
(2001) 07 RAJ CK 0098

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No's. 582 and 583 of 1999

Commercial Taxes Officer

APPELLANT

Vs

Binani Cement Ltd. and Another

RESPONDENT

Date of Decision : 02-07-2001

Acts Referred:

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

Citation : (2001) 4 RLW 690 : (2002) 128 STC 155 : (2002) 1 WLC 255 : (2002) 1 WLN 8

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sagar Mal Mehta, General and Sanjeev Johari, for the Appellant;
Sudhir Gupta and R.L. Prajapat, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—These two revisions are against the common judgment passed by the Rajasthan Tax Board, Ajmer, on December 18, 1998 allowing the appeals filed by Binani Cement, a division of Binani Industries Ltd., Binanigram, Pindwara, which relates to the extent of exemption from tax to which the respondent is entitled to avail of under the Rajasthan New Sales Tax Incentive Scheme, 1989 under the Rajasthan Sales Tax Act as well as under the Central Sales Tax Act, 1956. Since two separate applications have been made in respect of grant of eligibility certificate to avail of benefit under the notifications issued with reference to State Act as well as the Central Act, two proceedings have continued in that regard. However, the basic facts and issue remain the same.

2. The respondent (hereinafter called "the company") established a new cement unit within Panchayat Samiti, Pindwara, which commenced commercial production in 1997. It engaged itself in the manufacture of cement, the total fixed capital investment (FCI) in the new industrial unit claimed by the company was Rs. 53,252.87 lakhs (Rs. 532.52 crores) but only Rs. 5,553.72 lakhs (Rs. 55.53 crores) were accepted in the first instance as FCI eligible for availing the

benefit under the New Incentive Scheme, 1989. On that basis, the State Level Screening Committee certified the company entitled to avail exemption of tax to the extent of 25 per cent of the tax imposable only by treating it to be a large scale industry. Though it has not given any reasons for confining the benefit to 25 per cent apparently it refers to item 1-E of annexure C appended to the Rajasthan New Sales Tax Incentive Scheme, 1989.

3. Aggrieved with the quantum accepted as fixed capital investment as well as the percentage of tax exemption specified in the order of SLSC, the company appealed before the Rajasthan Tax Board under the provisions of the said scheme.

4. Before the Tax Board, it was contended by the Revenue that as it is not first cement unit within the Panchayat Samiti, Pindwara, it is not a prestigious unit falling under item 4 to avail the benefit of tax exemption at the rate of 75 per cent of the tax leviable and it otherwise remain a large scale unit having FCI over Rs. 5 crores, therefore is to be considered only a large scale unit governed by item 1-E of the annexure C, Under item 1-E the determination of extent of exemption was rightly made by SLSC. This contention has not been accepted by the Board by pointing out that the definition of a "prestigious unit" lay down two alternative requirements to qualify a unit as a prestigious unit which are not required to be fulfilled cumulatively but as a substitute for each other. As the unit in question had invested more than Rs. 25 crores, and employs 336 workmen (more than required 250) it does not remain a condition that it must be the first unit of its kind of the Panchayat Samiti, to claim status of new prestigious unit and therefore as the unit falls within the definition of "a prestigious unit" it shall be governed by item No. 4 making it entitled to avail benefit at 75 per cent of the tax leviable to be imposed subject to other limits. The Tribunal has reasoned that since intention for extending benefit of scheme to cement industry is manifest from deleting the name of cement industry from annexure "B" to the Scheme vide notification dated December 10, 1996 and insertion of item 1-E in annexure "C" specifying the limits of exemption in case of cement industry in small, medium and large scale units, and excluding the benefit in the case of very prestigious units, the unit qualified for exemption as a prestigious unit.

5. So far as the contention of the company about computation of eligible fixed capital investment, to quantify the maximum exemption limit which it could avail during the period of continuance of the eligibility certificate, the matter was remanded back to the State Level Screening Committee for deciding the question afresh in the light of observations made in the Board's order. That part of the order has not been challenged in these two revisions. However, learned counsel for the parties state that ultimately claim of the unit to FCI at Rs. 5,32,52.57 lakhs (Rs. 532.52 crores) has been accepted by SLSC; which puts it in the category of a very prestigious unit because of its FCI is more than Rs. 100 crores.

6. Aggrieved with the aforesaid order of the Board, these two revisions have been preferred by the Revenue.

7. Learned Advocate-General contends that benefit to the cement industry under the Scheme 1989 is confined to the extent envisaged under item 1-E of annexure "C", the said entry being specific entry relating to the cement industry, no other entry which is of general character can be looked into for the purpose of availing benefit in respect of a new cement unit. Therefore, notwithstanding that the company's unit may be considered a new prestigious unit, item No. 4 being general in character, cannot govern the case of cement industries. He relies on a decision of this Court in Commercial Taxes Officer Vs. Aditya Cement, in contending that the legislative history of the provision goes to show that the general benefit available to prestigious or new very prestigious unit are not extended to the cement industry in general from the very beginning and therefore the entries in annexure "C" must be read in that background as not conferring additional benefit than what has been envisaged under item No. 1-E of the appendix annexure "C".

8. Mr. Sudhir Gupta, learned counsel for the assessee, on the other hand, contends that there has been considerable shift in treatment to the cement industry under the scheme since 1996 and in relation to the cement the scheme has undergone material change. Therefore, applicability of scheme to the cement unit will have to be considered in the light of the scheme as it stood when the new unit in question started commercial production and became entitled to avail benefit of the scheme and applied for grant of eligibility certificate under the scheme of 1989. He pointed out that while Aditya Cement became eligible to avail benefit of the scheme and its case was under consideration, the cement industry was included in the list of ineligible industries in annexure "B" at item No. 10 and no provision of the scheme including annexure "C" quantifying the availability of incentive under the scheme was attracted at all. As a measure of exception to general inapplicability of scheme, a limited entry to large scale cement industry only was provided by inserting provisos two to Clause 2(j) and proviso to Clause 4(a) of the scheme then existing which envisaged that notwithstanding the cement industry remaining on the list of ineligible industries, the benefit to the extent provided in Clause 4(a) be granted to large scale cement units. Commercial Taxes Officer Vs. Aditya Cement, was thus decided on the basis of the scheme as it stood in the light of facts relating to the provisions carving out exception to the general ineligibility of cement industry by inserting two provisos under Clause 2(j) and Clause 4(a) of the scheme of 1989. On the other hand, vide notification dated December 10, 1996 the cement industry has been deleted from the list of ineligible industries in annexure "B" and has become entitled to avail the benefits of general conditions subject to restrictions if any imposed afresh. Simultaneously, with the taking away the cement industry from the list of ineligible industries, item 1-E was inserted in annexure "C" for quantifying the incentives available to the cement industry generally to the new cement industry falling in small, medium and large scale category at different rates which were largely different from what has been provided to a new industry, in general, to small, medium and large scale industries. Not only this,

by specific provision it excluded applicability of some of the other clauses which would otherwise have attracted consideration for quantifying the incentives under the scheme in respect of cement industry. For the purpose, he invited attention to item No. 2 concerning expansion or diversification unit and item No. 5 new very prestigious unit and Clause 1 applying to new units generally, yet no amendment was made in item No. 4 specifying the quantum of incentive available to new units falling in the category of a unit producing pollution control equipment/pioneer unit/prestigious unit. This act of excluding cement industry deliberately from items Nos. 1, 2 and 5, contends learned counsel, will leave no room of doubt that industry of cement otherwise falls in specific items identified specially for privileged treatment in the matter of grant of incentives under the scheme did not lose its applicability unless expressly excluded by the amended notification dated December 10, 1996.

9. I have given my anxious consideration to the rival contentions.

10. There is no dispute between the parties on facts. Firstly that it is a new industrial unit established for manufacture of cement in Panchayat Samiti, Pindwara, its FCI exceeds Rs. 500 crores and it employs more than 250 employees, to be precise 336 as found by the Tribunal and corresponds to the definition of a large scale industry having investment of over rupees five crores, as well as a new prestigious industrial unit having set up in a Panchayat Samiti by making investment in eligible fixed capital exceeding Rs. 25 crores and employing more than 250 workers and also corresponds to the definition of "a New Very Prestigious Unit" under the scheme having been established within a Panchayat Samiti with investment in eligible fixed capital over Rs. 100 crores. The cement industry since December 13, 1996 is not in annexure B, enlisting industries not eligible for sales tax incentives under the New Incentive Scheme, 1989. Therefore, subject to other conditions which can be clearly spelt out from the scheme, it attracts the applicability of the scheme without exception since December 13, 1996. It is also not seriously contended, and in my opinion rightly, though it was contended before the lower authorities that because it is not a first cement industry established in Panchayat Samiti, Pindwara, it does not correspond to definition of a prestigious unit. The expression "prestigious unit" has been defined in Clause 2(i) as under :

"(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."

11. A perusal of the aforesaid definition goes to show that first and foremost condition for becoming a "prestigious unit" is that it must be a new industrial unit. The second condition envisaged is that it must be first industry in any

Panchayat Samiti of the State during the period of scheme in which investment in fixed capital exceeds Rs. 10 crores with a minimum permanent employment of 250 persons or alternatively if it is not a first established new industrial unit in a Panchayat Samiti, it must be a new industrial unit having a fixed capital investment exceeding Rs. 25 crores with minimum permanent employment of 250 persons, or if it is an electronic unit it must have a capital investment exceeding Rs. 25 crores without any condition of employing minimum number of persons. Significantly with an industry with investment over Rs. 25 crores condition of its setting up in Panchayat Samiti itself is not a condition. It may be clear that expression "new unit" has occurred at two places ; firstly it qualifies a new industry established in a Panchayat Samiti and second expression qualifies a new industrial unit having a FCI exceeding Rs. 25 crores simplicitor. The second time use of expression "new industrial unit" only qualifies amount of investment. Apparently, the condition of first established industry in Panchayat Samiti is not attached with the other two conditions else the very first condition becomes redundant requiring fixed capital investment only to the minimum extent of Rs. 10 crores or more. If this condition is attached with investment of Rs. 25 crores or more, the alternative requirement will be redundant. Rs. 25 crores are always more than minimum of Rs. 10 crores.

12. The other conditions are not being referred because it is not in dispute before me that as per the scheme the assessee falls in all the three categories of the industries referred to above ; viz., a new unit which in "large scale", a new unit which is "prestigious new unit" and a new unit which is also "a very prestigious unit" and is neither an expansion, diversification or pioneer unit. Therefore, the entry of respondent-unit within portals of the scheme of 1989 is an admitted premise.

13. Thus qualifying to be classified in all the three categories, the controversy is about extent of benefits which it can avail under the scheme. This question would require examination of the exemptions offered and the quantum to the extent of which exemptions can be availed under the scheme.

14. Clause 4 envisages that an industrial unit which is granted eligibility certificate under the scheme shall be exempted from payment of tax on sales made within the State of the goods manufactured by it in accordance with the parameters incorporated under annexure "C" to the said scheme. Annexure "C" is a table divided in five columns. Column No. 1 is as usual the item number or serial number, column No. 2 is type of units, column No. 3 envisages the extent of the percentage of exemption from tax. Column No. 4 provides for maximum exemption in terms of percentage of fixed capital investment and column No. 5 envisages the maximum time-limit for availing exemption from, tax. The other relevant conditions, in connection with the present controversy, which are spelt out from Clause 4 of the scheme and the appendix annexure "C" are as is apparent from column numbers 3, 4 and 5 of annexure "C", three-fold limit is envisaged ; firstly, percentage of exemption from tax, secondly maximum

exemption which an industrial unit can avail under the scheme in relation with fixed capital investment and lastly the period within which the exemption can be availed. All the three limits are cumulative and not in exclusion of each other. These conditions work out in this way : that on sales of goods manufactured by a new unit tax is payable under the Rajasthan Sales Tax Act as well as Central Sales Tax Act and also on consignments outside the State. Notwithstanding tax is payable on such sales or consignments as the case may be, by virtue of the provisions of the scheme to the extent provided under column No. 3, the new industrial unit gets exemption from tax that is to say after subjecting to assessment the new industrial unit is not liable to pay sales tax whether under the State Act or under the Central Act or the consignment tax to the extent the exemption is made available under column No. 3 in rate of tax. For example, on sale of commodity X tax is payable at 10 per cent and if 50 per cent of the tax liability is exempted on each sales of goods manufactured by the industrial unit eligible to avail benefit under the scheme. On assessment of tax on turnover of commodity X at 10 per cent, 50 per cent of the tax liability will have to be paid by the assessee and he will enjoy benefit of exemption in respect of balance 50 per cent. Thus, under column 3 the extent of percentage of exemption from tax relates to each transaction of sale, the new unit can enjoy, subject to maximum limit in aggregate as envisaged in column 4, within a maximum period as envisaged under column 5, as will be seen hereinafter.

15. Column No. 4 which lays down the maximum limit of exemption in terms of percentage of fixed capital investment puts the maximum amount of exemption from tax in aggregate which the assessee is entitled to avail under column No. 3. The aggregate of tax exemption under column 3 is subject to maximum quantum of benefit the dealer can enjoy in respect of eligible industrial unit, which cannot exceed the maximum exemption limit in relation to the eligible fixed capital investment, i.e., to say if a unit is enjoying 50 per cent exemption from tax and is entitled to avail maximum exemption to the extent of its 100 per cent fixed capital investment, and its eligible fixed capital investment is one crore, on each transaction the dealer shall avail exemption of 50 per cent of tax in rate and this exemption he will continue to avail until he has availed the exemption of tax to the one crore of rupees.

16. However, the conditions for availing benefit under the scheme does not end here. Column No. 5 envisages maximum period during which an eligible industrial unit can avail the benefit of incentives made available to him under column No. 4. That is to say, exemption from payment of tax to the extent provided under column No. 3 is subject to maximum limit of quantum as determined in Clause 4 in relation to eligible fixed capital investment and that limit of exemption can be availed within the period prescribed under column No. 5. In simple terminology, if an assessee while availing exemption from tax under column No. 3 over a period has exceeded the maximum limit which it can avail under column No. 4 before the period prescribed under column No. 5 expires, still it will not be entitled to claim any further benefit under column 5 for the

remaining period and the dealer will have to start paying tax as soon as it has availed exemption from tax at the rate prescribed under column 3 in aggregate to the extent of maximum limit under column 4. On the other hand, while availing benefit under the scheme on its eligible sale transactions it fails to exhaust the tax-limit under column 4 and the period prescribed under column 5 also expires notwithstanding that the assessee has not been able to exhaust the maximum limit of exemption relating to FCI, he shall stop taking any further advantage of incentive on the expiry of the period. That is the effect of Sub-clause (d) of Clause 4 that when the limit is exceeded, all sales thereafter shall be subject to tax under the Act by the assessing authority concerned.

17. These limits are to be fixed in accordance with the type of unit corresponding to units classified for extending incentive benefit in column 2 of annexure "C".

18. With these limits in mind, the scheme of annexure "C" may be further considered. It classifies industrial units in categories ; (i) new unit, (ii) expansion, (iii) sick, (iv) pioneer, (v) new prestigious, (vi) new very prestigious, (vii) 100 per cent export oriented new prestigious/pioneer unit, and (viii) 100 per cent export oriented new very prestigious unit. It also classifies, independent of above classification for which separate limits of incentives have been envisaged, new units simpliciter in small, medium and large scale new units. This general category of new industrial unit is sub-classified into small, medium or large scale. A new unit in its manifestation of small/medium/large scale unit as per volume of capital investment is a general category of new industrial unit vis-a-vis a new pioneer unit, or new prestigious unit, or a new very prestigious unit. The 100 per cent exported oriented industries falling in the category of pioneer/prestigious or very prestigious unit has still been entreated to special treatment than general class of pioneer, prestigious or very prestigious new units. This reveals the concept of general versus specific in the backdrop of scheme and treatment of various types of industrial units falling into specific description specified in the scheme. This is not a static concept but depends upon variable factors and depends on the context in which question is to be considered to find out whether a subject has been treated for specific treatment different from general vice the two competing entries if the time corresponds to more than one of the entries in the annexure "C", and if so, in the relative context what is the general value from which it is to be treated differently.

19. With each of the above classifications, different level of incentives were provided depending upon to which classification the concerned industry corresponds. It may be noticed that notwithstanding the expression "a new unit" if an all embracing expression, imbibing within its ambit any new unit, apart from its classification a small, medium or large scale industry; can still be a pioneer unit; or a new prestigious unit ; or a new very prestigious unit ; or an 100 per cent export oriented prestigious or pioneering unit or 100 per cent export oriented very prestigious unit all corresponds to description of "new unit" yet different sorts of incentives were envisaged by carving out separate species of

new units, each having its own distinct and specific identity specially designed under the scheme. Vis-a-vis "a new unit" under item I, all other entries are specific entries so far as incentive envisaged for such special class of new unit under the scheme. A higher incentive to a new unit would not be denied merely because it falls in the category of new unit which being of general category, if it otherwise falls in any other specific entry which may be one or more and carries with it higher incentives. Thus, a unit if it is a pioneer unit within the meaning of expression defined in Clause 2(h), the unit will be classified in the specie of pioneer unit for quantifying its available incentives. Similarly, if a new unit corresponds as per its character to a prestigious or very prestigious unit, it is entitled to avail benefit which are available of such special class. This classification is for the purpose of providing entrepreneurs to establish such new industries in the Panchayat Samiti area, which are not urbanise area, which are not hithertobefore exist in the said area, subject to its purpose for which such classification has been devised, secure a minimum economic strength by envisaging minimum capital investment of Rs. 3 crores and employment of at least 100 persons in such new industry which is first of its own time.

20. However, a very first industry in the Panchayat Samiti with still large FCI of Rs. 10 crores and higher employment opportunity to a minimum of 250 people puts it in the category of not only in a large scale industry or a pioneer industry but also as a prestigious industry.

21. On the other hand, even if a unit is not pioneer industry in the sense that it is not of the very first of its type in a Panchayat Samiti, still a substantive large amount of capital investment of Rs. 25 crores more with employment opportunity of 250 persons is still considered a prestigious unit, though it is a large scale industry and not a pioneer industry but looking to FCI, in the area, makes it a prestigious industry.

22. Still higher incentives are offered for mega investment in a Panchayat Samiti without any other condition by classifying it as a very prestigious unit. Obviously, this is with an object of inviting huge capital investment in the area which usually helps building infrastructure for growth of allied industry and trade in area. Hundred per cent export oriented pioneer, prestigious or very prestigious industry speaks about the specific object to be achieved in the field of export by the three classes of industries falling in that category. Thus, a new unit may not be a large scale but be a pioneer unit and also a 100 per cent export oriented industry, another unit may apart from being a large scale unit may also be falling in special class of a pioneer, prestigious or very prestigious new unit on the basis of total FCI and employment opportunity offered and still further be in specific class of 100 per cent export oriented units. Likewise, it may be seen that pollution control equipment industry is not treated below a prestigious unit. Notwithstanding its FCI or other conditions attached in general to pioneer or prestigious units.

23. Classifying new unit with specific object of providing greater benefit to

industry established for the first time in specified area or making a minimum requisite volume of eligible fixed capital investment and offering minimum employment opportunity or looking to magnitude of capital investment brought to area where need of economic growth is felt more. This classification is not to differentiate it from and on the scale of small, medium or large scale units. Thus purpose of classifying new units into pioneer, prestigious, very prestigious or 100 per cent export oriented is not with reference to make distinction solely on the basis of scale of investment whereas classification of new industry into small, medium or large scale in classification with new units in general solely on the basis of scale of investment. Thus, object of classification of new units into small, medium or large scale on one hand and classifying new units in general, pioneer, prestigious, very prestigious, 100 per cent export oriented pioneer, prestigious or very prestigious units serves entirely different object. Hence, classification of a new unit, viz., small-scale, medium scale and large scale on the basis of scale of investment does not denude a new industrial unit of any type its special status of a pioneer, prestigious and very prestigious unit so also exclude operation of general entry. This aspect will be obvious on looking at relevant definitions of terms used in the scheme.

"2(a) "New industrial unit" means an industrial unit which commences commercial production during the operative period of the new incentive scheme but will not include,--

(i) an industrial unit established by transferring or shifting or dismantling an existing industry ; and

(ii) an industrial unit established on the site of an existing unit manufacturing similar goods.

Explanation I.--Date of commencement of commercial production means the 61st day after the day on which the raw material is, for the first time, put in the process of production including trial production.

Explanation II.--Very prestigious electronic industrial unit may use the dismantled machinery of an existing industry up to twenty per cent of its investment in plant and machinery.

(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 of 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. 100.00 crores or more. However, the progressive investment of the amount of project cost as appraised by the financial institutions shall be considered as investment made by a new unit and as soon as such investment reaches or crosses the point of Rs. 100.00 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."

24. While distributing jurisdiction for considering the application for grant of sanction between State Level Screening Committee and District Level Screening Committee, concept of large scale, medium scale and small-scale industry was introduced. An application in respect of large scale industry is to be considered by SLSC and application by medium scale and small-scale industry is considered by DLSC. For that purpose, respective scale has been defined in notes to Section 2(k) as under :

"2(k) "Screening committee for eligibility certificates".--In order to avail the facility available under "New Incentive Scheme" the applicant industrial unit will have to obtain sanction from the State or District Level Screening Committee, as the case may be.

(i) The State Level Screening Committee, which will grant sanction in respect of large scale units and cases referred to by District Level Screening Committee will consist of the following ;

1. Secretary, Industries ... Chairman 2. Managing Director, RIICO ... Member 3. Commissioner, Commercial Taxes ... Member 4. Director of Industries ... Member-Secretary

(ii) The District Level Screening Committee will grant sanction to medium and small-scale units and will consist of the following :

1. Collector (Industries) of the district ... Chairman 2. Representative of the Sales Tax ... Member Department (nominated by CCT) 3. Branch Manager concerned of ... Member Rajasthan Financial Corpn. 4. General Manager, District Industries ... Member-Secretary Centre

5. Representatives of RIICO in case of ... Member medium scale units where RIICO is the lead institution Notes.--(1)(a) Small-scale unit means a unit of which the investment in plant and machinery does not exceed rupees sixty lakhs. A mini cement plant, where the investment in its plant and machinery does not exceed the limits prescribed for small-scale units, shall mean a small-scale unit.

(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.

....."

25. The perusal of above provisions will confirm that while under Clause I classification of a new unit is founded solely on the basis of amount of investment made in a new industry, in each of other specific clause emphasis is on something more than amount of investment. In the latter class amount of investment requires to be made is substantial or other conditions. That saves the pioneer, prestigious or very prestigious units from being excluded by any entry in the genere of a new unit with reference to its classification solely on the basis of its scale of investment taking it to small, medium or large scale unit as the case may be. In such case between the two, principles of "specific entry shall exclude general" will be operate by relative part that out of the two company which of it be considered special and which general by keeping in view the object behind it, because a specific entry with its object attached to it shall remain specific vis-a-vis other entries.

26. Significantly, under Sub-clause (e) of Clause 4 additional conditions have been imposed by proved restrictions on sale outside State including branch transfers, after availing any benefit under the scheme. This restriction conveyed in percentage measure varies from one specie of unit to another. For prescribing the separate limit of prohibition the small-scale, medium scale and large scale industry taken together in general is considered as one class and prestigious, very prestigious and pioneer units have been treated differently as will appear from the following provision :

4(e) The incentive available under this scheme shall be subject to the condition that the beneficiary industrial unit after having availed of any benefit under this scheme shall not make sales outside the State including branch transfers of the goods manufactured by it exceeding 60 per cent in case of SSI, medium and large units and 80 per cent in case of pioneering and prestigious units and 90 per cent in case of very prestigious units of its total production :

Provided that in case of leather goods industry this limit shall be 80 per cent for SSI, medium and large units and 90 per cent for prestigious, very prestigious and pioneering units, and in case of electronics and white goods industries, this limit shall be 80 per cent for SSI, medium and large units, 90 per cent for pioneering and prestigious units and 95 per cent for very prestigious units.

27. After the amendments effected vide notification dated December 10, 1996 by which is relevant for our purposes, changes were made in the relevant entries to which reference has been made above, along with insertion of item 1E read as under :

Category

of cases

Type of units

Extent of the percentage of exemption from tax

Maximum exemption in terms of percentage of fixed capital investment(FCI)

Maximum time-limit for availing exemption from tax.

1

New units

75% of total tax liability

100% of fixed capital investment in case of medium and large scale units and 125% of FCI in case of small-scale units.

Seven years

1E

New cement units except in Tribal sub-plan area

75%, 50% and 25% of total tax liability in case of small, medium and large scale units respectively.

125% of fixed capital investment in case of small-scale units subject to an overall limit of Rs. 1.00 crore and 100% of FCI in case of medium and large scale units.

Seven years

2.

???.

???.

???

???

3.

???.

???.

???

???.

4.

New units producing pollution control equipments/pioneering

units/ prestigious "units.

75% of total tax liability

100% of fixed capital investment

Nine years

5.

New very prestigious units other than cement units except in tribal sub-plan area

90% of total tax liability

100% of fixed capital investment

Eleven years

6.

100% export oriented prestigious/pioneering units

100% of total tax liability

100% of fixed capital investment

Nine years

7.

100% export oriented very prestigious units

100% of total tax liability

100% of fixed capital investment

Eleven years

28. A perusal of the aforesaid table would show that from the general category of "new units", with its classification into large, medium and small-scale, new unit falling in item 1E was excluded. Item 1E enlisted new cement units except in tribal sub-plan area carrying somewhat different incentives than under general item No. 1 also in respect of each of medium, large and small-scale units only. It may be noticed that under item No. 1, a new unit enjoys tax exemption of 75 per cent of the total tax liability. Whether it is a small-scale, medium scale or large scale new unit subject to maximum amount equal to 100 per cent of its eligible FCI. But a new cement unit situated outside tribal sub-plan area enjoy 75 per cent of total tax liability only in case of small-scale industry simultaneously exemption was confined to 50 per cent only in the case of medium scale industry and 25 per cent in the case of large scale unit. But maximum exemption up to 100 per cent of FCI is in the cases of small-scale industry was subjected to further limit of Rs. 1 crore only. However, with reduction in exemption limit in tax, maximum limit of aggregate incentive remains 100 per cent of FCI.

29. At the same time, the legislative authority did not rest with insertion of item No. 1E but has undertaken further exercise. Under item 2 which provided limits of incentives to expansion or diversification units, notwithstanding the alleged

specific item No. 1-E, an exclusion clause was inserted by excluding expansion and diversification cement unit even in sub-tribal plan area from availing the benefit of incentive. Another notable exclusion of cement unit was made in item 5, i.e., new very prestigious units which, without exclusion clause, could avail 90 per cent of the total tax liability with 100 per cent of FCI as a maximum limit and a greater period for availing maximum amount of exemption than any other class of new unit. Thus, the additional benefit available to "new very prestigious unit" whether in the form of percentage exemption in the tax liability or the period during which the exemption could be availed, was not made available to a new cement industry by specific exclusion. However, a new cement industry which could still fall amongst a pioneer unit as per the definition given in Clause 2(h) or a prestigious unit as defined in Clause 2(i) or 100 per cent export oriented pioneer prestigious unit or very prestigious unit, yet no such clause was inserted to exclude the applicability of these specified class of industries slated for special treatment to exclude the cement industry from its purview.

30. The contention that a special entry will exclude the applicability of general entry, in my opinion, will not operate in the context of the scheme which exists today, to exclude the operation of item Nos. 4, 6 and 7.

31. By insertion of item No. 1E itself, it cannot, perhaps, be argued that 100 per cent export oriented unit is by itself not a specific entry having its purpose to promote export in addition to establishment of a new industry simpliciter, an object different from what is generally attached to new unit. It does not stand to reason that special benefits offered as incentives for export oriented industry were intended to be denied to the 100 per cent export oriented new cement units falling in item Nos. 6 and 7 otherwise, simply because new cement industry has been classified under item No. 1-E of small, medium and large scale. In my opinion, the object and operative field of the incentives devised for the pioneer, prestigious or very prestigious or export oriented prestigious/pioneering and 100 per cent export oriented very prestigious units being entirely different so as to invite principle generalibus specialias derogant to exclude these entries to operate in the case of new cement unit.

32. The Supreme Court in Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, while referring to maxim generalia specialibus non derogant said that it means that when there is a conflict between a general and a special provision the latter shall prevail. In making this observation the court quoted with approval the principle stated by Craies on Statute Law.

"The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."

33. It is also well-settled that the rule of construction is not of universal application. It is subject to condition that there is nothing in general provision expressed or implied indicating an intention to contrary.

34. From the scheme as discussed above, new units in its different scale--small, medium or large has been subject of general provision relating to incentive to new industrial unit as such. For this general category item No. 1 dealt with limit of incentive available to a new unit of types of large, medium and small-scale generally. Vis-a-vis new unit as a general class, a new cement unit was dealt with under item No. 1-E. Between the two, item Nos. 1 and then 1-E on express intention as well as on principle "special provision exclude operating of general provision", item No. 1-E is particular provision, and amongst new units--cement units will be dealt with under item No. 1-E, whether large, medium or small-scale and not under item No. 1. But what is not excluded by item No. 1 otherwise shall not be excluded by item No. 1-E also. Without insertion of item No. 1-E, item No. 1 "a new unit" was a general entry covering all new units of small, large or medium scale and items Nos. 4, 5, 6 and 7 are all particular provisions relating to new units in general. When for cement, item No. 1 is substituted by item 1-E, it became general law applicable to a new cement industry generally vis-a-vis particular law governing new units falling in categories governed by item Nos. 4, 5, 6 and 7. There is no ambiguity in it. Because of this, item No. 5, a specific provision was enacted for excluding new cement units from its ambit but no such specific provision was made in respect of item Nos. 4, 6 and 7. This omission of specific exclusion clause, coupled with special treatment envisaged for pioneer, prestigious and export oriented units of three limits, there is no room of doubt that on the field on which Clauses 4, 6 or 7 operate Clause 1 or Clause 1-E do not operate. In fact, each of item Nos. 4, 5, 6 and 7 is a specific entry vis-a-vis general entry of item No. 1, the new industrial unit or item No. 1-E, "new cement units" applicable to a new cement unit generally to be treated differently from item No. 1, but at the same time item No. 1-E is a general entry relating to new units manufacturing cement be of large, small or medium scale in relation to specific entries at item Nos. 4, 5, 6 and 7 to achieve additional and different object.

35. In fact item No. 1-E provides an alternative entry to the general entry of item No. 1 and not as a substitute for all the special items vis-a-vis item No. 1 used in the appendix. It may further be explained thus that while a new cement unit which otherwise would fall under item No. 1 would now fall under item No. 1-E. An expansion and diversification unit falling under item No. 2 has been excluded because of the amendment brought about on December 13, 1996. A cement industry if it is a sick unit would still be entitled to avail the benefit of item No. 3. It cannot be denied solely on the ground of specific entry No. 1-E. Likewise if the cement industry at item No. 1-E is intended to cover all fields of incentives offered to cement industry, there is no ostensible ground for amending entry No. 5 only without amending entry Nos. 4, 6 or 7. A new very prestigious unit under item No. 5 is entitled to avail 90 per cent of the total tax liability subject to

maximum 100 per cent of the fixed capital investment within a period of 11 years. Specific provision has been made to deny this incentive to a new cement industry falling in the category of new very prestigious unit that is to say that a cement industry with a fixed capital investment of Rs. 100 crores or more in a panchayat samiti shall not be entitled to avail the benefit as a very prestigious unit. However, there is nothing to suggest that if it is a 100 per cent export oriented very prestigious unit, it will not be entitled to avail benefit under item No. 7 there being no inclination that in the matter of incentives made available to the export oriented industries were intended to keep cement industry out of it. A new industrial unit falling under item No. 1 if falls in item No. 4 also, its incentives has to be governed under item No. 4 and not under item No. 1. There is nothing to suggest here again that a new cement unit which generally falls in item No. 1-E will not be entitled to avail benefit of other specific entries meant for special treatment under the scheme and such specially identifiable unit would loose its speciality because a new cement unit of large, medium or small generally has been identified to be treated separately from a new unit generally in its manifestation as large, medium or small-scale limit under item No. 1. Merely exclusion from item No. 1 and giving a different deal for a new cement industrial unit simplicitor from the general new industrial unit would not take way from it, its specific identity as separately defined which is otherwise attached with it as a prestigious unit, or as a pioneer unit, or as a very prestigious unit, or as 100 per cent export oriented unit or for that matter even on diversification or sick units. It is because of this factor, the legislative authority thought it fit wherever it desired to exclude the availability of the special incentives to the cement industry by specifying the same. It has so specified under item Nos. 1, 2 and item No. 5 only.

36. The contentions of learned counsel for the petitioners fails at the altar of reasoning on their own showing that diversification and expansion is not a new unit and would not be governed by item No. 1 or 1-E. Therefore, it needed an exclusion under Clause 2. This argument at least goes to show that the insertion of item No. 1-E is not of all pervasive operation governing the entire field of incentives available to a new cement industries as a whole. Therefore, it needed specific provision in respect of specific entries. Item 3 is relating to sick units. There cannot be any distinction between a sick cement or any other a sick unit requiring rehabilitation programme, and therefore no such exclusion clause has been appended with item No. 3.

37. As noticed above, a new cement unit will always be a part of item No. 1 without there being item No. 1-E and will always also be a part of clause of whatever type before it is excluded from it. Notwithstanding there being item No. 1, a new industrial unit would avail the benefits under Clauses 4, 5, 6 or 7 if it otherwise satisfies the test of new unit falling in such class. Likewise, after insertion of item No. 1-E a cement industry generally falling in item No. 1-E may also be falling in item Nos. 4, 5, 6 and 7. That being so, specific provision excluding item No. 5 from being applicable to the cement industry was made and

there being clearly intention, to exclude the benefits available under item Nos. 4, 6 and 7, no such amendment was deliberately made. Conclusion is irresistible that the Legislature made its choice demonstrably clear that wherever it wanted to exclude cement industry from the operation of the particular entry, it has made it express by inserting a note which is evident from the fact that while inserting item No. 1-E, it has not relied on the doctrine of "special excludes general" but has inserted an exclusion clause in item No. 1 and also in some of clauses from which it was extended to be excluded and insertion of item No. 1-E was not all pervasive. Thus, a new cement unit in generic sense was taken out of the bowl of new unit in general sense but not to make it a specific class vis-a-vis other specific class of new units in comparison to a new unit of any type of industry generally. Similarly, where the Legislature desired to exclude the benefit of incentive to cement industry in its expansion and diversification projects, it has expressed its desire by putting a specific amendment in item No. 2 and so also it has made its desire known to exclude the additional benefit available to a very prestigious unit by excluding the applicability of that item to a very prestigious cement units. That only goes to show that if it does fall under item No. 5, it will not carry its incentive. It necessarily does not mean that it will revert only to item No. 1-E and not to another items, if it satisfies the condition of being treated distinctly for special treatment to the industries established in a particular area with a minimum investment and minimum employment opportunity offered by them. The object of offering additional incentives to pioneer and prestigious units being distinct than granting of incentive to merely a new industrial unit, in my opinion, rule out the construction to treat the entry No. 1-E a special provision vice entries Nos. 4, 5, 6 and 7 as general entry. In fact construction of scheme as a whole points out to opposite direction and if the principle "specific entry excludes the general entry" is to be applied, to a prestigious new unit of cement is a specific provisional then a new unit item No. 1 or 1-E, and in the face of couple operating of 1-E will be left to the field of large, medium and small-scale generally which otherwise do not correspond to special description.

38. When it was pointed out that at more than one place the draftsman of the scheme has used exclusion clause to exclude new cement unit from the domain of specific item, but no such exclusion clause has been used to exclude applicability of items Nos. 4, 6 and 7 of the annexure "C", it was parried by learned Advocate-General that it appears to be a case of unintentional inadvertent omission by the draftsman, but intention was not to allow cement industry any benefit beyond entry at item No. 1-E. It is corollary of golden rule of construction that nothing is to be added or taken from a statute unless there are adequate grounds to justify that Legislature intended something which it omitted to express. A case not provided in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted and the omission appears in consequence to have been unintentional.

39. Lord Mersey said in *Thompson v. Goold & Co.* [1910] AC 409 :

"It is a strong thing to read into an Act of Parliament words which are not there, and in the absence of clear necessity it is wrong thing to do."

40. Principle underlying above rule in the context of taxing statute was explained by the Supreme Court in Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, . Approving the classic statement of Rowlatt, J. in Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 that in a taxing Act one has to look merely at what is clearly said. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used, the court said :

"To this may be added a rider : a case of reasonable doubt, the construction most beneficial to the subject is to be adopted.....The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than any notions which may be entertained by the court as to what is just and expedient. The expressed intention must guide the court".

41. No such clear necessity is found to exist to infer it to be a case of unintentional omission and read the exclusion clause with various clauses referred to above, which is not there. In fact the entire exercise of amendment indicates other way to be a case of deliberate omission.

42. Industrial unit and entry No. 1E has been inserted only as exception to entry No. 1 and not as exception to other entries except to the extent specifically envisaged by the legislative authority.

43. In this view of the matter, I am of the opinion that the Tribunal's order does not call for interference.

44. However, great deal of emphasis has been laid by the learned Advocate-General on the decision of this Court in Aditya Cement's case [2001] 121 STC 113 against which SLP has been dismissed Supreme Court decision reported in [2001] 123 STC 425 (Aditya Cement v. Commercial Taxes Officer).

45. Having carefully gone through the aforesaid judgment, the principle enunciated in Commercial Taxes Officer Vs. Aditya Cement, cannot be invoked in the present case. The brief resume of that case would make out reason for my conclusion. That was a case in which the commercial production of cement had started on March 28, 1995 on which date the cement industry was included in the list of ineligible industries in annexure "B". Therefore, on its own force, no part of the scheme including annexure "C" was applicable to the cement industry. However, a limited opening was made for making available to the cement industry the incentives under the scheme by inserting second proviso to Clause 2(j) of the scheme of 1989 and a proviso to Clause 4(a) of that scheme. No amendment was made in annexure "C" also. Clause 2(j) defines ineligible industries. Second proviso to Clause 2(j) stated that large scale new cement

plants shall be entitled to deferment of tax as provided in Clause 4 of the scheme and under Clause 4 the proviso was inserted simultaneously spelling out the scale of incentive to be made available to the large scale cement plant established except in tribal sub-plan area. The proviso to Clause 4 did not make any reference to special type of units, namely, pioneer, prestigious or new very prestigious units but confined benefits to the large scale units simpliciter in the light of cement industry being enlisted as ineligible industry not entitled to benefit of the scheme of any sort generally but a large scale cement unit was let-in for limited incentives referred to above.

46. In the face of these changes, the assessee has contended that once Clause 4 of the scheme of 1989 is made applicable to large scale new cement plants, all large scale 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. Thus, by reading Clause 2(j) the assessee had invited applicability of annexure "C" for quantifying the incentives available to it as a very new prestigious unit having an investment of over 100 crores to be availed during the period of 11 years by overlooking proviso simultaneously inserted in Clause 4 to become part of it, to which alone incentive to an ineligible industry was confined. It was a case under the deferment scheme. It is in the aforesaid circumstances, the court posed for itself the question to be decided as :

"The controversy centres around firstly the effect of insertion of second proviso 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 proviso to Clauses 2(j) and 4(a) of the scheme of 1989 ?."

47. The court recalling the principle that where the draftsman used the same words or phrases in the same context, he must be presumed to intend it in each place to bear the same meaning. Thus, all cement plants having project cost of more than 5 crores of rupees which have been established outside tribal plan area are covered by second proviso to Clause 2(j). Same meaning must ordinarily prevail under Clause 4(a) also.

48. The court further answered the issue before it as under :

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."

The court concluded as under :

"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 provisions 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."

49. Thus, it is apparent that the Commercial Taxes Officer Vs. Aditya Cement, was founded on the basis of the scheme as it existed prior to December 10, 1996 wherein cement industry was included in the list of ineligible industry and was not allowed entry to general portals of the scheme. The incentive was made available to it by carving out exception by insertion of two provisos and therefore the incentive which was made available to the ineligible industry while keeping cement industry in list of ineligible industry, was confined to the benefit envisaged in exception carved out thereto vide two provisos. Therefore, for identifying available incentives only provisos inserted by amendment could be looked into and not beyond.

50. However, the scheme has entirely changed after December 13, 1996. The cement industry has been taken out from the list of ineligible industry and has been thrown in the general pool for availing of the incentive in its fullness under

the scheme and new provisions were made for quantifying the incentives in the general pool. Therefore, the principle governing the quantification of the incentive in annexure C will govern the quantification of the incentives after December 13, 1996 and not in the context of availability of incentive as an exception to the general provision under the scheme existing prior to December 13, 1996.

51. Moreover, it is now well-settled principle approved by the Supreme Court in Union of India and others Vs. M/s. Wood Papers Ltd. and another,

"Truly speaking, liberal and strict constructions 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."

52. This principle was approved by the Supreme Court in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, and Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad,

53. In the present case, it is pointed out that the respondent new unit falls in the notification of exemption made available to it without exception, thereafter full play should be given to it and such ambiguity and any ambiguity or doubt, if there exists any, such ambiguity has to be resorted to in favour of the subject.

54. In the aforesaid circumstances, though in my opinion there is no ambiguity or doubt on the plain reading of the scheme as it is that item No. 1-E has been provided only as exception to item No. 1 and not an exception to other items and was not intended to govern the entire field of exemption made available to the cement industry so as to deny special benefits even if it falls in other specific items for which the scheme envisages better incentives, and the industry is entitled to the same. Yet even if there remains some doubt the same has to be resolved in favour of the subject in the absence of any explanation for specifically excluding the applicability of item Nos. 1, 2 and 5 only to the new cement unit but not excluding the operation of other items particularly items Nos. 4, 6 and 7 to which a new cement industry may correspond otherwise also then under item No. 1-E, by holding that if the new industrial unit falls in item No. 1E and also in item Nos. 4, 6 or 7 as the case may be, it shall be entitled to that benefit which is more beneficial to it than confining it to the least extent. The very fact that a new industrial unit notwithstanding falling in the general category is considered to be separate class for making available larger incentives because of the area in which it is established or the capital which it has invested in such area coupled with employment opportunity offered to the people, or the foreign exchange it earns, there is no reason to withhold such benefit to a cement industry falling

into specified clause by confining it to general clause under item No. 1-E.

55. As a result, the revisions fail and are hereby dismissed. There shall be no order as to costs.