(1984) 02 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition No. 908 of 1976

Ergen Plastic Industries APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 5CC

Citation : (1984) 57 STC 77

Hon'ble Judges : P.K. Banerjee, C.J

Bench : Single Bench

Advocate : R.L. Maheshwari, for the Appellant; A.K. Mathur, Additional Advocate-General, for the Respondent

Judgement

Pkadyot Kumar Banerjee, C.J.—The petitioner is a registered partnership firm, M/s. Ergen Plastic Industries, Jodhpur. Shri F. L. Maheshwari is the major partner along with others and the firm was registered with the Registrar of Firms in 1975. It appears, the partnership firm M/s. Ergen Plastic Industries, Jodhpur, carries on business of manufacturing and selling plastic goods, viz., polythene bags, films, plastic pipe, plastic cane, monofilaments, extruded sections, etc. It started the manufacture of polythene bags and films in 1967 as a proprietary concern. It was converted into a registered partnership firm in 1975 for carrying on business of manufacturing and selling plastic goods, namely, polythene bags, films, plastic pipe, plastic cane, monofilaments, extruded sections, etc., and was a licensed registered dealer under the provisions of the Rajasthan Sales Tax Act, 1954. It appears, after the proprietorship concern being converted into a partnership firm, fresh licences were granted to the new partnership firm and new registration No. R. S. T. 512/67 and C. S. T. JUC/4467 were allotted to the new partnership firm. In order to boost industrial production in the State, it is alleged, the State Government has given exemption to pay tax for new products with the help of new machinery u/s 5CC of the Rajasthan Sales Tax Act, 1954, and is availed of by issue of form S. T. 17A. The petitioner applied for the issue of the form S. T. 17A on 22nd March, 1975, but that was rejected. Appeal was taken. The appellate authority also rejected the same. It is alleged that in refusing this form the ground given is that the present partnership firm is using old machinery which has already been used by the old proprietary concern. Being aggrieved by the said order and further order on further letter in 1976 by which the respondents refused to give form S. T. 17A to the petitioner on the ground that about 80 per cent of the machineries installed are old machineries and the new machinery which has been installed for manufacturing plastic cane has not yet started production, the petitioner moved this Court and obtained the present rule.

2. The question is whether the petitioner is entitled to the exemption u/s 5CC of the Rajasthan Sales Tax Act, 1954. Mr. Maheshwari on behalf of the petitioner contended that Section 5CC of the Rajasthan Sales Tax Act read with notification u/s 5CC of the aforesaid Act makes it clear that the petitioner is entitled to exemption, because it is a new unit and therefore, entitled to the exemption.

3. Mr. Additional Advocate-General on behalf of the respondents, however, contended that the unit is not new, it was a proprietary concern all throughout. Thereafter it was converted into partnership firm in 1975 and the partnership firm was using the old machineries for the purpose and no new machinery has started production. In that view of the matter, according to Mr. Additional Advocate-General, the petitioner was not entitled to the exemption to be granted u/s 5CC of the Rajasthan Sales Tax Act, 1954.

4. Section 5CC of the Rajasthan Sales Tax Act, 1954, and the notification u/s 5CC are in the following terms:

5CC. Remission of tax on raw material for specified period-(1) Notwithstanding anything contained in Section 5 or 5A, but subject to such restrictions and conditions as may be prescribed, no tax shall be payable by a registered dealer who commissions any notified industry within the State on or after the first day of March, 1970, but before the 31st day of March, 1974, on sale to or purchase by him of any raw material up to 31st March, 1979, for the manufacture of goods for sale within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India :

Provided that where a registered dealer commissions any notified industry after the 31st day of March, 1974, but before the 31st day of March, 1979, no tax shall be payable by him for a period of five years from the date of the commissioning of the notified industry, on sale to or purchase by him of any raw material for the manufacture of goods for sale within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India :

Provided further that the State Government may, at any time, by notification in the official Gazette, order that a notified industry shall cease to be as such from such date as may be specified and thereupon the registered dealer who has commissioned such industry shall not be entitled to remission of tax under the provisions of this sub-section.

(2) Where any raw material purchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified therein, such dealer shall be liable to pay as penalty, such amount, not less than the amount of tax on the sale of such raw material at the full rate applicable thereto u/s 5, but not exceeding 1J times the amount of tax at such full rate, as the assessing authority may determine, having regard to the circumstances in which such use was made.

Explanation.-For the purpose of this section ''notified industry'' means an industry notified by the State Government in this behalf.

Notification No. F. 5(15)FD/CT/70-25, dated 1st July, 1970.

In pursuance of the explanation to Section 5CC of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), the State Government hereby notifies that all industries with new units shall be treated to be notified industries for the purpose of the said section.

Note:-For the purpose of this notification ''new unit'' means factory or workshop using machinery or substantial parts thereof not already used or acquired for use in any other factory or workshop in Rajasthan, but does not include any factory or workshop established on the site of an existing factory or workshop manufacturing the same goods or any addition to or extension of an existing factory or workshop for manufacturing the same goods.

5. From Section 5CC of the Rajasthan Sales Tax Act it is clear that a registered dealer is entitled to an exemption in respect of any notified industry commissioned on or after 1st March, 1970, but before 31st March, 1974, on sale to or purchase by him of any raw material up to 31st March, 1979, for the manufacture of goods for sale within the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India. Under Sub-section (2) of Section 5CC it was further provided that where any raw material puchased by a registered dealer under Sub-section (1) is utilised by him for any purpose other than a purpose specified therein, such dealer shall be liable to pay as penalty, such amount, not less than the amount of tax on the sale of such raw material at the full rate applicable thereto u/s 5, but not exceeding 1| times the amount of tax at such full rate. The word "notified industry" has been notified by the notification dated 1st July, 1970, stating therein the meaning of "new unit". It appears that "new unit" means factory or workshop using machinery or substantial parts thereof not already used or acquired for use in any other factory or workshop in Rajasthan, but does not include any factory or workshop established on the site of an existing factory or workshop manufacturing the same goods or any addition to or extension of an existing factory or workshop for manufacturing the same goods. From the said note to the notification it is clear that even if a factory or workshop established on the site is extended by any addition but manufactures the same goods, it will

not come within the meaning of the word "new unit". Therefore, in my opinion, Mr. Additional Advocate-General is correct when he says that new unit means new unit to be established for the manufacture of the goods on the expansion of a factory or existing factory or workshop for manufacturing the same goods, will not attract the notification. I have no hesitation to add that; if, however, it is found that the extension of the existing factory or workshop is for manufacture of different kind of goods, this may come within the mischief of Section 5CC of the Rajasthan Sales Tax Act as notified industry in view of the notification dated 1st July, 1970, or, in otherwords, if there were existing factory or workshop which is extended or added for manufacturing of other goods, then which was already there and which has been manufactured by the same factory, in such case provisions of Section 5CC may be attracted or exemption may be granted under it, but it is not necessary for me in this proceeding to say final word on this as argued by Mr. Maheshwari. "It appears, in the facts of the case as appearing from the annexures that the same goods are being manufactured in the existing factory, though a new machine is being installed for manufacturing different kind of goods." In my opinion, there is another difficulty of the petitioner in getting the exemption u/s 5CC of the Rajasthan Sales Tax Act, that is, that the old firm was a proprietary firm, and the petitioner is now registered partnership firm. The registered partnership firm has a different legal entity vis-a-vis the proprietary firm. Section 5CC makes it clear that a registered dealer who commissions any notified industry within a certain time will be entitled to some exemption. In the present case it is clear, the petitioner-industry as a firm has got a registration certificate a new and though one of the partners is major shareholder of the firm, still legally speaking the partnership and proprietary firm are two different legal entities. In these circumstances, in my opinion, the petitioner-partnership firm cannot be entitled as of right to exemption u/s 5CC of the Rajasthan Sales Tax Act, 1954, for the purchase of raw materials for manufacture of the goods for sale within the State."

6. In the circumstances, therefore, in any opinion, there is no merit in this rule. The rule must, therefore, stand discharged.

7. The rule is, therefore, discharged. There will be no order as to costs.

