
(2000) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Sales Tax Revision No. 1165 of 1999

Commercial Taxes Officer

APPELLANT

Vs

Vishnu Metals

RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 4(2)

Citation : (2000) 120 STC 433 : (2001) 4 WLC 754

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Sanjeev Johari, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—This revision u/s 86(2) of the Rajasthan Sales Tax Act, 1994 (for short "the Act") is directed against the judgment dated February 9, 1999, passed by the Rajasthan Tax Board, Ajmer (hereinafter to be referred to as "the Tax Board"), whereby the Tax Board while allowing the appeal has set aside the order dated March 19, 1999 passed by the District Level Screening Committee.

2. The brief facts which are not in dispute and are relevant for the purpose of deciding this revision are : that the respondent-assessee is the manufacturer of stainless steel sheets. Its original installed capacity was 1,300 M.T. per annum prior to February 16, 1995 when it has taken expansion activity. As against the installed capacity of 1,600 M.T. per annum, the unit has achieved the production of more than 85 per cent of the installed capacity in the year preceding the relevant date. Its production between April 1994 to February 15, 1995 was 1,292.913 M.T. and during the year ensuing the date of expansion, the respondent-assessee manufactured its own goods to the tune of 1,447.489 M.T. and also manufactured the goods by doing the job-work. In all it gave production to the extent of 2,193.76 M.T.

3. The respondent-assessee's unit applied for grant of eligibility certificate under

the provisions of the Rajasthan Sales Tax New Incentive Scheme for Industries, 1989 (for short "the Scheme of 1989") as an expansion unit. The requisite conditions for considering the unit eligible for grant of eligibility certificate as an expansion unit are contained in Clause 2(f) of the Scheme of 1989, which reads as under :

"2(f). "Expansion" means increase in the value of fixed capital investment by not less than 25 per cent of the net fixed assets of the existing project and accompanied by an increase in the production to the extent of at least 25 per cent of the original licensed/registered capacity.

Explanation : The benefits of sales tax incentive for expansion shall be admissible to the eligible units only after they have achieved at least 85 per cent of their licensed/registered capacity before expansion."

4. A perusal of the aforesaid provision goes to show that in order to avail the benefit of incentive scheme by the expansion unit, the following conditions are required to be fulfilled :

(a) That there should be increase in the value of fixed capital investment by not less than 25 per cent of the net fixed assets of the existing project ;

(b) That such increase in the value of fixed capital investment must be accompanied by an increase in the production to the extent of at least 25 per cent of the original licensed/registered capacity ;

(c) The unit must have achieved at least 85 per cent of their licensed/ registered capacity before expansion.

5. In the present case, there is no dispute that the respondent-assessee has increased in the value of the fixed capital investment by more than 25 per cent of the existing net fixed assets of the project and it has also achieved production of more than 85 per cent of its originally installed capacity which was 1,600 M.T. per annum before expansion. About the third condition, viz., that after expansion, it should have achieved its production at least 25 per cent in excess of its originally licensed/registered capacity, there is also no dispute that the total production of the unit inclusive of its own production and the production through job-work exceeded 25 per cent of the originally licensed/registered capacity within completion of one year of expansion. It is only thereafter that the expansion unit could aspire to get eligibility certificate for securing the benefit of incentive scheme as an expansion unit. However, the District Level Screening Committee (for short "the DLSC") was of the opinion that for the purposes of the aforesaid scheme, the manufacture of goods by way of job-work cannot be taken into account and the unit must have manufactured its own goods exceeding 25 per cent of its originally installed capacity before it could avail the benefit of incentive scheme as an expansion unit. On the above interpretation of the Scheme of 1989, the DLSC rejected the application of the respondent-assessee for grant of eligibility certificate.

6. On appeal, the Tax Board held that so far as the question of achieving the production 25 per cent in excess of its originally licensed/registered capacity is concerned, it makes no difference whether the production is done for the owners of the unit or is done on job-work but what is essential is that a unit should utilise fully its originally licensed/registered capacity of manufacture or production and should have further achieved 25 per cent excess to that capacity in production. The Tax Board also held that there is no requirement that the entire production in order to make the unit eligible for grant of benefit under the incentive scheme must be of its own account and not by way of any job-work. In this view of the matter, the Tax Board allowed the appeal filed by the respondent-assessee and directed the DLSC to issue necessary eligibility certificate to the respondent-assessee vide its order dated February 9, 1999. Hence this revision by the Revenue.

7. I have heard Mr. Sanjeev Johari, the learned counsel appearing for the Revenue and Mr. Dinesh Mehta, the learned counsel for the respondent and have carefully gone through the record of the case.

8. Mr. Sanjeev Johari, the learned counsel for the Revenue, urges that the Scheme of 1989 was brought into force vide Notification No. F.4(35)FD/Gr. IV/87-38 dated the July 6, 1989 and the said notification dated July 6, 1989 reads as under :

"In exercise of the powers conferred by Sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), the State Government, being satisfied that it is expedient in the public interest so to do hereby notifies the "Sales Tax New Incentive Scheme for Industries, 1989" (hereinafter referred to as the "New Incentive Scheme") and exempt the industrial units from payment of tax on the sales of the goods including bye-products and waste items manufactured by them within the State and in case of packing material used therewith the 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."

9. He submits that keeping in view the expression "exempts the industrial units from payment of tax on the sales of the goods manufactured by them" used in the notification dated July 6, 1989 it must be considered that for the purposes of computing acquired manufacturing capacity of an industrial unit seeking to avail the incentive scheme under the Incentive Scheme of 1989, the manufacture must of those goods which could be sold by it and not the manufacture of goods for others. In support of his contention, he has placed reliance on a decision of the honourable Supreme Court in *Prestige Engineering (India) Ltd. and Others Vs. Collector of Central Excise, Meerut and Others*,

10. Mr. Johari also urges that before the benefit of incentive scheme can be provided to a person, his eligibility for getting incentive or exemption under the scheme must be strictly determined. There cannot be any doubt on the principle

that before a person is taxed, he must be strictly brought within the four corners of the taxing provision and before a person is allowed to avail the exemptions or incentives, he must strictly be held to have fulfilled the conditions under which such exemptions/incentives are provided. Keeping in view the above principle, we must examine what are the conditions which make an industrial unit eligible for exemption under the Incentive Scheme of 1989 and to what extent of exemptions, he is entitled to.

11. Clause (3) of the Incentive Scheme, 1989 deals with applicability of the New Incentive Scheme and it provides that the New Incentive Scheme will be applicable (i) to new industrial units ; (ii) to industrial units going in for expansion or diversification ; and (iii) to sick units. The explanation (1) appended to clause (3) of the Incentive Scheme, 1989 clearly provides that ineligible industries shall not be given any benefit under this notification.

12. Clause 2(a) defines "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. Clause 2(j) also defines "ineligible industries". Obviously, we are concerned with "expansion unit" and, therefore, the definition given to term "expansion" is reproduced hereinabove.

13. It is relevant to mention here that Clause 2(j) defines "ineligible industries" means the industries listed in annexure B appended to this notification which will not be eligible for sales tax incentives provided that the restriction imposed in this clause shall not apply to a sick unit as defined in sub-clause (b) of this clause. Thus, it is clear that ineligible industries as defined in Clause 2(j) of the Incentive Scheme, 1989 does not exclude the units engaged in activity of manufacture done through job-work.

14. It is also not seriously disputed by Mr. Johari, the learned counsel appearing for the Revenue, that the job-work undertaken by an industrial unit does result in the manufacture of goods and in doing the job-work, its production capacity is also utilised for manufacture of the goods and this is also understood by the process of manufacturing. I am unable to see any provision in the Incentive Scheme of 1989 by which the eligibility of an industrial unit is only confined to its own manufacturing activities.

15. There is distinction between the expressions "eligibility to claim benefit of incentive" and "extent of incentive enjoyable by such eligible unit" under the scheme. The former refers to basic conditions of the fulfilment of which alone a dealer can lay claim to avail benefit under the scheme. Once he is admitted to scheme, the question will arise what benefit he can derive and what are the conditions for availing such exemptions. The expression to which learned counsel for Revenue referred to with some emphasis reads :

"exempt the industrial units from payment of tax on sales of goods manufactured by them."

16. This is only indicative of the benefit which an eligible unit can avail under the scheme, namely an industrial unit eligible under the scheme to avail benefit is entitled to claim exemption from payment of tax on sale of goods manufactured by it, including bye-product and waste of such manufacturing activities. It does not lay that unit in order to be eligible to lay claim to exemption from payment of tax on sales must sell all the goods manufactured by it. It only signifies that an industrial unit, which is eligible to claim exemption can lay claim only to the extent it is indulging in taxing event of sale of goods manufactured by it. To the extent it is not selling the goods manufactured by it, it will not be claiming any benefit in respect of it. On the other hand, the eligibility to lay such claim of entry to incentive scheme is provided elsewhere under the scheme laying condition for the same. As noticed above, the eligibility condition for an expansion unit to lay claim to entry into the benefits of the scheme are mentioned in Clause 2(f). Once those conditions are fulfilled, it is entitled to lay claim to exemption from payment of tax on sales made by it of the goods manufactured by it. One major feature of the scheme is that it does not exempt the commodity from tax but subjects all the sales which fall in the category of taxable turnover to tax and exempts the dealer owning the eligible unit from payment of tax by adjusting the same to maximum limit of quantum upto which it is computed with reference to its capital investment. If even after fulfilling all the conditions of eligibility, a unit does not make any taxable sales or engage in activity which is subject to tax, he may not be able to avail benefit of the scheme in respect of such goods. But such inability to avail benefit of exemption cannot lead to any inference that he has not manufactured those goods. Nor can his failure to sell the goods manufactured by him affect its eligibility to exemption in respect of transactions for which he can lay such claim.

17. The aforementioned decision of the Supreme Court in Prestige Engineering (India) Ltd's case [1994] 6 SCC 465 rather supports the assessee-respondent. Prestige Engineering (India) Ltd. and Others Vs. Collector of Central Excise, Meerut and Others, was a case under the Central Excises and Salt Act and related to the scope of notification granting exemption to the goods produced on job-work basis. By notification dated April 30, 1975, the Central Government in exercise of its powers under Rule 8(1) of the Central Excise Rules, 1944, exempted goods falling under item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 manufactured in a factory as a job-work from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job-work. The expression "job-work" was defined in the explanation appended to the above notification. The honourable Supreme Court was concerned to decide whether in the facts before it, the appellant has indulged in any job-work or has indulged in the activity of manufacturing its own goods. In that, case, there was a specific provision regarding exempting manufacture through job-work from payment of excise

duty. Thus but for exemption notification, job-work would have attracted excise duty in respect of manufacturing activity done as job-work. However, in the instant case, there is no specific provision in the Act excluding the manufacture through job-work from availing the benefit of incentive scheme and hence, that case will not support the revenue but it would rather support the respondent-assessee.

18. In this connection, it would not be out of place to refer to another decision of the honourable Supreme Court in *Assessing Authority-cum-Excise and Taxation Officer v. East India Cotton Mfg. Co, Ltd*, [1981] 48 STC 239. In that case, the court was considering the case arising under the provisions of the Central Sales Tax Act. The business mentioned in the certificate of registration was "textile manufacturing, sale, purchase, wholesale distribution ; sale and purchase of yarn and waste and textile machinery". The certificate of registration also specified, inter alia, the following classes of goods for the purpose of Sub-section (1) of Section 8, namely :

"dyeing colours, and other chemicals for use in manufacture".

19. The assessee purchased these goods in the course of inter-State trade and commerce on the basis of its certificate of registration and furnished to the selling dealers having declarations in form C stating that these goods were purchased for use by the assessee in the manufacturing of goods for sale. On the strength of these declarations the selling dealers were taxed in respect of the sales effected by them to the assessee at the rate of 3 per cent u/s 8(1)(b) of the Central Act. The goods purchased by the assessee were used partly for sizing, bleaching and dyeing of textiles belonging to the assessee and partly for sizing, bleaching and dyeing of textiles belonging to third parties on job-basis. The assessee was served with a show cause notice under the Central Sales Tax Act on the ground that the assessee had been misusing the certificate of registration by doing sizing, bleaching and dyeing for third parties on job-basis. In those circumstances, the question very much similar to the one raised in the present case arose before the honourable Supreme Court.

20. The court held that "a statute must be construed according to its plain language and neither should anything be added nor should anything be subtracted unless there are adequate grounds to justify the inference that the Legislature clearly so intended".

21. On merit, the court found that "the expression used by the Legislature as well as the rule-making authority was simply "for use.....in the manufacture.....of goods for sale" without any addition of words indicating that the sale must be by any particular individual. The Legislature had designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods". In the present case also, for the purpose of achieving benefit under the incentive scheme, the Legislature has abstained from using any expression of limitation indicating that the entire

production in order to make the unit eligible for grant of benefit under the incentive scheme must be on its own account and not by way of doing job-work.

22. It is also pertinent to notice the object of scheme. The object of scheme is not to grant the concession simpliciter. Tax concession is mainly a temptation to achieve the principal object of inviting entrepreneurs to make capital investment within the backward areas of State for providing opportunity of balanced economic growth and to get increased production for the citizens. The condition about achieving minimum percentage of existing capacity of production prior to expansion and securing subsequently at least 25 per cent additional production than existing installed capacity prior to such expansion, emphasise in no uncertain term that for availing benefit of scheme by an expansion project, the same must not only have shown ability to give production up to its full existing capacity but must also give at least 25 per cent extra production of such capacity. In achieving this object, for whom such production is made does not appear to be a relevant factor from the scheme itself, so long as the unit gives increased production in fulfilment of such object, in the absence of specific condition about production for self, it cannot be read into the scheme to truncate its operative field, to the detriment of its objects.

23. In this view of the matter, the Tax Board was right in allowing the appeal filed by the respondent-assessee and directing the DLSC to issue necessary eligibility certificate to the respondent-assessee vide its judgment dated February 9, 1999.

24. I, therefore, find no force in this revision and it is hereby dismissed with no order as to costs.