
(2000) 04 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 1016 of 1999

CTO

APPELLANT

Vs

Bhartiya Ispat Udhyog

RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Citation : (2000) 2 WLN 7

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. Commercial Taxes Officer, Special Circle, Pali has filed this revision aggrieved with the order of the Rajasthan Tax Board, Ajmer dated 30th May, 1997 allowing the appeal of the respondent.

3. The respondent which is a small scale industry engaged in manufacture of iron bars, angles and channels etc., made an application on 6.3.1995 before the District Level Screening Committee for grant of eligibility certificate for an expansion project. It has claimed the eligible fixed capital investment for computing the benefit of incentives available. The District Level Screening Committee (DLSC) held the unit to be an eligible expansion unit to avail incentive under the scheme but quantified the eligible fixed capital investment at Rs. 15,58,528. according to which investment in new building was taken at Rs. 4,89,075, in new plant and machinery qualified investment was taken at Rs. 8,22,945 and installation expenditure at Rs. 2,46,508, thus, in total Rs. 15,58,528 was quantified as Eligible Fixed Capital Investment. This was done vide order dated. 23.2.1996. Aggrieved with the quantification of eligible fixed capital investment for the purpose of quantifying incentive, the assessee filed an appeal before the Rajasthan Tax Board which has been allowed partly.

4. The DLSC has confined the scheme of eligible fixed capital investment of new

building to the reduced amount of Rs. 4,89,075 by observing that the total investment in new building is not confined to the expansion unit only but some amount has also been invested for constructing sheds etc. for the existing undertaking and therefore the assessee is not entitled to the entire amount invested in buildings but confined the eligible amount of expansion to the extent production has been increased namely by 39% of the total investment. The Board has found that there has been two reports, one from the Managing Director, DLS C. Pali dated 25.5.1995 according to which as against the claim of assessee the eligible fixed capital investment were certified to be Rs. 12,72,770 whereas as per the District Industries Officer, District Industries Sub-Center, Pali, the eligible fixed capital investment in the new buildings for expansion was Rs. 13,76,787 and held that though there was justification for not to allow that part of the investment which was made in the existing unit and did not concern the expansion unit or the expansion expenditure but there was no jurisdiction for the DLSC without considering the report about the value of the investment made in expansion unit only but by estimating the eligible fixed capital in proportion to increase in production.

5. The reasoning of the Board appears to be sound. The increase in production is a perennial benefit and capital investment does not necessarily correspond in most cases with the percentage of increase in the production capacity. On the other hand, it is ordinarily other way round. The capital investment in creating or expanding infrastructure does not bear proportion to increase in installed capacity or production capacity achieved. Since the eligible investment in the expansion unit was found by two officers as noticed above, and the Board has accepted the higher of the two, I do not find any justification in interfering in that finding in revision as no question of law is involved in it.

6. The other addition that has been made by the Board is in respect of second hand imported machinery purchased by the assessee at Rs. 16,54,241 not directly from the foreign seller but from an importer in India. The DLSC has disallowed the expenses inter-alia on the ground that since the dealer has not purchased it directly from the seller from outside the country he is not eligible for incentive in respect of such investment. The eligible fixed capital investment defined in Sub-clause (e) of Clause 2 of 1989 Incentive Scheme includes second hand plant and machinery imported from outside the country and its installation. By definition it does not prescribe any condition that the imported second hand machinery must be purchased directly from outside the country. The para (iii) of Sub-clause (e) of the Clause 2 of the Scheme while makes investment in new plant and machinery as eligible fixed capital investment and include imported second hand machinery from outside the country also. The purpose behind making this provision is clear from Explanation 2 attached to the aforesaid definition which provides that plant and machinery used or installed anywhere in the India, shifted, leased, hired or transferred in any manner will not be considered as fixed capital investment eligible for sales tax incentives. This indicates that the machinery which has already been used in India or installed in

India, the re-use or re-installation within the State is not eligible for fixed capital investment. Both new plant and machinery as well as imported second hand machinery from outside the country can both be installed for the first time in India and thereafter can be shifted, purchased leased, hired or transferred in any manner to different places in the State. The first installation of the new machinery or the imported second hand machinery within the State of Rajasthan is to be included in the fixed capital investment, appears to be the true purport of the eligible fixed capital investment for the purpose of the scheme. The person from whom the machinery is purchased, does not make it qualified for eligible fixed capital investment. That may only be relevant for the purpose of finding the genuineness of the purchase and the cost incurred by the investor but not for the purpose of deciding its eligibility. If the machinery is directly imported by a dealer from outside the country or purchases such second hand machinery for the first time from an importer of such machines, before it is installed anywhere in India or used anywhere, in the country, has been put at par with the new plant and machinery installed in the State. No doubt is raised about whether the imported second hand machinery which has been purchased by the assessee to have already been used somewhere in India. If the assessee is the first user of such imported second hand machinery purchased from a dealer in India and that has been installed at eligible site, he is entitled to its inclusion in eligible fixed capital investment. Obviously, the assess has not purchased directly from foreign seller but has purchased from an importer within the country, he is not to get the original bill of import nor he is a person liable to pay custom duty etc. Therefore, these considerations become irrelevant. The board was therefore, right in not disallowing the amount of investment made in imported second hand machineries solely on the ground that the same have not been purchased from a seller directly or outside the country. Since otherwise there has been no objection, it has rightly come to the conclusion to allow the same to be entered in computation of eligible fixed capital investment for quantification of investment.

7. No other issue is involved.

8. The petition, therefore, fails and is hereby dismissed.