**(2015) 08 RAJ CK 0079**

**In the Rajasthan High Court**

**Case No :** Civil Sales Tax Revision Petition No. 1132 of 1999

Commercial Taxes Officer APPELLANT

Vs

Plastic Weave Industries and Others RESPONDENT

**Date of Decision :** 06-08-2015

**Acts Referred:**
Constitution of India, 1950 — Article 14

**Citation :** (2015) 08 RAJ CK 0079

**Hon'ble Judges :** Vineet Kothari, J

**Bench :** Single Bench

**Advocate :** Vinit Kumar Mathur and Dinesh Godara, for the Appellant; Prakash Javariya, Advocates for the Respondent

## Judgement

Dr. Vineet Kothari, J—The Revenue has filed the present revision petition aggrieved against by the order of the Tax Board dated 15.01.1999 whereby, while allowing the appeal of the respondent-Assessee, the Tax Board held that the Assessee was entitled to the benefit of exemption under the Sales Tax Incentive Scheme of 1987 under the category of "Diversification" as defined in Clause (2)(g) of the said Incentive Scheme.

2. The relevant observations of the learned Tax Board in the impugned order dated 15.01.1999 are reproduced herein below for ready reference:--

3. The present revision petition filed by the Revenue, at the earlier point of time was disposed of by a co-ordinate Bench of this Court on 15.02.2006. The said order dated 15.02.2006 passed by the coordinate Bench of this Court is also quoted herein below for ready reference:--

"SB Civil Revision Petition No. 1132/1999.

Date of Order : 15th February, 2006.

PRESENT

HON''BLE MR. JUSTICE BHAGWATI PRASAD

Mr. Sangeet Lodha for the petitioner/s.

Mr. Harish Purohit for the respondents.

Heard.

This revision petition is filed against the order of the tax board. The question involved was whether the preparation of bags by different method is diversification or not. The tax board, on the basis of a decision given by it in the matter of M/s. Tayal Electronics, Udaipur, came to the conclusion that the unit which is though producing HDPE bags has started producing these bags by a different procedure of stitching and thus it has been held by the tax board that since the new product had a different quality, use and price, the new product which is prepared, though is a bag, yet is a product of diversification.

Learned counsel for the revenue asserted that in the scheme which sanctioned, concession on diversification require that there has to be a new product. In the instant case, according to the learned counsel for the revenue, the only mode change is process of stitching. Earlier it has been from regular weaving machine but now it is by circular weaving. The raw material is same fiber of HDPE/PP granule. The raw material for production of bags is conversion of granules into fabrics and then stitching it. The raw material and the product being the same, it cannot be considered that it is a new product being produced by a different production line and thus according to the counsel for the revenue, the order of the DLSC in refusing the concession of the concerned assessee was rightly passed. The tax board has interfered without there being sufficient material on record to conclude that a different line of production has been established. It has been wrongly held that the production comes within the definition of diversification.

The learned counsel for the respondent has not been able to controvert these facts that the finished product and the raw material was the same, the only change was that the ordinary stitching was converted into circular machine stitching. Such kind of change cannot, in all probability be said to be by a different new line of production. It cannot be deemed to come within the definition of diversification. The grant of concession is thus considered inappropriate and hence is set aside. The order of the DLSC is restored. The revision petition is accordingly disposed off.

Sd/- (BHAGWATI PRASAD), J."

4. Aggrieved by the order of this Court dated 15.02.2006, the Assessee took the matter further to the Hon''ble Supreme Court by way of SLP No. 21694/2006 which was later on registered as Civil Appeal No. 3759/2007 "M/s. Platic Weave Industries v. Commercial Tax Officer, Udaipur & Anr." which came to be allowed by the Hon''ble Supreme Court on 13.08.2007 setting aside the aforesaid order dated 15.02.2006 passed by the coordinate Bench of this Court and the Hon''ble Supreme Court remanded the case back to this Court for consideration and

 

decision afresh. The order dated 13.08.2007 passed by the Hon''ble Supreme Court is also quoted herein below for ready reference:--

"IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No. 3759/2007 (@ SLP (c) No. 21694/2006)

M/s. Plastic Weave Industries.. Appellant

Versus

Commercial Tax Officer, Udaipur & Anr... Respondents

O R D E R

Delay condoned.

Leave granted.

Having heard learned counsel for the parties, we are of the opinion that the requirements for determination of the question which would arise for exercise of the jurisdiction of the High Court under Section 86 of the Rajasthan Sales Tax Act, 1994 having not been followed, the impugned judgment cannot be sustained. We are, furthermore, of the opinion that in the facts and circumstances of this case the application or otherwise of the Excise Notification(s) should also be taken into consideration by the High Court while determining the question.

We, therefore, set aside the impugned judgment and remit the matter to the High Court for consideration of the matter afresh. The appeal is allowed. The parties would be at liberty to bring on record the Excise Notifications.

Sd/- J. [S.B. SINHA] sd/- J. [H.S. BEDI]

New Delhi,

August 13, 2007"

5. The relevant Excise Notifications which were referred and relied upon by the Assessee before the Hon''ble Supreme Court have also been produced before this Court which shows that Entry 46.01 relating to woven sacks of polymers of ethylene or propylene or a combination thereof, other than those manufactured on circular looms attracted nil rate of duty whereas, such products manufactured on circular looms attracted duty @ 24% under Entry 39.01 and 39.02. The relevant Entries are also quoted herein below for ready reference:--

6. The relevant Notifications extending the benefit of exemption scheme are quoted herein below for ready reference:--

"Woven sacks of polymers of ethylene or propylene or a combination thereof

In exercise of the powers conferred by sub-rule(1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 223/86-Central Excises, dated the 3rd April, 1986, namely:--

In the said notification, the following proviso shall be inserted at the end, namely:--

"Provided that the exemption contained in this notification shall apply only if such woven sacks of polymers of ethylene or propylene or, as the case may be, a combination thereof are manufactured on flat knitting looms".

[Notification No. 453/86-C.E., dated 20-11-1986]

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"Woven sacks of polymers of ethylene or propylene

In exercise of the powers conferred by sub-rule(1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 223/86-Central Excise, dated the 3rd April, 1986, namely:--

In the said notification, for the existing proviso, the following proviso shall be substituted, namely:--

"Provided that nothing contained in this notification shall apply if such woven sacks of polymers of ethylene or propylene or, as the case may be, a combination thereof, are manufactured on circular looms".

[Notification No. 3/87-C.E., dated 7-1-1987]

xxx

7. The relevant portion of Chapter 39 "Plastic and articles thereof" is also quoted herein below for ready reference:--

"15. For the purpose of heading Nos. 39.19, 39.20 and 39.21., the expression "film" means sheetings of thickness not exceeding 0.25 millimeters.

16. For the purpose of this Chapter, "insulated ware" shall mean any multi-walled or multi-layered article intended to provide thermal insulation."

8. The learned counsel Mr. Vinit Kumar Mathur with Mr. Dinesh Godara appearing for the Revenue submitted that mere difference of plant and machinery, earlier the flat machine and now being circular machine, did not bring into existence a different product and the same HDPE/PP bags continued to be manufactured and sold by the Assessee and, therefore, it was not a case of "Diversification" and the DLSC was justified in refusing to give the benefit of the Incentive Scheme of 1987 to the respondent-Assessee whereas, the learned Tax Board has erred in allowing the said benefit to the Assessee treating it as a case of "Diversification".

 

9. On the other hand, the learned counsel Mr. Prakash Javariya appearing for the respondent-Assessee submitted that the crucial words in the definition of "Diversification" in the Incentive Scheme of 1987 are, "Diversification means launching of new product line under the same company, firm or partnership provided the total fixed capital investment in such a diversification exceeds at least 25% of the value of the net fixed assets of the original project". The learned counsel submitted that the facts of case are not in dispute and it is an admitted position that the Assessee had installed three Circular looms machines for manufacture of HDPE/PP Circular Woven Fabric and Bags with the help of circular machines by investing Rs. 9,00,000/- for each of the machine and, therefore, the said machines were installed and the old flat machines were discarded altogether. The learned counsel submitted that though a product having different commercial value came into existence and the product line was also definitely different from the earlier one. The learned counsel urged that the learned DLSC wrongly emphasized the need of coming into existence of altogether new product, while interpreting the definition of "Diversification" whereas, it was not so necessary. The change of product line with the change of method of production or process of production by different and more advanced plant and machinery amounted to "Diversification" and the huge investment made by the Assessee for installation of such new plant and machinery would be liable for the benefit of exemption under the said Incentive Scheme of 1987 the category of "Diversification".

10. The learned counsel Mr. Prakash Javariya also urged that two other similarly situated units of Udaipur itself namely, M/s. Rajasthan Chemicals and M/s. Popular Packing Private Limited, were given the similar benefits under the category of "Diversification" by the DLSC on the same set of facts as obtaining in the present case, but the said benefit was not extended to the respondent-Assessee in a case of hostile discrimination, merely because on the basis of the objection raised by the concerned Assessing Authority, who was also a Member of the DLSC, contrary to the opinion of other Member of DLSC namely, General Manager, District Industries Centre, who recommended the case of the Assessee for grant of such benefit and even such facts were duly noticed by the learned Tax Board in para -3 of the order dated 15.01.1999 but without any rebuttal to the aforesaid facts, the benefit of Incentive Scheme of 1987 was denied by the DLSC to the Assessee and, therefore, the learned Tax Board was justified in allowing the benefit of the Incentive Scheme of 1987 treating the product manufactured with the help of circular loom machines to be covered under the definition of "Diversification".

11. The learned counsel Mr. Prakash Javariya appearing for the respondent-Assessee also produced before this Court, the coloured photographs of two types of plant and machinery for manufacture of HDPE/PP Circular Woven Fabric and Bags and also the sample of fabrics and differently woven PP/HDPE bags. The learned counsel also produced before this Court the two bags, one earlier manufactured with the help of flat machine stitched in "L" shape and another bag

 

manufactured with the help circular loom machines and submitted that the products of two fabrics had different commercial value as the ''L'' shape bags earlier produced were of fixed size and the width which were manufactured with the flat machines, whereas the bags prepared with the help of circular loom machines stitched the fabric only on one side at the bottom only, were of more strength and bigger size which could be produced by the Assessee and even both may appear to be similar products known as "HDPE/PP Fabric and Bags" but they have different market and commercial value and use.

12. I have heard the learned counsels for the parties at length and perused the record of the case.

13. The definition of "Diversification" given in the Scheme of 1987 is quoted herein below for ready reference:--

"Diversification" means launching of new product line under the same company, firm or partnership provided that the total fixed capital investment in such a diversification exceeds at least 25% of the value of the net fixed assets of the original project".

14. What is important to become eligible to get the benefit under this category of "Diversification" under the said Incentive Scheme of 1987 is different product line and it is not necessary to have an altogether different and new product out of such new product line. The product line means assembly of plant and machinery which manufactures a particular product. The different machines installed by the Assessee later on, in the present case, namely, the Circular loom machines instead of Flat machines where both the machines manufacture HDPE/PP Fabrics only but the product line and the assembly of plant and machinery is definitely different in both the cases. The bags are later on stitched in different manner in "L" shape or on one side at the bottom only. The important words "product line" appears to have been missed by the Revenue or DLSC while emphasizing that only if a new product comes into existence by use of different machines then only, it would amount to "Diversification". In the present case, the product is HDPE/PP Fabric and Bags only, may be of different width but the different and more width of fabric manufactured by Circular machine allowed the Assessee to stitch the fabric only on one side which, according to the Assessee, made it more strong and gave more capacity having different market and commercial value. Therefore, essentially both the products remained the similar though not exactly the same and they had different market value, size and manner of stitching. In one case earlier ''L'' shape stitched bag of HDPE/PP fabric was manufactured and in other case later on, only bottom stitched bags of HDPE/PP with more width were manufactured. The earlier ''L'' shape bag is the product manufactured by flat machines and the later product is manufactured by the newly installed circular loom machines by the Assessee by investing Rs. 9,00,000/- for each of the three machines, which was a new and different product line.

 

15. There is also no cogent distinction or reason made out by the Revenue in the present case, as to how, the two other similarly situated units of the Udaipur itself on same set of facts alleged could be given the exemption under the category of "Diversification" and the present Assessee alone was picked up to be denied this exemption. Though the facts relating to the other units namely, M/s. Rajasthan Chemicals and M/s. Popular Packing Private Limited are not before this Court, but once this factual aspect was raised and brought to the notice of the DLSC or the Tax Board, it was the duty of the Revenue to have distinguished their cases with the case of the present Assessee or else the DLSC ought to have extended the same benefit to the present Assessee also, as no arbitrary or pick and choose discrimination can be permitted even while considering the exemptions notifications under the taxing statutes, which call for literal interpretation and no equity considerations come in. But Art. 14 of the Constitution of India applies to taxing statutes and Notifications also.

16. The relevance of the Excise Notifications referred and relied upon by the Assessee before the Hon''ble Supreme Court has also to be seen in the light that if the two products were not treated differently under the Excise Law, one would not have been given exemption and the other would have attracted excise duty @ 24%. Therefore, it is clear that under the Excise law, where the taxable event is ''manufacture'' as against the ''sale'' under the Sales Tax Law and the Excise law statute treats these two products manufactured by Flat machines and Circular machines differently, possibly the Commercial Taxes Department cannot contend that the two products coming out from the different product lines (assembly of plant and machinery) and have different commercial value, even though the same raw material viz., HDPE/PP Woven Fabric is used, are the same products and that is what might have persuaded the Hon''ble Supreme Court to direct this Court to take into consideration the Excise Notifications also, while deciding the case afresh and which Notifications are found to be of great significance and relevance in the present case; and on the basis of which, this Court can conclude that the two products in the present case are of commercially different value having different price in the market and one being exempted from the excise duty and the other levied duty @ 24% ad-valorem. Therefore, they are commercially different articles and satisfy the definition of "Diversification", as defined under the Incentive Scheme of 1987 even if a different product is envisaged in the said definition.

17. Thus this Court is of the considered view that the earlier view taken by the learned Single Judge of this Court which proceeded on the assumption that "Diversification" requires coming into existence of a new product is not sustainable and on a closer reading of the definition of "Diversification" under the Incentive Scheme of 1987 which requires that the investment exceeding 25% in the new product line (assembly of new type of plant and machinery), the said criteria is satisfied by the Assessee in the present case. This Court has, therefore, no hesitation in holding that the case of the respondent-Assessee is covered under Clause 2(g) of the Incentive Scheme of 1987 and it has been

 

rightly granted the benefit of exemption under the said category of "Diversification" by the Tax Board.

18. The learned counsel Mr. Prakash Javariya appearing for the respondent-Assessee also informed the Court that the Assessee has already availed the said exemption under the Exemption Certificate issued to the Assessee under this category in the month of March, 1999 in pursuance of the order of the learned Tax Board dated 15.01.1999 passed in favour of the Assessee.

19. The present Revision Petition filed on behalf of the Revenue is thus liable to be dismissed and the same is, accordingly, dismissed. No costs. A copy of this order be sent to the concerned parties and authorities and Tax Board be sent forthwith.