
(1984) 12 PAT CK 0007
In the Patna High Court
Case No : Tax Case No. 1 of 1980 (R)

Gupta Brick Works

APPELLANT

Vs

Commercial Taxes Tribunal and Others

RESPONDENT

Date of Decision : 20-12-1984

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 4(3)(b)

Citation : (1985) PLJR 791 : (1985) 58 STC 267

Hon'ble Judges : S.S. Sandhawalia, C.J.;Udai Pratap Singh, J;Satyeshwar Roy, J

Bench : Full Bench

Advocate : S.B. Gadodia, K.M. Lal, B.S. Lal and M.S. Mittal, for the Appellant;
T.K. Das, Standing Counsel and J.P. Gupta, Junior Counsel to Standing Counsel,
for the Respondent

Judgement

S.S. Sandhawalia, C.J.—The true import and impact of the two notifications issued u/s 4(3)(b) of the Bihar Sales Tax Act, 1959 for exempting the newly set up small-scale industries from the incidence of general and special sales tax is the primal question necessitating this reference to the Full Bench. Equally at issue is the correctness of the observations in the earlier Division Bench judgment in Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others, .

2. The facts are not in dispute and lie within a narrow compass. The State of Bihar in order to extend incentives for the setting up of small-scale industries within it issued Notification No. A. STGL-E-1013/69/9924 F.T. dated the 19th September, 1969 granting exemption from the levy of general sales tax as well as special sales tax on the sales of finished products by the newly set up small-scale industries for a period of five years from the date they started production. This notification was given retrospective effect from the 19th June, 1969 and was to remain in force till the 31st March, 1974. A similar Notification No. B. STGL-E-1023/73 S.O. 351 dated the 14th March, 1974 was then issued which was to remain in force from the 1st April, 1974 to the 31st March, 1979. It is the

admitted position that M/s. Gupta Brick Works, the petitioner, is an industrial unit which started production on the 1st January, 1971. However, it was not till five and a half years later that it was got registered as a small-scale industry by the Industries Department of the State Government on the 2nd July, 1976. It would appear that in this long interregnum the petitioner-firm did avoid the finalisation of its liability for general and special sales tax payable. The claim raised on its behalf is that it is retrospectively entitled to the benefit of the notification with effect from the 5th January, 1971 when it commenced production irrespective of the date of its registration much later.

3. The claim of the petitioner was rejected by the Commercial Taxes Tribunal, Bihar (vide annexure 6 dated 23rd March, 1980), which, following its earlier decision in *Gayatri Mills v. State of Bihar* in Revision Case No. 173 of 1975 dated the 4th September, 1976 held that the claim of exemption has to be calculated from the date of its registration as a small-scale industrial unit. The petitioner then moved the Tribunal for referring three questions of law to the High Court which was also rejected. However, the petitioner-assessee then moved the High Court u/s 33(2) which directed the Tribunal to refer the following questions of law and state a case which has been duly complied with :

(1) Whether, on the facts and in the circumstances of the case, the petitioner started production within five years prior to the grant of registration certificate from the Industries Department on the 2nd July, 1976 ?

(2) Whether, on the facts and in the circumstances of the case, the petitioner is entitled to exemption in respect of the period of five years prior to the grant of registration by the Industries Department ?

4. This case originally came up before a Division Bench before which firm reliance was placed on behalf of the petitioner on the observations in *Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others*, . In view of certain anomalous results flowing therefrom the case was referred to a larger Bench for an authoritative decision.

5. At the very threshold it may be noticed that there is no dispute on the facts and the consequent answer to question No. (1). It is the common and admitted ground that the date of commencement of production of the industrial unit is the 1st of January, 1971. Calculating arithmetically the same is not within five years of the date of registration with the Industries Department which again is undisputed as being the 2nd of July, 1976. Therefore, it must be held that the petitioner-firm started production beyond the period of five years from the date of its registration. The answer to question No. (1), therefore, has to be rendered in the negative.

6. Adverting now to the second question, the core of the argument of Mr. Gadodia on behalf of the petitioner-firm is that under the said two notifications all the newly set up small-scale industrial units would be entitled to the benefit of exemption, irrespective of the date of their registration with the Industries

Department, in case they had commenced production within a period of five years prior to the issuance of the date of the first notification (that is, 19th June, 1969) and equally within five years subsequent thereto. In concrete terms the argument is that if an industrial unit commenced production even on the 18th June, 1964 or as late as the 18th June, 1974 it would still come within the beneficial ambit of the first notification. The stand of the learned counsel indeed is that the crucial date is that of the publication of the notification and the consequent period of five years prior or subsequent thereto and not at all the date of the registration as a small-scale unit which, according to the counsel, is irrelevant once the same had been secured. The ancillary contention to the same is that once an industrial unit comes within the rule of eligibility then it must enjoy the exemption for an inflexible period of five years and not a day less. Reliance, as stands already noticed, was on the observation in *Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others*, .

7. Since the controversy herein must necessarily centre round the language of the notifications, it seems apt to quote them at the very outset.

Notification

A. No. STGL-E-1013/69-9924 F. T. dated 19-9-1969 : In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 4 of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) the Governor of Bihar is pleased to exempt from the levy of both "general sales tax" and "special sales tax", sales of finished products by the newly set up small-scale industries at the first stage of sale after production for a period of five years from the date the industry starts its production.

Explanation:

(i) "Small-scale industry" means an industrial unit with an investment up to Rs. 7.5 lacs on plant and machinery, excluding the value of land and building, and approved and registered by the Industries Department of the Government of Bihar.

(ii) "Newly set up small-scale industrial units" include such units which have already been set up but have not yet completed a period of 5 years from the date of starting of production.

2. The notification shall remain in force from 19th June, 1969 to the 31st March, 1974.

Notification

B. No. STGL-E-1023/73 S. O. 351 dated 14-3-1974 with effect from 1-4-1974 : In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 4 of the Bihar Sales Tax Act, 1959 (Bihar Act XIX of 1959) the Governor of Bihar is pleased to exempt from the levy of both "general sales tax" and "special sales

tax" sales of finished products by newly set up small-scale industries at the first stage of sale after production for a period of five years from the date the industry starts its production subject to the conditions that-

(a) The owners of the industry shall issue serially cash/credit memos for sales of finished goods which will contain the names and address of the purchaser, description of goods sold and its price, the exemption certificate number and dated signature of the seller, and

(b) the owner of the industry shall maintain sales and purchase registers as also stock register for sales and purchases of goods, and

(c) the owner of the industry shall remain liable to render such accounts of his sales as become applicable under the provisions of the Bihar Sales Tax Act, 1959 on demand by the authorities appointed u/s 8 of the aforesaid Act and shall obtain certificate of registration u/s 9 of the said Act after his gross turnover exceeds the specified quantum as mentioned u/s 3 of the Bihar Sales Tax Act, 1959.

Explanation: Same as in Notification No. 9924 dated 19-9-1969.

2. This notification shall come into force with effect from 1st April, 1974 and shall remain in force till 31st March, 1979.

8. Now viewing the matter in its correct perspective, herein one must notice at the outset that we are called upon to construe the delegated subordinate legislation which must be deemed part and parcel of the taxing statute, namely, the Bihar Sales Tax Act, 1959 (hereinafter called "the Act"). The exemption granted by the notifications is in the nature of an exception to the ordinary and uniform rule of the incidence of sales tax on the goods produced as laid out by the charging sections of the Act. There can be no manner of doubt that the exemption under the two notifications is a concession granted by the State Government in its bounty. Though the motivation therefore may be to attract, encourage and nurse small-scale industries, yet the industrial units could not have inflexibly claimed it. There is no legal or inherent right thereto. Equally manifest it is that the notifications are in the nature of a privilege in favour of the class of newly set up small-scale industries. It is a settled rule of the construction of taxing statutes that one does not easily tend to the extension of a class privilege of exemption from the general rule of taxation unless the language of the statute is unequivocal and categoric and admits of no other interpretation.

9. A bird's eye view of the object underlying the notifications cannot but affect the perspective for their interpretation. The purpose of the grant of exemption herein is plainly twofold. Firstly it is the larger policy of the State to encourage or attract smaller entrepreneurs and to supplement the larger and heavy industries within the State to have a proper and balanced mix of the two. Secondly, the object is to grant the exemption to such small-scale industry only at the initial stage of its teething troubles beginning from the date of commencement of

production till five years thereafter. It is to be pointedly noticed that the exemption is not for all and every small-scale industry indefinitely but only for the newly set up small-scale industry which has, in terms, been defined. It is well-known and indeed axiomatic that industrial production has to pass through a period of gestation before the unit becomes viable. The twin purpose herein, therefore, is that not only should the industry be a small-scale one, but it also must be a newly set up one which has been precisely defined with the commencement of the date of production as the focal point. Looking at the two notifications, so far as small-scale industry is concerned, the criteria are the approval and registration by the Industries Department and so far as its newly set up nature is concerned, the criterion is the commencement of the date of production, till five years thereafter.

10. Now a plain look at the explanation and definition of "small-scale industry" would show that as regards the factum of being a small-scale industry the core of the matter is the date of its approval and registration by the Industries Department. It is not any and every small-scale industry which is eligible for exemption under the notifications, even though in actual fact it may even be smaller than the prescribed ones. To come within the same, it must satisfy the tests which are inflexibly prescribed. The factual requirement is that the investment on plant and machinery (excluding the value of land and buildings) must not exceed Rs. 7.5 lacs. The formal requirement then is that it must be approved and registered by the Industries Department of the Government of Bihar. It is only with such approval and registration that any industrial unit can come within the scope of the notifications. If one may say so, until the formal condition of registration is satisfied, the industrial unit has not the least claim for entitlement to the exemption granted by the notifications. To put it simply, the threshold question is : Was the industrial unit duly approved and registered as a small-scale industry by the department or not ? If the answer to that question be in the negative then nothing further arises in this context. Consequently the primal condition herein is first the approval and registration of the industrial unit as a small-scale industry by the Department of Industries of the Government of Bihar.

11. Learned counsel for the petitioner had then attempted to lay some misplaced reliance on Clause (ii) of the explanation for contending that this mandated an inflexible period of five years for the grant of exemption from sales tax. Further inference therefrom was sought to be drawn that once that was so, the concession would extend to a period of five years prior to the date of the notification on the 19th of June, 1969 and equally to five years subsequent therefrom. This argument has only to be noticed and rejected. Clause (ii) spells out an inclusive definition of what is a newly set up small-scale industrial unit. In my view it cannot and does not determine the specific period for which the concession of exemption from sales tax would operate. As has already been noticed, this provides for the second and the equally important condition of eligibility, namely, that the industrial unit must be a newly set up one. It

deserves highlighting that it is not every small-scale industrial unit which is within the ambit of the notification but only the newly set up ones. Clause (ii), therefore, is specifically an elaboration of what the concept of newly set up is for this purpose. This is firmly rested from the date of starting production till five years thereafter. It is only in this five years' period of gestation that the industrial unit, even though it may be a small-scale one, can have the benefit. To my mind this condition of eligibility does not determine the period for which the exemption would be available. To take an example, if the notification in its last paragraph 2 were to read as "The notification shall remain in force from 19th June, 1969 to the 19th of June, 1970", could it possibly be said that even though the notification itself was only for a year yet the exemption must extend over five years. As I said earlier, the period for which the exemption may be given is the very bounty of the State and not any inherent right thereto. It is within the power of the State to grant exemption for one year, two years or three years as it may desire and no inflexible right for exemption for a full period of five years is either inherent or even remotely flowing from the terms of the notification. Clause (ii) of the explanation, therefore, is the second rule of eligibility or qualification for claiming exemption from sales tax and does not determine the time factor for which the same would be available. In a way it only declares that such eligibility as a newly set up small-scale industrial unit can exist only from the date of starting production till five years thereafter and the moment the said period is crossed the unit would cease to be a newly set up one and become an ordinary industrial unit and consequently ineligible for any further concession.

12. The matter can also be examined from another refreshing angle rooted on the facts of the present case as a representative example. On the admitted position herein the date of starting production was 1st of January, 1971. Suppose, if the assessment in the ordinary course, which indeed should be the rule, had been made in each assessment year, could the petitioner have claimed such an exemption in the assessment years 1971-72, 1972-73, 1973-74 and 1974-75 ? The answer would be plainly in the negative because up to that stage the petitioner was not admittedly approved or registered as a small-scale industry and thus plainly ineligible for any exemption. If it had sought any such concession the assessing authority would plainly bar the door in its face by pointing to its non-registration. Can it possibly be said that by the fortuitous circumstance or evasion of the finalisation of the assessment for more than five years the petitioner can now turn round after a passage of five and a half years from the date of production and retrospectively claim the benefit of the concession ? I do not think so.

13. Equally the stand sought to be taken by the petitioner would lead to anomalous and plainly discriminatory results. As has been pointed out, in cases where assessments have been finalised every year as they should be, any other eligible industrial unit which started production at the same time with the petitioner but was not registered would be obliged to pay the tax over this period. Can it be said that the petitioner-firm having avoided the assessment for

every year by one method or the other should be able to take advantage of the same and having secured registration after five and a half years from the date of starting of production turn round and claim the benefit for the earlier periods ? Such a situation would create two anomalous classes, namely, those who had been fortunate enough to avoid or evade yearly assessment and later getting benefit of the exemption as against those honest taxpayers who had every year rendered their returns and abided by the law, to secure their yearly assessments. It must be noticed that even Mr. Gadodia had to very fairly concede that if in the case of the petitioner the assessment had taken place in the years 1972-73 to 1974-75 and the tax had been paid, it could not later on the basis of subsequent registration have sought exemption and claimed refund of the tax duly paid at the relevant time.

14. Even more untenable is the stand of the petitioner that the benefit of exemption could extend even five years prior to the date of the notification on the 19th June, 1969. If that were to be so, a small-scale industrial unit starting production in 1964-65 would be within the ambit of the example noticed in the preceding paragraph. If the yearly assessments in such a case were to be finalised in the years 1965 to 1969 on the 18th June, could the assessee therein claim exemption ? The answer would be obviously in the negative because at that stage even the very hint of the concession and the existence of the notification on .the statute book would be totally non-existent. It must, therefore, be held that the incidence of a tax cannot be allowed to rest on the fortuitous or accidental circumstance of the date when the assessment order may come to be made in the original or by way of remand. If that were allowed to be so, the levy of tax would depend upon the vagaries of the assessing officers and the unpredictable fortunes of a long drawn litigation in such cases rather than on a firm foundation and on the basic uniformity of the rule of law.

15. In fairness, one must notice Mr. Das's stand on behalf of the respondents that the period of exemption may extend only up to one, two, three or four years depending entirely on the date of the approval and registration of the industrial unit as also on the date of its production. He took the -firm stand that there cannot be any blanket five year period of exemption necessarily and further that no retrospectivity can be given to the exemption from the date of the eligibility, that is, the date of the registration of the unit as such. It was the case that until that date there is no guarantee that the unit satisfies the test of being a small-scale industry and is at all eligible for the same. Consequently the exemption cannot be extended over a period which is anterior to the date of registration.

16. The aforesaid submission of the learned counsel for the respondent-State is eminently meritorious but it is necessary to first advert to the Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others, which undoubtedly lends a handle to the stand sought to be taken on behalf of the writ petitioner and this, as already noticed, has necessitated this reference to the larger Bench for reconsideration of certain- observations made therein. A

close perusal of the said judgment would indicate that the primary points before the Bench were altogether different from the precise question which has been quoted in paragraph 3 of this judgment. Therein the Bench was considering the somewhat different, though analogous, Notifications Nos. 139 and 141 both dated the 18th of January, 1977. Nevertheless, there are indications in the judgment that it proceeded on the basis that the exemption must be available for five full years and this period cannot be cut down, With great respect, it appears that this has been so held as a dictum without adequate discussion of any earlier precedent or principle as to why necessarily the exemption must be for an inflexible period of five years and not less. In assailing this view, the learned counsel for the respondents had rightly pointed out that, as noticed at page 302 of the report, the point was conceded by the learned State Counsel appearing for all the respondents. The subsequent observations thereto are, therefore, rested on the concession and an assumption that it should be so. The learned counsel for the respondents rightly submitted that the rival aspect that the exemption must from the nature of things stem only from the date of registration was not even referred to, far from being considered or adjudicated upon. The learned Judges, therefore, viewed the issue in a vacuum without any reference to the date of registration, which, as already noticed, is the sine qua non for eligibility and the consequent claim of concession for exemption. Yet again this inflexible period of five years was sought to be rested on the allegedly unequivocal language of the notifications. With respect, it is not so and the language far from being unequivocal is indeed ambivalent and this was so held by the Bench itself in the opening part of the judgment in the following words:

There seems to be no end to the conundrums suggested at the Bar regarding the interpretation of two notifications which I shall hereinafter mention and I suppose, there will be no end to those conundrums until such notification are effaced and fresh notifications, if any, in more concise and unequivocal terms are issued should the State Government so choose.

Yet again this assumption of five year period seems to proceed on the supposed equitable consideration that every small-scale industrial unit should be given the benefit for this period. I regret my inability to subscribe to this line of reasoning. As noticed earlier, the exemption here is entirely in the nature of a concession and as pointed out is an exception to the rule of general incidence of tax. It is for the State to determine the period of exemption or concession which it wishes to grant and no inherent right to claim such an exemption arises in favour of the exemptees. There are no equities in the levying of a tax or the grant of exemption therefrom. It is dependent on the sovereign will of the legislature and its competence to impose or exempt the same.

17. It is in this context that the memorable words of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioner* [1921] 1 KB 64 deserve to be recalled:

It is urged by Sir William Finlay that in a taxing Act clear words are necessary in

order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at that which is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in nothing which is to be implied. One can only look fairly at the language used.

The aforesaid enunciation of law received express laudatory approval from Viscount Simon, L.C. (House of Lords) in *Canadian Eagle Oil Co. Ltd. v. The King* [1946] AC 119. Again with regard to the exemption granted from taxation to a particular class, the rule of construction is well-enunciated by Lord Young in *Hogg v. Parochial Board of Auchtermuchty* (1880) 7 R (Sc) 986:

I think it proper to say that, in dubio, I should deem it the duty of the Court to reject any construction of a modern Statute which implied the extension of a class privilege of exemption from taxation, provided the language reasonably admitted of another interpretation.

18. Once equitable considerations are out of the way, it must be noticed that the Division Bench did not adequately advert to the aspect that the concession is given only to the newly set up industrial units and not to all small-scale ones. It is plain that even though an industrial unit may be a small-scale one in fact, it would not be entitled to the exemption till it was duly registered with the Department of Industries. Equally even if it was registered but the period of the commencement of its production had exceeded five years, it would cease to be a newly set up unit and ineligible for exemption on that ground. If, as I have said earlier, the right to exemption is rested on the firm ground of the date of its registration then any small-scale industrial unit, which had already started production four years ago from that date, would get the benefit only for the remaining period of one year (if covered by the notification), because it would cease to be a newly set up unit thereafter.

19. Even the sequence of these notifications granting and withdrawing the exemption would give the lie direct to the assumption that there was any intent to grant the concession for an inflexible period of five years. Indeed, these notifications show no method in their whimsicality. It would appear that the first notification (annexure 1) was issued on the 19th of September, 1969 but retrospectivity was sought to be given to it by three months and it was to remain in force from the 19th of June, 1969 to the 31st of March, 1974. Later by annexure 2 issued on the 14th of March, 1974 the earlier concessions were extended for five years from the 1st of April, 1974 to the 31st of March, 1979. However, by Notification No. S.O. 1082 dated 30th of June, 1976 the earlier notification was withdrawn with effect from the 1st of July, 1976 abolishing the exemption totally. Curiously, again eight months later on the 18th of January, 1977 the exemption was again sought to be restored with some kind of retrospectivity with effect from the 1st of July, 1976. Thereafter also the cycle of

abolishing and restoring the exemption has been repeated. Therefore, the fluctuating fortunes of the grant of exemption, its unceremonious withdrawal and the cryptic restoration would all tend to indicate that far from the intention of giving a uniform exemption of five years the authors thereof in their wisdom temperamentally granted the exemption and withdrew it or restored it at will for reasons which are far from being discernible or patent on this record.

20. For the reasons aforesaid, I am unable to subscribe to the blanket theory of a five year period of exemption to all the newly set up small-scale industrial units irrespective of the date of their registration with the Industries Department and the period intervening from their date of production. With the deepest deference the observations on this point in *Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others*, are not tenable and are hereby overruled.

21. To conclude : It is held that to be eligible and entitled to exemption from sales tax under the notifications a twin test has to be satisfied. Firstly, there must be the approval and registration by the Industries Department as a small-scale industry. Secondly, such an industry must be newly set up, that is, not older than five years from the date of starting of production. Consequently there are two clear termini here, namely, the commencing limit being the date of the approval and registration by the Industries Department and the outer limit being the date of the completion of five years from the date of the starting of production by such an industrial unit. This, of course, has to be determined within the parameters of the period for which the notification itself remains in force. In a way the concession of exemption herein is made available only to the small-scale industries in their infancy. The claim, if one may put it metaphorically, subsists till such a small-scale industry attains the age of five years from the date of its birth, viz., the date of starting production. The object and purpose is to lend a hand to such an industry in its teething period of the first five years. In my view, it is not made available for a blanket period of five years of exemption irrespective of the age of the small-scale industry. Indeed the moment the small-scale industry crosses this limit of five years from the date of its production it gets out of the definition of being a newly set up one and thus ceases to be eligible for the exemption. It was submitted rightly, though somewhat picturesquely, before us that the exemption is for a small-scale industry, which is a minor up to its age of five years, and not for older ones beyond that limit.

22. It is the admitted position in the present case that the industrial unit had already completed more than five years from the date it started production and when it secured the approval and registration of the Industries Department on the 2nd of July, 1976. It would, therefore, be not eligible for the exemption. The answer to question No. (2) is rendered in the negative, that is, in favour of the Revenue and against the assessee.

Satyeshwar Roy, J.—I agree with the order proposed by Honourable the Chief

Justice, and I give my reasons for the same.

2. Is the petitioner entitled to the exemption under the notification dated 19th September, 1969 (annexure 1 to the application) or the notification dated 14th March, 1974 (annexure 2 to the application); both the notifications issued u/s 4(3)(b) of the Bihar Sales Tax Act, 1959 ? The notifications have been quoted in paragraph 7 of the judgment of Honourable the Chief Justice. It will appear that the notification dated 14th March, 1974 is verbatim same of the notification dated 19th September, 1969 except that some conditions have been stated in the notification dated 14th March, 1974 and in clause 2 the period mentioned in the two notifications is different.

3. For the purpose of claiming benefit under either of the notifications, it is necessary for the petitioner to establish that the industry in question was a "newly set up small-scale industrial unit", as defined in the notifications. The explanation provides, besides other conditions, that the industry in question must be approved and registered by the Industries Department of the Government of Bihar.

4. The Division Bench which referred this case to a larger Bench doubted the correctness of the decision of *Kailash Roller Flour Mills and Others Vs. Assistant Commissioner of Commercial Taxes and Others*, on which the petitioner relied. On facts that decision, in my opinion, does not help the petitioner. As is the practice of this Court, it is therefore not necessary to decide the correctness or otherwise of that decision. Since this question was allowed to be canvassed during hearing and Honourable the Chief Justice has expressed his opinion, I am expressing my opinion on the same.

5. If an industry is found to be a newly set up small-scale industrial unit as understood under the notifications, for what period such industry may avail the exemption ? According to the petitioner, it shall be five years from the date the industry starts its production and according to the respondents it will be for the periods respectively mentioned in clause 2 of the notification. "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." After approving this classic statement of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64, the Supreme Court in *Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others*, added that "To this may be added a rider: in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the Court as to what is just or expedient." A statute, here the statutory instruments, must be read as a whole. I may also notice the well-

known canon of construction of statute, which will equally apply to the construction of statutory notification, as noticed by Honourable the Chief Justice in *Nawal Kishore Agrawal v. State of Bihar* 1984 BRLJ 158: It is well-settled canon of construction that no part of a statute is to be rendered redundant by a process of interpretation unless there are compelling reasons to so construe the provision. In simple language, it boils down to this: read the whole of the notification, collect the meaning and intention from the plain and unambiguous expression used therein and see that no part of the notification is rendered redundant unless there is compelling reason.

6. To my mind there is no ambiguity in the language used in the notifications. The first part of the notifications unambiguously states that the exemption shall be for five years from the date the industry starts its production. It will be noted that the notification dated 19th September, 1969 remained in force from 19th June, 1969 to 31st March, 1974 and the notification dated 14th March, 1974 remained in force from 1st April, 1974 to 31st March, 1979. The stand of the respondents was that although in the first part of both the notifications it was stated that the exemption would remain in force for five years from the date the industry started its production, in view of clause 2 of the notifications the exemption was available only up to 31st March, 1974 in cases where the notification dated 19th September, 1969 was attracted and up to 31st March, 1979 in cases where the notification dated 14th March, 1974 was attracted. In concrete terms the stand of the respondents was that if newly set up small-scale industry (as understood under the notifications) went into production on 19th June, 1969 it was entitled to get the exemption up to 31st March, 1974 which was less than five years; if it went into production on any date after 19th June, 1969 but up to 30th March, 1974, it would get exemption for proportionately reduced period. If it went into production on 31st March, 1974 it was not entitled to any exemption. So far as the notification dated 14th March, 1974 is concerned, in concrete terms the stand of the respondents was that if a newly set up small-scale industry went into production on 1st April, 1974 it was entitled to get the exemption for five years, i, e., up to 31st March, 1979 but if it started production on any date after 1st April, 1974 it would not be entitled to five years' exemption and the period must be confined up to 31st March, 1979. If this stand of the respondents is accepted, it cannot be denied that the five years' period stated in the first part of the notification becomes otiose, which, under no rule of construction can be permitted. To give effect to all parts of the notifications and for giving a harmonious construction it must be held that what is intended by clause 2 of both the notifications was that if a newly set up small-scale industry started production between 19th June, 1969 and 31st March, 1974 such industry would be entitled to exemption for five years counting from the date it started production. Likewise, under the notification dated 14th March, 1974 if a newly set up small-scale industry went into production between 1st April, 1974 and 31st March, 1979 such industry would be entitled to an exemption for five years computing from the date when it started production.

The same interpretation must be put with regard to industry covered by explanation (ii), that is to say, if it had not completed five years on the date the notifications came into force, it would get exemption for five years from the date it started production. The periods mentioned in clause 2 of both the notifications do not curtail or reduce the period of five years stated in the first part of the notifications; rather these were the periods within which if production was started or if it fell short of five years, the exemption would be available. This is precisely what was held in *Kailash Roller Flow Mills*² [1981] 48 STC 97 pat. With respect, I agree with that decision.

7. This then brings me to decide whether the petitioner can get any relief. The petitioner, Gupta Brick Works, admittedly started production on 5th January, 1971 when the notification dated 19th September, 1969 was in force. Admittedly again, it was approved and registered as a small-scale industry by the Industries Department on 2nd July, 1976. Therefore, on 2nd July, 1976 it became a newly set up small-scale industry as defined in the notifications. But by that time it had completed more than five years of production. It was not a "newly set up small-scale industrial unit" under any of the notifications.

8. I will, therefore, answer both the questions referred by the Tribunal in the negative and against the petitioner-assessee. There shall be no order as to costs.

Udai Pratap Singh, J.

For the reasons recorded in the judgment of Honourable the Chief Justice, I concur with the view expressed by him.