
(2001) 04 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2904 of 1999

Grasim Industries Ltd.

APPELLANT

Vs

Commissioner, Commercial Taxes

RESPONDENT

Date of Decision : 04-04-2001

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(5)

Citation : (2001) 4 RLW 106 : (2002) 125 STC 35 : (2002) 1 WLC 369 : (2001) 2 WLN 674

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Rajendra Mehta, for the Appellant; Sangeet Lodha, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Short issue has been raised in connection with the proper meaning to be assigned to the expression "the other manufacturers in the State in the relevant industry during the accounting year 1984-85" which find place in the notification issued by the State of Rajasthan in exercise of powers conferred by Section 8(5) of the Central Sales Tax Act, 1956 (annexure 1) No. F.4(72) FD/Gr. IV/81-18 dated May 6, 1986.

2. The question has arisen in the circumstances that the petitioner is a public limited co., it has established an industrial unit in State of Rajasthan for manufacturing white cement known as Birla White, at Post Office Rajshree Nagar, via Pipar Road, District Jodhpur.

3. Through aforesaid notification a partial exemption was offered to the dealers having their place of business and who are manufacturing goods in the State of Rajasthan. Such manufacturer could claim partial exemption from the tax payable in respect of the increased sales of such goods manufactured by him in the course of inter-State trade or commerce. The concession is by way of

reduction in the rate of tax at 50 per cent of the tax so payable on increased sales vis-a-vis such sales in the base year 1984-85 up to 50 per cent and at the rate of 75 per cent of the tax so payable on increased sales made over and above the aforesaid 50 per cent, in the manner and subject to the conditions as detailed in the notification. The notification related the eligible increased sale in respect of which partial exemption could be claimed with the percentage of sales during the accounting year 1984-85 (hereinafter called "the base year") by a dealer. Envisaging the contingency that the dealer, who is manufacturing the goods, may or may not be in existence in 1984-85, the base year, in relation to which the increase in sales in the course of inter-State trade or commerce to the extent envisaged is to be computed, made the specific provision in the notification. The notification in question reads :

S.O. 23.--In exercise of the powers conferred by Section 8(5), Central Sales Tax Act, 1956 (Central Act 74 of 1956), the State Government in supersession of the Finance Department Notification No. F4(72)FD/Gr./IV/81-36 dated December 3, 1985 [S.No. 584], hereby directs that, with immediate effect, any dealer, having his place of business and manufacturing goods in the State of Rajasthan, may claim partial exemption from the tax payable in respect of the sales by him of such goods in the course of inter-State trade or commerce by way of reduction at the rate of 50 per cent of the tax so payable on increased sales up to 50 per cent and at the rate of 75 per cent of the tax so payable on increased sales made over and above the aforesaid 50 per cent, in the manner and subject to the conditions as follows :

(1) Such reduction of tax shall be allowed to a dealer only after and in respect of the increase which is effected in the percentage of the quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter-State trade or commerce and despatched to head office, branch office, depot or agent outside the State for sale outside the State, during any accounting year as against such percentage during the accounting year 1984-85 ;

(2) In the case of a dealer who commenced the manufacture of goods in the State of Rajasthan on or after January 1, 1985, the average of the aforesaid percentages in respect of the other manufacturers in the State in the relevant industry during the accounting year 1984-85, calculated and determined by the assessing authority with the approval of the Commissioner, shall be deemed to be the percentage in respect of such dealer for the accounting year 1984-85 ;

(3) The increase effected in the percentage, as referred to in Clause (1) above in respect of the sales in the course of inter-State trade or commerce, to be considered shall be limited to the extent of the decrease in the percentage in respect of the despatch of goods to head office, branch office, depot or agent outside the State for sale outside the State, during the relevant accounting year as against such percentage during the accounting year 1984-85.

4. It is not in dispute in this petition that the petitioner is entitled to partial exemption under the aforesaid notification on its inter-State trade or commerce. It is also not in dispute that the petitioner has commenced the manufacture of white cement in the State of Rajasthan after January 1, 1985, therefore, the increased sales in respect of which partial exemption could be claimed by him could not be related to its own sales in the course of inter-State trade or commerce and despatches to head office, branch office, depot or agent outside the State for sale outside the State during base year (accounting year 1984-85). Therefore, the increased sales in the course of inter-State trade or commerce of such goods as are manufactured by it within the State of Rajasthan has to be related to the percentage of quantum of goods sold in the inter-State trade or commerce out of the total quantum of goods sold within the State in respect of "other manufacturers in the State in the relevant industry during the accounting year 1984-85".

5. The assessee's contention in this regard is that the relevant industry in the context can only mean primarily the industry engaged in manufacture of such goods, as are manufactured by the claimant, which is situated within Rajasthan. In this regard vis-a-vis the petitioner the only industry engaged in manufacture of white cement could be considered as the other manufacturer in relevant industry. The only manufacturer which was in existence in Rajasthan prior to January 1, 1985 engaged in the manufacture of white cement, the goods manufactured by the petitioner-company, was J.K. White Cement at Gotan, and therefore, for the purpose of finding relevant percentage of quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter-State trade and commerce and despatches to the head office, branch office, depot or agent outside the State for sale outside the State, during the base year the data of other manufacturer in relevant industry, namely, J.K. Industries, engaged in the manufacture of white cement as J.K. White Cement Works at Gotan in the State of Rajasthan during the accounting year 1984-85, could be taken into consideration. The figures accepted in the case of J.K. White Cement Works are not to be doubted inasmuch as both certificates, one furnished by the J.K. White Cement showing the computation made in its case of the sales during the base year for claiming the benefit of the aforesaid notification, as well as the figures admitted to be accepted by the department in the case of J.K. White Cement Works have been placed on record as annexure 2 and annexure R/5 by the petitioner and respondents respectively.

6. The respondents' case is that the term "relevant industry" cannot be confined to the industry of manufacturing "white cement" within the State of Rajasthan but takes within its compass all the industries within the State of Rajasthan manufacturing cement of whatever nature and creed and the computation of base year's figure of the total sale ; intra-State as well as inter-State; and the despatches outside the State for sale outside State for 1984-85 were computed on that basis and the advantage on that basis has been extended to the

petitioner.

7. In that connection, the petitioner has submitted that even in that regard the percentage figures of base year for cement industry as a whole has been applied to the petitioner. It has been submitted that the case of Shri Ram Fertilisers and Chemicals, Kota, a manufacturer of grey portland cement, by the department itself had determined the base year's percentage figures. The base year date to be applied to the petitioner as conveyed to the petitioner vide annexure 5 dated April 25, 1998 are not in consonance with that either. A comparative chart of the base year figures adopted for the purpose of carrying out computation of the partial exemption benefit under the aforesaid notification has been placed on record as annexure "A" attached to annexure 6 by the petitioner, which is as under :

INDIAN RAYON & INDUSTRIES LTD.

WHITE CEMENT DIVISION

Comparative chart showing determination under notification dated May 6, 1986.

Sl. No.

Type of sales

As determined by Assistant Commissioner, Special Circle-I, Jodhpur, vide his letter dated 25-4-1998

As per order dated 4-12-1987 in the case of M/s. ShriRam Fertilisers and Chemicals, Kota

Actual despatches of JKWC, Gotan

1

Sales within State

22.22%

17%

02.92%

2

Inter-State sales

26.13%

18%

24.60%

3

Sales outside State/ branch transfer

52.65%

65%

72.48%

8. It is true that broadly speaking the expression "cement" is a generic term which includes within its ambit all types of cement of whatever nature which have the adhesive value and are used in construction. However, the notification dated May 6, 1986 is not concerned with the cement as a commodity for special treatment for partial exemption but it deals with all "goods manufactured by the dealers". The term "goods manufactured" does not refer to a genus which embraces a variety of species within it, but refers to every specie of goods which are specifically distinguishable from other specie of goods either for the purpose of manufacture or for the purpose of sales, the subject with which the notification deals. The term "goods" has been used in generic sense which has classified the words "manufactured by the dealer". Therefore, for determination of increased sales and decreased despatches (otherwise than as sales), while considering the inter-State sales of goods manufactured with reference to which the exemption is claimed, in case the manufacturer himself was not in existence or not manufacturing goods until 1st of January, 1985, one has to look at the other manufacturers in the relevant industry manufacturing the same specie of goods as manufactured by the claimant dealer within the State of Rajasthan. If the inter-State sales of white cement as the specie of goods manufactured by the dealer is to be considered for extending partial exemption and for which other manufacturers in the relevant industry is to be looked around within the State of Rajasthan for the purpose of finding base year statistics then such other manufacturers in the relevant industry can ordinarily be only an industry engaged in manufacture of specific goods, viz., white cement. Other manufacturers of such goods cannot be identified with the generic genus but has to be identified with goods in specie identifiable with the specie of goods manufactured by the claimant for the purpose of finding the relevant industry engaged in the manufacture of the goods as are manufactured by the dealer.

9. The expression "relevant industry" related to which the other manufacturers in the State are referred to, in the context of the entire notification, can only relate to the manufacture of such goods as are manufactured by the dealer in question in the State of Rajasthan. The entire expression cannot be read outside the context of "such goods" referred to in the preamble of the notification which provides the subject of the Notification No. S.O. 23.

"S.O. 23.--In exercise of the powers conferred by Section 8(5), Central Sales Tax Act, 1956, the State Government in supersession of the. Finance Department Notification No. F4(72)FD/Gr. IV/81-36 dated December 3, 1985, hereby directs that, with immediate effect, any dealer, having his place of business and manufacturing goods in the State of Rajasthan, may claim partial exemption from the tax payable in respect of the sales by him of such goods in the course

of inter-State trade or commerce by way of reduction at the rate of 50 per cent of the tax so payable on increased sales made over and above the aforesaid 50 per cent, in the manner and subject to the conditions as follows."

10. It clearly says that a dealer who is having his place of business in the State of Rajasthan and manufacturing goods in the State of Rajasthan, he is entitled to claim partial exemption in respect of sales by him of such goods in the course of inter-State trade or commerce. The expression "such" here could only classify the specie of goods manufactured by the dealer having his place of business in the State of Rajasthan and the exemption is also in respect of increased sales of goods so manufactured by him, and with no other. That being so, in Clause (1) the total quantum of goods sold within the State and in the course of inter-State trade or commerce and despatches to head office, branch office, depot or agent outside the State for sale outside State during the accounting year 1984-85 can only relate to the quantum of such specie of goods as are manufactured by the claimant dealer. Viewed in that light, the "other manufacturers in the State in the relevant industry" cannot also be divorced from manufacture of such goods as are manufactured by the claimant dealer-manufacturer envisaged under preamble and Clause (a) of the notification. If that is so, then so far as possible the goods manufactured by the comparable industry must be the same. The relevant industry engaged in the manufacture of the goods for the purpose of determining the percentage of quantum of goods sold during the course of base accounting year 1984-85 can only be the industry engaged in the manufacture of the goods as are manufactured by the dealer. That being the position, if there is one or more industry within the State of Rajasthan engaged in the manufacture of the same specie of goods, white cement in the present case, as are manufactured by the dealer, there is no room for deviation to look around and find out the genus in which such specie of goods fall for the purpose of the general classification. For illustration, if a person is engaged in the manufacture of electronic watches, it cannot be classified with in the relevant industry of a person engaged in manufacture of any electronic goods other than watches notwithstanding that "electronic goods" for the rate purposes may have been classified as one entry in the notification governing the rates of tax under the Act in the State. Likewise, cement as an adhesive material used in construction is broadly speaking a building material and in the light of such an entry in the Schedule of rates, may in the absence of any specific entry relating to cement, may fall in such entry for applying the rate. That would not make the manufacturer engaged in manufacture of any construction material as a manufacturer in the relevant industry vis-a-vis manufacturer of cement.

11. In this view of matter, the only relevant criteria which appears to be justified to be applied for determining the identification of "the other manufacturers in the State in the relevant industry" appears to be a common parlance test criteria with which the commodity is known in the trade. The white cement as a marketable commodity in the market in common parlance is distinguished from Portland grey cement in general. Portland grey cement is distinct commodity, as

far as commercial parlance in the commercial world is concerned, from white cement is well fortified by a large number of precedents.

12. In this connection, reference may be made to the decision in *In Re: Purbachal International and Another*, The question fell for consideration before his Lordship was whether ordinary Portland cement and white cement are two different commodities ? The issue had arisen in the case arising under the Central Excise Tariff and in the context of exim policy. The two-fold contentions were raised ; one on the basis of the treatment given to the "White cement" different from ordinary portland grey cement under the Import Cement (Control) Order, 1978 and secondly that white cement is a different commercial commodity in the commercial parlance. The contention of the assessee on both counts was accepted firstly because the Import Cement (Control) Order dealt with specifically and distinctly with that part of it. However, independent of the Control Order the court examined other materials, viz., the booklet issued by the Indian Standard Institution under the name and style "Indian Standard Specification for White Portland Cement" and considered the contentions in the light of the common parlance test and said :

"So meanings given to articles in fiscal statute must be as people in trade and commerce conversant with the subject generally treat and understand the same in the usual course and that technical and scientific tests offer guidance only within limits..... The authoritative publication made in the Indian Standard Institution treating white Portland cement as a different commercial commodity to that of ordinary low heat Portland cement, it must be held that in commercial parlance the two commodities are known as two different commercial commodities and that there is no scope for contending merely on the basis of some chemical test contrary to the chemical analysis published by the Indian Standard Institution to hold that white cement and ordinary cement are same commodity. The important test for determining whether white cement and ordinary cement is one commercial commodity or not, is that if a customer asks for cement from a cement dealer, whether, the cement dealer will give him or offer white cement or not, certainly, a cement dealer will not offer white cement in such a case. The value of the two commodities are different, its chemical composition and uses are quite different. In commercial world it is treated as two different commercial commodities."

13. This decision found approval by the Supreme Court in *Kajaria Exports Ltd. v. Union of India* (1995) 3 Supp SCC 61 . The like question had arisen before the Supreme Court as had arisen *In re : In Re: Purbachal International and Another*, The court after coming to the independent conclusion that under the Import Cement (Control) Order the white cement has been treated differently from grey cement. The court recorded the contention of the appellant and it answered as under :

"The appellants have also drawn our attention to the composition of white cement which is different from ordinary portland cement. Properties of white

cement are also somewhat different from those of ordinary portland cement. In commercial parlance, white cement is considered as a different commercial commodity. It is submitted before us that if a customer asks for cement from a cement dealer, he will get ordinary portland cement and not white cement. Our attention was drawn to a decision of the Calcutta High Court *In re : In Re: Purbachal International and Another*, A learned single Judge in that judgment has discussed at length the properties of ordinary portland cement as against the properties of white cement. He has set out the relevant portions of a booklet issued by the Indian Standard Institution under the title 'Indian Standard Specification for White Portland Cement'.....We respectfully agree with these findings of the learned single Judge."

14. In this connection, reference may also be made to the principle laid by the Supreme Court in *Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others*, which held that "in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the trade and its popular meaning should commend itself to the authority". So meaning given to articles in fiscal statute must be as people in trade and commerce conversant with the subject generally treat and understand the same in the usual course and that technical and scientific tests offer guidance only within limits. Once the articles are in circulation and came to be described and known in common parlance, the court should find no difficulty for statutory qualification under a particular entry.

15. Learned counsel for the respondents have relied on the decisions of M.P. High Court in *Associated Cement Co. Ltd. v. State of M.P.* [1997] 106 STC 340 MP, of the Orissa High Court, in *P. Rama Rao & Sons v. State of Orissa* [1990] 77 STC 303 Ori and of the Allahabad High Court in *Commissioner of Sales Tax Vs. Mango Mal Nanak Ram*,

16. Having carefully considered those precedents cited by the learned counsel for the respondents in support of the plea that cement would include all varieties of cement in the context of the present controversy, they offer little assistance. The Allahabad High Court in *Commissioner of Sales Tax Vs. Mango Mal Nanak Ram*, was dealing with a problem in which the cement was subjected to specific entry in the Schedule of rate and no other item was specified for rates on each types of cement. The contention was raised that white cement and grey cement in common parlance are different commodities and would not be liable to be taxed as cement under the said entry in the Schedule and need to be taxed on the residuary rate which is applicable to unspecified items. As it is apparent, the basic context of the controversy was entirely different. The context of consideration before the Allahabad High Court was entry in the Schedule of rates which provided for specific entry "cement". The question was directly with reference to application of rate be made with specific entry of "cement" which provides genus for all types of cement, or white cement be excluded from such specific entry to a residuary entry in the absence of any specific entry for white cement. It rested on the principle specific provision will exclude operation of

general provision. Cement in comparison to residuary being special entry, cement will exclude the applicability of general rate under residuary clause, if any type of cement, in the context be related to specific entry vis-avis general entry in consideration. It was not dealing with a question related to comparing of two manufacturers vis-a-vis identity of goods manufactured by each of them under a notification like the one in question for the purpose of computing the concession in connection of increase in inter-State sales of a given commodity. It cannot be doubted that where the term which is to be interpreted was "cement" used in the Schedule of rates providing a specific rate, obviously white cement as a specie of cement would fall within the category of specific cement than any other non-specific, non-descript entry of residuary items not specifically provided for elsewhere.

17. The question before us is not whether the white cement can be considered as falling in the entry "cement" for the purpose of Schedule of rates but question is whether goods manufactured known in the commercial market as "white cement" is distinct from all other types of cement as a goods manufactured by other dealers in commercial parlance. If the term in a generic sense has been used in Schedule of rates without excluding any particular specie thereof from its purview then all items falling in that general term would be encompassed within it for the purpose of applying the rate and a special entry in the Schedule in that event would be considered including all types of cement to be taxed under that entry only to the exclusion of other entry unless otherwise specified. This distinction would be apparent from the decision relied on by the learned counsel for the respondents in *P. Rama Rao & Sons v. State of Orissa* [1990] 77 STC 303 (Ori). That was a case in which Orissa Sales Tax Act has used two entries in the Schedule of rates ; one was cement and another was white cement.

18. The question has been raised that providing two different rates in respect of the commodity falling in the same group of commodity was discriminatory. It is in that context the court said that though in common parlance and commercial sense cement would include all varieties of cement, however, it is open to the Legislature to make a distinction between different varieties of commodities falling under a broad head and to provide different rates of tax and points of taxation for cement and white cement is valid. It only highlights that for the purpose of prescribing rates applicable to a particular commodity in the absence of making any provision in different varieties of the same type of commodities, if they fall in the same genere, that rate would be applicable universally to all varieties falling therein without any distinction. This decision rather helps the petitioner than the respondents.

19. The another decision relied on by the learned counsel for the respondents is from the M.P. High Court in the case of *Associated Cement Co. Ltd. v. State of M.P.* [1997] 106 STC 340 MP. This again turned on the expression used in the Schedule of rates provided under the levy of export tax imposed by Municipal Corporation, Katni. The entry read "All types of cement". It is to be noticed that

the statute itself made it clear that for the purposes of rates it is making no distinction between the available distinct varieties of cement.

20. Therefore, in my opinion, all the three decisions do not advance the case of the respondents in interpreting the term to find out "other manufacturers of goods in the relevant industry within the State of Rajasthan", and related to broad category in which all types of cement would be included. As noticed by me above, the key to identify the manufacturer of the goods is related to such goods as are manufactured by the dealer with reference to whom the relevant industry is to be found out and if such investigation relates to white cement, and there exist other industry engaged in manufacture of white cement in Rajasthan, the base year figures cannot be related to cement industry generally, but must relate to other manufacturers of white cement within the State of Rajasthan.

21. Lastly, the learned counsel for the respondents urged that word "similar" cannot mean identical and therefore the relevant industry must not be confined to industry engaged in manufacture of identical goods as are manufactured by the dealer in question and for that purpose he placed reliance on Nat Steel Equipment Pvt. Ltd. Vs. Collector of Central Excise,

22. Suffice it to say that the expression used in the present case is not the "similar industry" but the expression used is the "relevant industry". The "similar" only refers to alike as the industry which may not be identical but the term "relevant industry" has direct reference to have relations with other objects which in the present case is the manufacturing of goods which are manufactured by the dealer claiming the partial exemption, in relation to whom the other manufacturer in the relevant industry are to be identified for the purposes of determining the requisite values in the base accounting year 1984-85 because the petitioner himself had not started manufacturing its goods before January 1, 1985.

23. The result of the aforesaid discussion is that this writ petition is allowed, the impugned communication dated April 25, 1998 (annexure 5) is quashed and the respondents are directed to redetermine the relevant values of the percentage of quantum of total sales within the State and sales in the inter-State trade or commerce or despatches outside State for sale outside State of Rajasthan in the accounting period 1984-85 with reference to manufacture of white cement within the State of Rajasthan in terms of the notification annexure 1 for the purpose of computing the increase in eligible turnover for partial exemption under the said notification to which the petitioner is entitled and give effect to it.

There shall be no order as to costs.