Cement

RESPONDENT

Date of Decision : 24-05-2000

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 7(2B)

Citation : (2001) 121 STC 113 : (2000) 2 WLN 384

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sagar Mal Mehta, A.G., S.S. Bhandawat, A.A.G. and Sanjeev Johari, for the Appellant; Shanti Bhushan Rajendra Mehta, Pradeep Agrawal and M.L. Patodi, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—This revision is directed against the judgment dated May 21, 1998 passed by the Rajasthan Tax Board, Ajmer, whereby the respondent-assessee was held entitled to enjoy the benefit of deferment of payment of tax under the Rajasthan Sales Tax New Deferment Scheme, 1989 (for short "the Scheme of 1989") up to the limit of 90 per cent of its tax liability as a new very prestigious unit instead of 50 per cent of its tax liability as sanctioned by the State Level Screening Committee.

2. The facts necessary for the purposes of this revision petition briefly stated are : that the respondent-assessee established a new industrial unit for the manufacture of cement at Shambhupura in District Chittorgarh. In this unit, the fixed capital investment is over Rs. 100 crores. It has been established in a Panchayat Samiti area, which is outside tribal sub-plan area. It commenced its commercial production on March 28, 1995. Therefore, it falls in the category of "new very prestigious unit" as defined in paragraph (ii) of Clause 2(i) of the Scheme of 1989.

3. In the first instance, the State Level Screening Committee, vide its letter dated October 6, 1995, conveyed its decision dated September 1, 1995 that the respondent-assessee is eligible for the benefit of exemption from tax under Sales Tax Incentive Scheme, 1989, in the Central Sales Tax Act and deferment of tax under the Scheme of 1989 under the Rajasthan Sales Tax Act on the basis of a new very prestigious industrial unit on the sale of cement. In pursuance of the above finding, the Joint Director of Industries directed the Assistant Commercial Taxes Officer, IInd COR, Chittorgarh, to issue eligibility certificate to the respondent-assessee. It was also informed to the Assistant Commercial Taxes Officer that the eligible fixed capital investment was stated to be, subject to verification, Rs. 1,86,90,47,040.

4. In compliance of the above direction, the Assistant Commercial Taxes Officer issued the eligibility certificate dated October 31, 1995 to the respondent-assessee certifying that the new industrial unit of the respondent-assessee is entitled to enjoy benefit of deferment of tax up to the limit of 50 per cent of its tax liability as per the Scheme of 1989.

5. Thereafter, the respondent-assessee moved a rectification application for increase of its incentive benefit limit from 50 per cent to 90 per cent of its tax liability in terms of the criteria laid down in annexure C appended to the Scheme of 1989. The said application was rejected by the Assistant Commercial Taxes Officer vide its order dated May 21, 1997.

6. The respondent-assessee challenged the order dated October 31, 1995 as also the order dated May 21, 1997 by way of filing an appeal before the Rajasthan Tax Board, Ajmer. The Rajasthan Tax Board, Ajmer, vide its order dated May 21, 1997 allowed the appeal filed by the respondent-assessee holding that the Assistant Commercial Taxes Officer has erred in restricting the benefit of deferment of tax under the Scheme of 1989 up to the limit of 50 per cent of the tax liability considering the new industrial unit of the respondent-assessee to be a large scale unit and not a "new very prestigious unit". It directed the Assistant Commercial Taxes Officer to issue a new eligibility certificate by rectifying the quantum of eligible amount of deferment to be 90 per cent of the tax liability under item 5 of annexure C appended to the Scheme of 1989.

7. It is contended by Mr. S.M. Mehta, the learned Advocate-General appearing on behalf of the petitioner, that as per the Scheme of 1989, all large scale industrial units engaged in manufacturing of cement were ineligible for any benefit under the Scheme of 1989 in view of item No. 10 of the annexure B appended to the Scheme of 1989 containing the list of industries not eligible for sales tax deferment under the New Deferment Scheme. By S.O. No. 354/F-4(8) FD/Gr. IV/91-121 dated March 6, 1991, second proviso was inserted to Clause 2(j) of the Scheme of 1989 ; which remained in force until the date of commencement of commercial production by the respondent-assessee. It was on March 6, 1991, second provisos to Clause 2(j) and Clause 4 were inserted but no amendment was brought in annexure C, providing quantum of benefits enjoyable by the

eligible industries under the scheme according to different classifications and subject to conditions made thereunder.

8. No amendment was made in annexure B the list of ineligible industries for sales tax deferment under the New Deferment Scheme until December 13, 1996. Therefore, the extent of relaxation granted and the benefits extended in the case of large scale cement industries of all sorts must be confined to the benefits extended by the two provisos [second proviso to Clause 2(j) and second proviso to Clause 4 of the Scheme of 1989] which were introduced simultaneously.

9. It was also urged that vide notification dated June 13, 1994 with effect from June 15, 1994, the limit of exemption that could be claimed by a large scale cement plant outside tribal sub-plan area, having fixed capital investment of Rs. 100 crores or more was fixed at 50 per cent of the tax liability. Therefore, as on the date the respondent-assessee commenced its commercial production, it was not entitled to get the benefit except what was provided under second provisos to Clause 2(j) and 4 of the Scheme of 1989. The general provisions contained in annexure C appended to the Scheme of 1989 are applicable to all classes of eligible industrial units generally, which do not fall within the list of ineligible industries for sales tax deferment under the scheme and, therefore, those provisions contained in annexure C will not govern the case of large scale cement industries.

10. It was further pointed out by the learned Advocate-General that if the large scale industries as defined in Note 1 appended to Clause 2(k) of the Scheme of 1989 is taken to be distinct and different from "new very prestigious unit" from other kind of new industrial units specified in Clauses 2(h)(i) and (ii) of the Scheme of 1989, in that event the cement industries which fall in the category of "pioneering unit", "prestigious unit" and "very prestigious unit" will not fall in the eligibility criteria at all. It is only by taking a liberal construction of the scheme that the prestigious units or very prestigious units which necessarily falls in the definition of the "large scale" industrial units also having the project cost exceeding Rs. 5.00 crores, that such benefit can be extended to it. Therefore, a new industrial unit known as very prestigious unit by itself will not be entitled to any benefit, except as a large-scale industry.

11. It has been contended by Mr. Shanti Bhushan, learned counsel appearing for the respondent-assessee, that a new very prestigious industrial unit has been treated for conferring special benefits under the scheme than for the new industrial unit simpliciter under the Scheme of 1989. Once second proviso to Clause 2(j) of the Scheme of 1989 was inserted with effect from June 3, 1991, all large scale new industrial units established anywhere in the State of Rajasthan outside sub-plan area also and not established in banned area would fall outside the purview of the list of industries not eligible for sales tax deferment under the New Deferment Scheme (annexure B) appended to the Scheme of 1989 and all the provisions of the Scheme of 1989 became applicable to it. So far as reference to large scale new cement plants in second proviso to

Clause 2(j) of the Scheme of 1989 is concerned, there is no disagreement between the learned counsel that it includes all new industrial units falling under the category of large scale cement plants. However, the issue is joined in construing Clause 4 of the Scheme.

12. It is contended by Mr. Shanti Bhushan, learned counsel appearing for the respondent-assessee, that once Clause (4) of the Scheme of 1989 is made applicable to large scale new cement plants, all large scale cement new plants shall be governed by substantive Clause 4(a) of the Scheme of 1989 for being conferring benefits in accordance with the parameters incorporated in annexure-C appended to the Scheme of 1989. Had the second proviso to Clause 4(a) not been inserted, the effect of insertion of second proviso to Clause 2(j) would manifestly be that large scale cement plants corresponding to the definition of "new very prestigious unit" shall be eligible to the benefit of deferment of tax to the extent provided in Clause (5) of annexure C which is indubitably applied to all new prestigious units. By this Clause (5) of annexure C, new very prestigious units are made entitled to deferment, of 90 per cent of the total tax liability, of course subject to the maximum deferment of 100 per cent of the fixed capital investment to be available during a period of 11 years. Since second proviso to Clause 4(a) only restricts the extent of percentage of deferment of tax to 50 per cent in the case of large scale cement industries instead of 75 per cent in the case of new units generally and does extend to the new very prestigious units, the restriction imposed by second proviso to Clause 4 of the scheme on the operation of the substantive provision as a result of insertion of second proviso to Clause 2(j) of the scheme cannot be given extended meaning to include the restrictive provision to be applicable to new prestigious units as well.

13. The contention was buttressed on principle that a provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision. The object of granting exemption from payment of sales tax has obviously been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State.

14. In reply, Mr. S.M. Mehta, the learned Advocate-General, urged with equal emphasis that the provisions of the tax exemption scheme are to be strictly construed and unless a person strictly falls within the four corners of exemption, the benefit of doubt must go to revenue.

15. So far as the principle to which reference has been made by the learned counsel, I do not find any serious dichotomy between the two. In the matter of taxing statutes, the principle appears to be well-settled. Since every matter of taxation puts a burden on the tax-payer, the normal rule is that the provision of taxing statute levying charge should be strictly construed. Unless the charge strictly falls within the charging provision, no person can be subjected to levy of

tax. Ordinarily the burden of proving that tax is leviable is strictly within the four corners of taxing statute is on the revenue vested with the task of implementing the taxing statute. The accepted rule of constructive law is that benefit of doubt is to be resolved in favour of subject. However, once a person is brought within the four corners of the levy, full effect must be given to the provision of the taxing statute so as to bring home the charge in accordance with the provisions of the Act. It is equally true that every exception or exemption from the charge to which a person is subjected to, puts an additional burden on the remaining subjects and objects of the tax to make good the deficiency of revenue. Therefore, like before a person is subjected to levy, he must be strictly brought within the four corners of the levy before a person, who is otherwise subjected to charge, is held entitled to any exemption or exception, such exception must strictly be construed before a person is allowed to enter the field of exemption/exception. Here the benefit of doubt in construing the statement goes in favour of the Revenue. However, once a tax-payer or tax incident enters the field of exception or exemption, the rule of liberal construction governs in interpreting the exemption so as to effectuate the purpose for which the exemption is granted. In both the fields, the rule of construction is the same. Ultimately, in the case of levy, before a tax-payer is subjected to levy, the provision of taxing statute must be strictly construed so as to bring a person within the net of the charge. So also once a person is subjected to levy, the provision of exception or exemption therefrom must be strictly construed so as to take away the person outside the purview of the charge. However, where a person is subjected to exemption, the benefit of any doubt in the construction of the statute or the provision about the extent of the scope of such exemption ought to be resolved in favour of the subject where there is a room for two opinions. However, where there is no room for two opinions and reasonably only one conclusion can be reached, there is no room for operation of the aforesaid rule of liberal or strict construction.

16. The well established rule in the oft quoted words of Lord Wensleydale [Re Micklethwait (1855) 11 Exch. 452] is :

"The subject is not to be taxed without clear words for that purpose ; and also that every Act of Parliament must be read according to the natural construction of its words."

17. The principle was restated by the House of Lords in the opinion of Lord Halsbury in *Tennant v. Smith* [1928] AC 150 and of Lord Simonds in *St. Aubyn v. Attorney-General* [1951] 2 All ER 473.

18. Lord Cairns in *Partington v. Attorney-General* [1869] LR 4 HL 100 stated the principle thus :

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject

within the letter of the law, the subject is free, however, apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute."

19. These principles were consistently accepted by the courts in India. In *A.V. Fernandez Vs. The State of Kerala*, it was stated :

".....in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the 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 tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter."

20. While dealing with construing exemption or concession provision in *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, it has been observed :

"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."

21. The Supreme Court in *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, said :

"It appears to us the true rule of construction of a provision as to exemption is one stated by this Court in *Union of India and others Vs. M/s. Wood Papers Ltd. and another*,

22. It was again stated in *Bombay Chemical Pvt. Ltd. Vs. Collector of Central Excise, Bombay I, Bombay*, in which though no reference has been made to the aforesaid two decisions, that the test of strict construction of exemption notification applies at the entry, that is, whether a particular goods are capable of falling in one or the other category but once it falls within the category then the exemption notification has to be construed broadly and widely. That was a case under the Central Excises and Salt Act, 1944.

23. In *Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*, the court reiterated the views expressed in *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, and *Union of India and others Vs. M/s. Wood Papers Ltd. and another*, and stated 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 and 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.

24. The principle was again reiterated in State Level Committee and another Vs. M/s. Morgardshammar India Ltd.,

25. However, this discussion need not detain us any longer inasmuch as the principle of liberal or strict construction arises only in a case where there is ambiguity in the provision but where there is no ambiguity in the meaning that can be assigned to the provision, the question of invoking liberal or strict construction really does not at all arise. It is also true that we are considering third stage of question, viz., subject of levy is not in dispute and entry of the dealer to the portals of exemption too is not in dispute. Dispute is only about the extent to which the dealer is entitled to avail the tax exemption/deferment benefit. Therefore, before taking all this exercise of liberal or strict construction of the exemption notifications, we must look into the provisions as they are existing in the context in which they have been set in and to find out whether they lead to only one conclusion and leave no room for invoking the principle of liberal or strict construction of the statute or there is a room for invoking such a principle.

26. The court in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, (S said that the choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. There is no caveat to above principles in large number of precedents cited on both sides. The question in each case required consideration for applying above principles of construction which necessarily need be scanned in the light of facts and circumstances established in each case and cannot be imported as strait-jacket into another case.

27. In the instant case, the controversy centres around firstly the effect of insertion of second provisos to Clauses 2(j) and 4(a) of the scheme ; and secondly whether the term "large scale industry" can be assigned different meaning for the purposes of second provisos to Clauses 2(j) and 4(a) of the Scheme of 1989 ?

28. Here, it would be appropriate to notice the relevant provisions of the Scheme of 1989. In exercise of the powers conferred by Section 7(2B), Rajasthan Sales Tax Act, 1954, the State Government notified the "Sales Tax Deferment Scheme"

which, inter alia, provided the benefit of deferment of the payment of tax on sales made by the industrial units within the State of the goods manufactured by them within the State by linking the benefit with the fixed capital investment in the manner and to the extent and for the period as specified in the said notification. The salient features of the scheme are that for the purpose of extending the benefit of deferment of payment of tax under the Scheme of 1989, the industrial units were classified, in the first instance, in the category of "new industrial unit", "sick industrial unit", "expansion" and "diversification" respectively in Clauses 2(a), (b), (f) and (g) of the Scheme of 1989. For the purpose of identifying for different level of exemption, the new industrial units were further classified while linking the benefit available under the scheme with the fixed capital investment as small-scale unit, medium scale unit and large scale unit in the note appended to Clause 2(k) of the Scheme of 1989. Clause 2(k) of the Scheme of 1989 specifically provides that in order to avail of the facility available under the "New Deferment Scheme", the applicant industrial unit will have to obtain sanction from the State or District Level Screening Committee, as the case may be. Note (1) appended to Clause 2(k) of the Scheme of 1989 classifies the scales of unit on the basis of the fixed capital investment as under :

"Notes.--1(a) Small-scale unit means a unit of which the investment in plant and machinery does not exceed rupees sixty lakhs.

(b) Medium scale unit means a unit of which the project cost does not exceed rupees five crores.

(c) Large scale unit means a unit of which the project cost exceeds rupees five crores."

Apart from classifying the industries into the small-scale industry, medium scale industry and large scale industry on the basis of fixed capital investment, which was the primary object to give effect to the declaration made in the preface of the notification dated July 6, 1989 that benefit will be available only if it is linked with fixed capital investment in the manner and to the extent and for the period as covered by this notification.

29. Thus, it is clear that at the relevant time when the new industrial unit of the respondent-assessee came into existence, as per the Scheme of 1989, the small-scale unit was one in which investment in plant and machinery was not exceeding rupees sixty lakhs and the medium scale unit was one in which the project cost was not exceeding rupees five crores. Similarly the large scale unit was one in which the project cost was exceeding rupees five crores. While classifying small-scale unit, the investment only in plant and machinery was to be taken into consideration and not the entire project cost but however, for the purpose of classifying units as medium scale unit and large scale unit, investment in entire project cost was to be taken into consideration. From the note reproduced above, it is clear that all units having whole project cost above

Rs. 5 crores are categorised as large scale industrial unit.

30. The above definition "eligible fixed capital investment" goes to show that the total project cost is different from investment in new plant and machinery and land. For the purpose of sanctioning the scheme and quantifying the fixed capital investment, so that the benefit available under the scheme may be linked with a new industrial unit, in addition to the above general classification, new industrial units have been further classified into three specific categories, viz., "pioneering unit", "prestigious unit" and "very prestigious unit" in Clause 2(h), (i) and (ii) of the Scheme of 1989, which reads as under :

"2(h) "Pioneering unit" means the first "new industrial unit" established in any panchayat samiti of the State during the period of this scheme in which investment in fixed capital exceeds Rs. 3.00 crores and the minimum permanent employment is 100 persons.

(i) "Prestigious unit" means a "new industrial unit" first established in any Panchayat Samiti of the State during the period of this scheme in which investment in fixed capital exceeds Rs. 10.00 crores with a minimum permanent employment of 250 persons or a "new industrial unit" having a fixed capital investment exceeding Rs. 25.00 crores and with a minimum permanent employment of 250 persons or a new electronic industrial unit having fixed capital investment exceeding Rs. 25.00 crores.

(ii) "Very prestigious unit" means a "new industrial unit" first established in any panchayat samiti of the State during the period of this scheme in Which investment in fixed capital is Rs. 100 crores or more. However, the progressive investment of the amount of project cost as appraised by the financial institution reaches or crosses the point of Rs. 100 crores, during the operative period of the scheme, the unit shall acquire the status of a "very prestigious unit" for the purpose of claiming enhanced proportionate benefits under this scheme."

31. The aforesaid three definitions makes it abundantly clear that the object and the purpose behind each of the category of new industrial unit is different. In pioneering unit, the criteria is investment over Rs. 3.00 crores and permanent employment of minimum 100 persons and further its establishment in any Panchayat Samiti. The criteria which brings a new industrial unit within the category of Prestigious unit is first establishment in any Panchayat Samiti of the State and during the period of this scheme in which investment in fixed capital exceeds Rs. 10 crores with a minimum permanent employment of 250 persons. A new electronic industrial unit having fixed capital investment exceeding Rs. 25.00 crores with a minimum permanent employment of 250 persons also falls within the category of Prestigious unit. On the other hand, the criteria which may bring a new industrial unit in the category of "Very Prestigious Unit" is the minimum amount of investment to exceed Rs. 100 crores establishment of the new industrial unit in any Panchayat Samiti of the State and during the period of this scheme in which investment in fixed capital is Rs. 100 crores or more, brings

such large scale industry in the category of "New Very Prestigious Unit".

32. In addition to the above features of the scheme, the scheme further provided for "sick industrial unit", "eligible area", "banned areas" and "ineligible industries" in Clause 2(b)(c)(d) and (j) of the Scheme of 1989, which read as under ;

"2(b) "Sick industrial unit" means--

(i) an industrial unit which has incurred cash losses in two complete and consecutive financial years immediately preceding the commencement of this scheme or during the operative period thereof, and is likely to continue to incur cash losses in the next financial year and has an erosion on account of cumulative cash losses to the extent of 50 per cent or more of its net worth and being potentially viable is taken up by a Central or State level financial institution or a bank, under a programme of rehabilitation ; or

(ii) an industrial unit which is declared sick during the operative period of this scheme by the Board for Industrial and Financial Reconstruction under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and which is taken up by a Central or State level financial institution or a bank under a programme of rehabilitation ; or

(iii) a closed industrial unit which is taken over and sold during the operative period of this scheme to a new management by RIICO or RFC.

2(c) "Eligible area" means the area other than the banned areas.

2(d) "Banned areas" means the areas under--

(i) the Urban Agglomeration limits of Jaipur and Kota, and

(ii) municipal limits/UIT limits of all towns :

Provided that industrial units located on land duly converted by competent authority for industrial purposes or located in the industrial areas developed by co-operative societies/private sector or located in the industrial areas developed/financed by the State Government or its corporation and prestigious electronic unit, very prestigious electronic units and sick units as defined in Clause 2(b) and located anywhere in the State shall be eligible for deferment provided under this notification.

33. Clause 3 of the Scheme of 1989 deals with applicability of the New Deferment Scheme and relevant part of it reads as under :

"3. Applicability of the New Deferment Scheme.--The New Deferment Scheme will be applicable--

1. to new industrial units ;

2. to industrial units going in for expansion or diversification ; and

3. to sick units.

Explanations.--(I) The ineligible industries shall not be given any benefit under this notification.

(2).....

(3).....

(4)..... "

34. Explanation (1) appended to Clause 3 of the Scheme of 1989 makes it clear that ineligible industries shall not be given any benefit under this notification. With this background, if we look at item No. 10 of annexure B appended to the Scheme of 1989, which is relevant for the present purpose and was in operation at the time when the new industrial unit established by respondent-assessee came into existence and commenced its commercial production, we shall find that all cements including white cement plants except (a) those in the small-scale sector, (b) mini cement plants using vertical shaft kiln with a licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum, or mini cement plants using rotary kiln with a licensed capacity not exceeding 300 tonnes per day or 99,000 tonnes per annum ; and new industrial units in the Tribal sub-plan area find mention in the list of industries not eligible for sales tax deferment under the New Deferment Scheme, 1989.

35. In this background of the generality of the scheme, the bone of contention falls around the amendment introduced in the scheme by insertion of second proviso to Clause 2(j) and second proviso to Clause 4 of the scheme. It will be appropriate here to reproduce second proviso to Clause 2(j) and second proviso to Clause 4 of the Scheme of 1989 as they stood at the time the new industrial unit of the respondent-assessee commenced its commercial production, in extenso :

"2(j) "Ineligible industries" means the industries listed in annexure "B" to this notification, which will not be eligible for sales tax incentive.

Provided

Provided further that large scale new cement plants established, except in tribal sub-plan area, shall be entitled to deferment of tax as provided in Clause 4 of this notification.

4. Deferment of tax on sales.--(a) An industrial unit, which is granted eligibility certificate under this notification shall be entitle to defer the payment of tax on sales made within the State of the goods manufactured by it in accordance with the parameters incorporated in annexure "C" to this notification.

Provided.....

Provided further that mini cement plants using vertical shaft kiln with licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum or mini cement plants using rotary kiln with the licensed capacity not exceeding 300

tonnes per day or 99,000 tonnes per annum, shall be entitled to claim deferment of tax to the extent of 50 per cent of their tax liability under the Act and the large scale cement plants established, or expansion thereof, except in the tribal sub-plan area, shall be entitled to claim deferment of tax to the extent of 25 per cent of their tax liability under the Act with all other restrictions applicable to an industrial unit as provided in annexure "C". In case of large scale cement units having an Investment of Rs. 100 crores or more and located in non-tribal sub-plan areas, the deferment of tax shall be 50 per cent of their tax liability under the Act with all other restrictions applicable to an industrial unit as provided in annexure C.

36. Proviso 2 to Clause 4 as it existed on the date immediately before proviso to Clause 2(j) was inserted read :

"Provided that mini cement plants using vertical shaft kiln with a licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum, or mini cement plants using rotary kiln with a licensed capacity not exceeding 300 tonnes per day or 99,000 tonnes per annum may be entitled to claim deferment from tax to the extent of 50 per cent of its tax liability under the Act with all restrictions applicable to an industrial unit as provided in annexure C."

37. Proviso 2 to Clause 4 which became operative as a result of simultaneous amendment in Clause 2(j) and 4 on March 6, 1991 reads as :

Provided further that mini cement plant using vertical shaft kiln with licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum or mini cement plants using rotary kiln with the licensed capacity not exceeding 300 tonnes per day or 99,000 tonnes per annum, shall be entitled to claim deferment of tax to the extent of 50 per cent of their tax liability under the Act ** (and large scale cement plants established, except in the tribal sub-plan area, shall be entitled to claim deferment of tax to the extent of 25 per cent of their tax liability under the Act) with all other restrictions applicable to an industrial unit as provided in annexure "C" (** Inserted by notification dated March 6, 1991).

38. Ordinarily the rule of construction is that when the Legislature uses some word in different parts of the sections or statute, there is a presumption that the word is used in the same sense throughout unless this presumption is misplaced by the context. The principle was stated by the Supreme Court in *Bhogilal Chunilal Pandya Vs. The State of Bombay*,

"Words are generally used in the same sense throughout in a statute unless there is something repugnant in the context."

39. It was reiterated in *Raghubans Narain Singh v. Uttar Pradesh Government* AIR 1967 SC 465 :

"It is well settled rule of construction that where the Legislature uses the same expression in the same statute at two places or more than the same interpretation should be given to that expression unless context requires

otherwise."

40. In *Farell v. Alexander* [1976] 2 All ER 721, it has been succinctly said :

Where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning."

41. Applying this principle, the expression "the large scale cement plants established outside tribal sub-plan area" whether under second provisos to Clause 2(j) or Clause 4(a) of the Scheme of 1989 shall have to be assigned the same meaning as per note appended to Clause 2(k) of the scheme, a large scale unit means a unit having project cost of Rs. 5 crores or more. If large scale unit means in literal sense to be all units having project cost more than 5 crores then the same meaning ought to be assigned to expression used in second proviso to Clause 4(a), without further qualification. If large scale cement plants were to mean cement plants having more than Rs. 5 crores project cost except those falling in the class of pioneer, prestigious or very prestigious units, that expression in both proviso, must ordinarily carry the same meaning. In the latter case, assigning of that meaning obviously shall keep the specifically defined units outside the expression of large scale unit. That would make such specific units outside tribal area still ineligible. Obviously that could not be the legislative intent, nor such interpretation has been advanced by either of the parties so far as proviso to Clause 2(j) is concerned. Thus all cement plants having project cost of more than 5 crores of rupees which have been established outside the tribal plan area are covered by second proviso to Clause 2(j). Same meaning must ordinarily prevail under Clause 4(a) also.

42. That is so is further clear from the language used in second proviso to Clause 4(a) of the Scheme of 1989 which was in force at the time when the unit of the respondent-assessee commenced production. This proviso classified large scale cement plants for the purpose of extending the benefit of taking out of the list of ineligible industries to the extent envisaged under second proviso to Clause 2(j) of the Scheme of 1989, on the basis of the fixed capital investment. One category of large scale cement plant has been classified as a cement plant having project costs of over rupees five crores but not exceeding Rs. 100 crores, which otherwise does not fall, within the list of eligible industries under item No. 10 of annexure B. Another category of large scale cement plant is that having project costs of over Rs. 100 crores. Investment in fixed capital of Rs. 100 crores or more is directly related to classifying any large scale unit of that magnitude to be a very prestigious unit, which is primarily on the basis of the scale of investment. Therefore, as on the date, the respondent-unit commenced its commercial production it fell within the definition of large scale unit having project costs of over Rs. 100 crores and thus also fell to be governed by the second proviso to Clause 4(a) of the Scheme of 1989. That is on the anvil of assigning the same meaning to the same expressions used in two provisos. Admittedly in second proviso to Clause 2(j) a large scale cement plant has been used irrespective of its further classification into prestigious or very prestigious

unit to which category also, the large scale unit may belong. If they were to be considered as different classes of units for the purposes of this scheme then this will have to be accepted that the prestigious and very prestigious units have still not been included within expression "large scale unit" in the exception carved out from the ineligible industries under second proviso to Clause 2(j) of the Scheme of 1989.

43. It is of some significance that the expression used is not merely "large scale cement plant" but the expression used is further hedged by the expression "except in the tribal sub-plan area". This exception is to be read in the light of the entry No. 10 of the annexure B of the scheme which uses the same expression for the purpose of excluding "large scale cement plants of any sort established in the tribal sub-plan area" from inhibition of ineligibility to claim benefit under the Scheme. Therefore, it is not possible to assign in the first place on the basis of the language used in the two provisos different meaning for the purpose of the scheme.

44. The question then arises whether there is anything contrary in the context of the scheme which may lead us to consider the same expression in two provisos differently ? Having a close look at the scheme with its salient feature already discussed above and the legislative history of the treatment of cement industries under the scheme since its inception and the language used in second provisos to Clauses 2(j) and 4 of the scheme, we do not find any reason to come to a different conclusion.

45. So far as the context of the provisions of the Scheme of 1989 are concerned, we cannot lose sight of the fact that admittedly as on March 6, 1991, large scale cement new industrial units established outside the tribal sub-plan areas were not eligible for enjoyment of the benefit of Scheme of 1989. In fact, all cement plants including white cement plants were ineligible for getting benefit of the scheme except to the extent exclusion carved out in item No. 10 of the list of industries not eligible for sales tax deferment under the Scheme of 1989. By insertion of second proviso to Clause 2(j) of the scheme vide S.O. No. 354/F,4(8)FD/Gr. IV/91-121 dated March 6, 1991, the large scale new cement plants except in tribal sub-plan area were also made entitled to deferment of tax as provided in Clause 4 of the Scheme of 1989. Thus, it is clear that all cement plants still were not excluded as such from the list of eligible industries under the scheme and the same continued to be there. Therefore, one thing is clear that but for the proviso to Clause 2(j) of the Scheme of 1989, merely by dint of Clause 4 of the Scheme of 1989 or any other provision in the scheme, large scale cement units established in the State of Rajasthan outside tribal sub-plan areas would not enjoy any benefit. The second proviso to Clause 4 of the scheme restrict the extent of the benefit too to the large scale new industrial units. In the first instance without further classification, it is not that the scheme framing authority rest contented with the insertion of second proviso to Clause 2(j) of the Scheme but instead it simultaneously made provision in Clause 4 of the

Scheme also to provide extent of exemption to provide integral contextual link between the two.

46. In the context of the Scheme dealing with the cement plants, it would also be appropriate to refer to the legislative history in dealing with the extent of incentive/deferment Scheme to the cement plants in Rajasthan. The New Deferment Scheme, 1989 came into force while the Rajasthan Sales Tax Deferment Scheme, 1987 was already in operation. The Scheme of 1989 had extended the benefits to the same extent which were existing under the Scheme of 1987. However, the two schemes were simultaneously operating as is apparent from the fact that the New Deferment Scheme, 1989, has come into force with retrospective effect, i.e., with effect from March 5, 1987 (with effect from the date the earlier Scheme of 1987 was brought into operation). Under Clause 1 of the Scheme of 1989, any industrial unit being covered by the Rajasthan Sales Tax Deferment Scheme, 1989, has an alternative option to claim the benefit of the Scheme of 1989 and an industrial unit of which the application under the old scheme has been rejected on the ground of limitation only, or is pending before any Screening Committee was permitted to opt for the New Deferment Scheme by making a simple application on a plain paper to this effect before the appropriate Screening Committee. The aforesaid provisions of Clause 1 of the Scheme of 1989 make it clear that reference to the old Scheme is not wholly out of context for the purpose of finding the context in which the amendment in Clause 2(j) and Clause 4 has been brought about. Under the old Deferment Scheme also, the definitions of "new industrial unit", "sick industrial unit", "eligible area", and "banned area" are in part *materia* with the definitions of these terms provided in the Scheme of 1989. Under the Scheme of 1987 also, all cement plants including white cement plants except those in the small-scale sector and except new industrial units in the tribal sub-plan areas were enlisted in. annexure B the list of industries not eligible for sales tax incentive/deferment under the Scheme of 1987. Thus, it is clear that right from inception of the Scheme of 1987, large scale cement units established outside tribal sub-plan area were not made eligible for availing the benefit of the Deferment Scheme. However, mini cement plants were kept out of annexure B the list of industries not eligible for sales tax deferment under the New Deferment Scheme vide S.O. No. 199 dated February 22, 1990. This again made it clear that except small-scale sector units wherever situated or the new industrial units of whatever nature situated in tribal sub-plan area, were not eligible to claim the benefit of the scheme. It would be pertinent to. notice that under the Deferment Scheme, 1987, small-scale unit and medium scale unit for the purpose of consideration by different Screening Committees were assigned the meaning as contained in the definitions given by the Government of India from time to time.

47. Under the Scheme of 1987 only pioneering unit and prestigious unit were classified but the new very prestigious unit was not classified. The definition of pioneering unit and prestigious unit under the Scheme of 1987 were in *pari materia* with the definition of these terms as provided in the Scheme of 1989.

Therefore, it is clear that all cement plants were kept out of the scope of Deferment Scheme unless the same was established in tribal sub-plan area or a mini cement plant. In the Scheme of 1987, item No. 10 was inserted in annexure B, the list of ineligible industries substituted for the existing provision as noticed above in the exactly same manner in which it found place in the Scheme of 1989 and has been made effective retrospectively.

48. It may be further pertinent to note here that in the list of industries not eligible for deferment of sales tax, the entry No. 10 relating to cement plants in the present form was inserted with effect from February 22, 1990 and simultaneously, second proviso to Clause 4 of the Scheme of 1987 was added, which reads as under :

"Provided that mini cement plants using vertical shaft kiln with a licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum, or mini cement plants using rotary kiln with a licensed capacity not exceeding 300 tonnes per day or 99,000 tonnes per annum may be entitled to claim deferment from tax to the extent of 50 per cent of its tax liability under the Act with all restrictions applicable to an industrial unit as provided in annexure C."

49. This makes it clear that notwithstanding taking the mini cement plants of the nature referred to in item No. 10 of the annexure B, the same were not made subject to quantum of benefit as was generally available in annexure C to the new industrial units. In this context, if we read the legislative history of the provisions relating to cement plants, under the list of industries not eligible for deferment of sales tax under the Scheme of 1987, one can certainly come to the conclusion that on the date the Scheme of 1989 was notified on July 6, 1989, entry No. 10 of the list of industries not eligible for sales tax deferment under the New Deferment Scheme "(annexure B) was to keep out all cement plants including white cement plants except those in the small-scale sector and except new industrial units in the tribal sub-plan area from the benefit of the scheme. That was ad verbatim the same as was existing in the Scheme of 1987. At that time, no separate proviso existed in Clause 4 of the scheme. However, with the substitution of entry 10 in the list of industries not eligible for sales tax deferment (annexure B) vide notification dated January 11, 1990, published on January 17, 1990, which was also in pari materia and ad verbatim as was inserted in the Scheme of 1987, all cement plants including white cement plants except (a) those in the small-scale sector, (b) mini cement plants using vertical shaft kiln with a licensed capacity not exceeding 200 tonnes per day or 66,000 tonnes per annum or mini cement plants using rotary kiln with a licensed capacity not exceeding 300 tonnes per day or 99,000 tonnes per annum and (c) new industrial units in the tribal sub-plan area were also included in the list of industries not eligible for sales tax deferment and yet when they were so brought out of the ineligible expanse, the same were set for independent treatment under second proviso to Clause 4 of the scheme quantifying the eligible limit of exemption linked with tax liability.

50. With this background, if one looks at further development by insertion of second proviso to Clause 2(j) and Clause 4(a) of the Scheme of 1989 with effect from March 6, 1991 as referred to above, one cannot miss direct link between the two, viz., extension of benefit of New Deferment Scheme, 1989 to the large scale new cement plants established except in tribal sub-plan area which were hitherto in the list of industries not eligible for deferment of sales tax annexure B was not amended as such and were linked with deferment of tax as provided in second provisos to Clause 2(j) and Clause 4 of the scheme of 1989. The second proviso to Clause 2(j) of the scheme was substituted with the addition of "large scale new cement plants" established, except in tribal sub-plan area, shall be entitled to deferment of tax to the extent of 25 per cent of their tax liability under the Act with all other restrictions applicable to an industrial unit as provided in annexure C.

51. Here significantly it has to be noticed that while second proviso to Clause 2(j) refers to the large scale "new cement plants established outside tribal sub-plan area" to be entitled to deferment of tax as provided in Clause 4 of the scheme, the substitution of second proviso to Clause 4 does not restrict the extent of benefit to the large scale new cement plants alone but extends deferment of tax to the large scale cement plants established or expansion thereof. Thus it also reveals that second proviso to Clause 4 covers the full field of quantum of tax liability related benefit to be enjoyed under the scheme in respect of such cement plants which are taken out from the operative field of entry 10 of annexure B. The contention raised by learned counsel for the petitioner does not carry conviction.

52. Therefore, bringing into second proviso, the extension of deferment benefit to large scale units can only be referable to the unit having fixed capital investment above Rs. 5 crores without further classification. The provision of annexure C referred to in Clause 4 are not ipso facto extended to large scale new cement plants as new unit in column No. 1. The large scale new cement plants have been subjected to different treatment by adding simultaneously proviso to which Clause (a) of Clause 4 to provide the context of two provisions being brought into effect simultaneously. The contextual interpretation too supports and strengthens the conclusion that the connection between the two provisos is that the cement plants which were hitherto totally excluded from the purview of benefit of deferment scheme has been allowed to enter the portals of deferment scheme to the extent which has been brought into effect. It is not possible to segregate two provisions and to assign different meaning to large scale new cement plants under proviso second to Clause 2(j) and proviso second to Clause 4(a) of the scheme either on literal construction or on contextual construction. If that is so, the only reasonable conclusion to which one can reach is that the large scale cement plants which have been established outside the tribal plan area and otherwise not eligible for the benefit of deferment scheme have been allowed the limited benefit provided under second proviso to Clause 4(a), i.e., 25 per cent of their taxability under the Act with effect from March 6, 1991 which was enhanced

to 50 per cent with effect from June 15, 1994. Thus, looking from any view, I am unable to sustain the contention of the learned counsel for the respondents for invoking the interpreting exercise of liberal/ strict construction for the present controversy. I am further of the opinion that no ambiguity in the use of the same form under second provisos to Clause 2(j) and Clause 4 is there and upon reading of these provisions, the only one conclusion is reasonably possible as discussed above.

53. Accordingly, this revision succeeds. The impugned order dated May 21, 1998 passed by the Rajasthan Tax Board is set aside and it is held that respondent-assessee is entitled to the benefit of tax exemption/ deferment to the extent of 50 per cent of the tax liability, of course subject to other conditions mentioned in annexure C. The parties are left to bear their own costs of this revision petition.