
(1999) 04 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 8703 of 1989

Mipco Seamless Rings (Gujarat) Ltd. and Another	APPELLANT
Vs	
Industries Commissioner, Gujarat State and Others	RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 47(4), 49(2)

Citation : (1999) 04 GUJ CK 0048

Hon'ble Judges : Rajesh Balia, J;Anil R. Dave, J

Bench : Division Bench

Judgement

A.R. Dave, J.—The petitioner-company has approached this Court with a grievance that it has been wrongly denied certain benefits under

the provisions of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act") though it is very much entitled to the same. The petitioner

has also challenged recovery proceedings initiated by respondent No. 2 whereby, the Government authorities have sought to recover the amount

of sales tax from the petitioner-company which has been referred to in annexure A-13(i) annexed to the petition. Though the petitioner has

challenged validity of section 47(4) of the Act in the petition, the learned advocate appearing for the petitioner has fairly submitted that the

petitioner would not like to challenge validity of the said section.

2. The facts in a nutshell giving rise to the present petition are as under :

So as to see that certain underdeveloped areas of the State of Gujarat are developed and industries are established in such underdeveloped areas,

the State of Gujarat, respondent No. 3 herein, has framed several policies so as to attract industrialists to establish their new industrial units in such

areas. So as to encourage new industrial units to establish their manufacturing units in such areas, the State of Gujarat gives benefit under the Act

either by way of deferment of payment of sales tax or exemptions from payment of sales tax. Such benefits are also given to industrial units already

established in such areas if they enhance their production beyond certain limit or start manufacturing something different by way of diversification.

According to the petitioner, it is entitled to benefit under one of such schemes framed by the respondent-Government under the provisions of

section 49(2) of the Act. From time to time, the respondent-Government has issued notifications giving details of such schemes framed by it and

one such notification has also been issued on May 6, 1986, a copy of which is annexed and marked annexure 1 to the affidavit-in-reply. Reading

the said notification with the relevant provisions of the Act and other relevant resolutions including Government resolution dated August 27, 1980 it

appears that if a new industrial unit which commences commercial production during the operative period of the scheme, the industrial unit

becomes entitled to certain exemption from payment of sales tax provided the new industrial unit has fulfilled all the conditions incorporated in the

relevant Government resolutions.

3. It is the case of the petitioner-company that the petitioner had started manufacturing rolled rings. While starting manufacture of rolled rings, the

petitioner-company had fulfilled all the conditions for getting exemption from payment of sales tax as prescribed under the Government resolution

dated August 27, 1980. Upon certain conditions, the petitioner-company was exempted from payment of sales tax as specified in the eligibility

certificate dated October 5, 1982 whereby the company was exempted from making payment of sales tax to the tune of Rs. 50 lakhs in respect of

manufacture of rolled rings as specified in the eligibility certificate dated October 5, 1982 during the period commencing from April 19, 1982 to

April 18, 1989. The eligibility certificate given to the company with regard to the above referred exemption was subsequently modified so as to

enable the petitioner-company to get benefit to the tune of Rs. 80 lakhs. Having commenced manufacturing rolled rings, the petitioner-company

wanted to avail of further exemption under the scheme by manufacturing another type of ring named ""forged rings"". For the said purpose it was

necessary for the company to import a new machinery and by the said diversification the company was to start manufacturing ""forged rings"" which were a little different from the rolled rings which were being manufactured by the company.

4. The petitioner-company had given an application for getting eligibility certificate for being exempted from payment of sales tax under the Act in respect of manufacture of forged rings which was by way of diversification under the scheme. It is the case of the petitioner-company that for the purpose of manufacturing forged rings, the petitioner-company had obtained necessary licence dated February 28, 1983 from the department of Industrial Development of the Government of India. It has been specifically stated by the company that for the purpose of manufacturing rolled rings the company had already obtained licence from the aforesaid department of the Government of India on November 28, 1980. The copies of relevant licences are annexed and marked as annexure 3 and annexure 2 respectively to the affidavit-in-reply filed on behalf of respondent No. 1.

The said two licences clearly reveal that the products manufactured by the company were different and only due to the said fact the company was required to obtain another licence when the company wanted to start manufacturing forged rings.

5. As per the provisions of the scheme, the petitioner-company was supposed to get an eligibility certificate from respondent No. 1 and on the strength of the eligibility certificate, respondent No. 2 was to furnish an exemption certificate so as to avail of an exemption from payment of sales tax under the Act.

6. Certain relevant undisputed facts with regard to investment of the company are as under. For the purpose of manufacturing rolled rings the company had invested Rs. 3,60,53,337 for the purpose of purchase of machineries, land and building whereas for the purchase of new machinery for manufacturing forged rings, the company has spent approximately Rs. 1.10 crores.

7. When the petitioner-company had submitted its application for obtaining eligibility certificate to respondent No. 1, respondent No. 1 refused to grant eligibility certificate on the ground that in fact there was no diversification for the reason that there was no difference between rolled rings and

forged rings. In support of the said refusal it has been stated in the affidavit-in-reply filed by respondent. No. 1 that an expert had visited the factory premises of the petitioner-company and the expert had opined that there was no difference between rolled rings and forged rings and therefore it was not a case of diversification.

8. Learned Advocate Shri Kamal Mehta appearing for the respondents has tried to justify the stand of respondent No. 1 by submitting that in fact there was no difference in rolled rings and forged rings and therefore the petitioner-company was not entitled to any exemption much less the eligibility certificate from respondent No. 1.

9. In support of the petitioner's case learned advocate Shri Pathak has vehemently submitted that the stand taken by respondent No. 1 is absolutely unjust illegal and improper for the simple reason that rolled rings and forged rings are different products. After having started manufacturing rolled rings, the petitioner -

company had thought of diversification and in pursuance of the said idea it had started manufacturing forged rings. For the purpose of manufacture

of forged rings, it was necessary for the petitioner-company to obtain a separate licence from the Department of Industrial Development of the

Government of India because without such a licence, it was not open to the petitioner-company to manufacture forged rings. Upon perusal of the

said licences it is very clear that the licensing authority, namely, the Department of Industrial Development of the Ministry of Industry, Government

of India, has permitted the petitioner-company to manufacture 7 million rolled rings by virtue of licence dated November 28, 1980 and 25 million

forged rings by virtue of another licence dated February 28, 1983.

10. We see much substance in the contention of the learned advocate for the petitioner. Had the product been one, it would not have been

necessary for the petitioner-company to approach the Government of India in the Ministry of Industry with a request to issue another licence for

manufacture of forged rings. The fact that the petitioner-company had to approach the Ministry of Industry for obtaining another licence to

manufacture forged rings and licence dated February 28, 1983 was issued to the petitioner-company for manufacturing 25 million forged rings

clearly denote that rolled rings and forged rings are different products.

11. The petitioner-company has also placed on record certain details with regard to manufacture of rolled rings and forged rings manufactured by it

during the period commencing from 1982 to 1998. Learned Advocate Shri Kamal Mehta appearing for the respondents has not objected to

production of the said figures on record. Upon perusal of the said figures, the following facts emerge :

Year Production of Total

Rolled rings Forged rings

1982-83	7,32,229	7,32,229
1983-84	10,31,900	... 10,31,900
1984-85	9,78,827	9,78,827
1985-86	15,58,525	15,58,525
1986-87	13,25,942	13,25,942
1987-88	15,12,229	14,04,521 29,16,750
1988-89	16,17,089	20,91,325 37,08,414
1989-90	12,73,811	18,26,060 30,99,871
1990-91	12,31,940	118,08,276 30,40,216
1991-92	15,58,776	20,12,289 35,71,065
1992-93	13,57,002	15,75,186 29,32,188
1993-94	16,98,545	17,03,844 34,02,389
1994-95	13,86,023	14,97,643 28,83,666
1995-96	12,79,481	... 12,79,481
1996-97	11,75,763	... 11,75,763
1997-98	7,25,380	... 7,25,380

2,04,43,46 1,39,19,144 3,43,62,606

After getting necessary licence to manufacture forged rings, the petitioner-company started manufacturing forged rings from the year 1987-88.

Upon perusal of the figures stated hereinabove and the licensed capacity to manufacture rolled and forged rings, it is clear that the petitioner-

company had not attained maximum production of rolled rings. Though the company was having capacity to manufacture 7 million rolled rings, the company had manufactured only 15,12,229 in 1987-88 and the company had manufactured 14,04,521 forged rings in the same year. Had rolled and forged rings been the same products, the petitioner-company would not have spent a substantial amount of Rs. 1.10 crores for importing another machinery for manufacturing forged rings. Similarly, for subsequent years, the company had manufactured much less rolled rings than its optimum or licensed capacity and had also manufactured forged rings in addition to rolled rings during the said period. The above referred figures also support the contention of the petitioner that both the rings are different.

12. Upon perusal of the affidavit-in-rejoinder filed on behalf of the petitioner-company, it is clear that strength of rolled and forged rings are absolutely different. Raw material used in both the rings are also different. Moreover, machinery used for manufacturing rolled and forged rings are different. The said facts have not been controverted either by filing an affidavit or even by oral submissions by learned advocate Shri Kamal Mehta.

Learned Advocate Shri Mehta appearing for the respondents has only relied upon the affidavit filed on behalf of respondent No. 1 stating the fact

that an expert had visited the premises where forged rings were being manufactured and the expert was of the view that the forged rings and rolled rings were not different. At an earlier occasion this Court had called for the relevant files to see the report of the expert. Upon perusal of the files, it appears that the following note was made by the expert :

I had visited the unit. In the existing unit they manufacture ball bearing inner and outer races. In the additional capacity set up also they manufacture inner and outer races. Both the products are same. It is not a case of diversification.

So as to support the above referred observation or finding, the technical adviser (engineering) has not relied upon any material or has not placed on record anything. Looking to the above-stated report not supported by any material or any reasoning, we are not inclined to believe the said report.

Normally whenever any expert gives his opinion, his opinion would always be supported by some reasoning. Learned Advocate Shri Mehta appearing for the respondents was also given some time to show how the rolled

and forged rings were considered same in spite of a fact that as per the pleadings, both the products were different. He was also given an opportunity to state the basis on which the above referred remark was made by the technical expert but he frankly conceded that there was nothing on record to show that the technical adviser had any reason to make above referred statement. Moreover, he could not place any material on record to show that both the products were not different though sufficient time was given to him. In view of the above referred statement not supported by any material and in view of a specific averments made on behalf of the petitioner-company that strength of both the rings and machineries and raw material used for manufacturing both the rings are absolutely different, we are inclined to believe that rolled rings and forged rings cannot be said to be the same products.

13. The term ""diversification"" has been defined in Government Resolution dated May 6, 1986 as under :

"Diversification" means launching of new product line under the same company, firm or partnership provided the total fixed capital investment in

such a diversification exceeds at least 25 per cent of the value of the not fixed assets of the original project.

In the instant case, first of all, the petitioner-company started manufacturing rolled rings as stated hereinabove under licence dated November 28,

1980 from the Department of Industrial Development of the Government of India. After some time, the petitioner-company imported another

machine worth Rs. 1.10 crores so as to enable the petitioner-company to start manufacturing forged rings. For the said purpose the petitioner-

company had to again approach the abovenamed department of the Government of India for obtaining another licence as forged rings are

considered different by the said department of the Government of India. It is definitely not a case of expansion for the reason that rolled rings and

forged rings are different products. Moreover, the petitioner-company had not reached the optimum level of production of rolled rings and

therefore it was not necessary for the petitioner-company to buy another machine for manufacturing rolled rings. The fact that the petitioner-

company spent a sum of Rs. 1.10 crores for purchasing a new machine and obtained another licence clearly denotes that the petitioner-company

wanted to launch a new product by manufacturing forged rings. Had it been a case of expansion, the petitioner-company would have increased its capital investment by not less than 25 per cent of the fixed assets of the existing project and would have increased its production to the extent of 25 per cent of its original installed capacity. In the instant case, the petitioner-company had never reached the installed capacity and therefore this is not a case of expansion. At one point of time it was suggested by learned advocate Shri Kamat Mehta appearing for the respondents that the petitioner was claiming the exemption on the ground that there was an "expansion" by the petitioner-company. In view of the above facts, the said submission of Shri Mehta is not at all well-founded. Moreover, the petitioner never claimed any benefit on account of expansion of its project because in fact the petitioner-company wanted to launch a new product named I forged rings and thereby it wanted a benefit under the Act on the ground of diversification.

14. Looking to the term "diversification", a unit should start a new product line under the same company, firm or partnership and investment in new fixed capital for such a diversification should exceed 25 per cent of the value of the net fixed assets of the original project. It is not in dispute that the petitioner-company had launched a new product line for manufacturing forged rings and had also spent a further sum exceeding 25 per cent of the value of the net fixed assets of the original project because in the original project the petitioner-company had invested approximately Rs. 3.6 crores whereas for the purpose of diversification the company had purchased machineries worth Rs. 1.10 crores and thereby had increased its total fixed capital investment by more than 25 per cent of the value of the net fixed assets of the original project.

15. Learned advocate Shri Kamat Mehta has mainly relied upon the report of the technical expert saying that forged rings and rolled rings are the same products. With reluctance we are constrained to observe that the report submitted by the technical expert is not at all acceptable. Except for the fact that rolled rings and forged rings are the same products and that the expert ascertained the said fact after visit of the factory premises, nothing more has been said by the expert. His opinion has not been supported by any material. He has not made any note to support his opinion.

Normally, whenever any expert gives his opinion or report, especially when such a report or opinion is likely to affect a citizen's right to get some benefit from the State, the report or opinion must be supported by some reasons or the expert must record the reasons in his office file so that the reasons can be examined by the superior technical or executive authority or by the court of law. Even learned advocate Shri Kamal Mehta could not deny the fact that nothing was said by the respondent-authorities in reply to clear averments made by the petitioner-company that raw materials used for manufacture of rolled rings and forged rings were absolutely different and strength of both the rings were also different. A new machine had to be purchased for the purpose of manufacturing forged rings. Had the product been the same, the petitioner-company would not have spent a substantial sum of Rs. 1.10 crores for buying a new machinery especially when it was not manufacturing rolled rings at its optimum level. Even if we took at the sum total of rolled rings and forged rings manufactured by the petitioner-company in any year, the total production also is not exceeding optimum capacity of the original project or plant installed by the petitioner. This fact clearly reveals that rolled rings and forged rings are different.

16. Normally this Court would not decide any disputed question of fact. In the instant case, as per submission made by the petitioner-company, rolled rings and forged rings are different products, whereas, on the other hand, it has been submitted by the respondents that there is no difference between the rings referred to hereinabove. Looking to the pleadings and peculiar facts and circumstances of the case, we are inclined to come to the conclusion that rolled rings and forged rings are different and in the instant case, there is a diversification as the petitioner-company has launched a new product line and therefore the petitioner-company is entitled to eligibility certificate from respondent No. 1.

17. In normal circumstances, this Court would have asked respondent No. 1 to reconsider the decision in the light of the observations made hereinabove and on the basis of the facts submitted by the petitioner-company, but we do not think it proper to adopt such a course for the simple reason that the present petition was filed somewhere in 1989. The petitioner has already paid sales tax as it was not getting the benefit under the

scheme referred to hereinabove. As the facts are very clear, we do not think it proper to remand the matter but it would be in the fitness of things

to direct respondent No. 1 to grant eligibility certificate as prayed for by the petitioner-company so as to enable the petitioner-company to get the

advantage of exemption on the basis of the said eligibility certificate by approaching respondent No. 2 or any other authority thereafter for getting

the actual benefit under the scheme.

18. In the circumstances, we direct respondent No. 1 to furnish necessary eligibility certificate to the petitioner-company within a period of three

weeks from the date of receipt of the writ by respondent No. 1. It is hoped that respondent No. 2 or any other appropriate authority under

respondent No. 3, who is to give final benefit to the petitioner-company, in pursuance of the scheme referred to hereinabove, shall consider the

fact that substantial delay has been caused in the instant case and shall try to expedite the matter by giving benefit to the petitioner-company as

soon as possible in accordance with law.

19. It is pertinent to note that the petitioner-company and other similarly situated manufacturing units might have initiated their business activities in

the underdeveloped areas of the State of Gujarat so as to enable themselves to take some benefit under different schemes framed by the

Government of Gujarat and thereby they might have given valuable aid and assistance to the State in the matter of its development. Such units,

which have spent substantial amount and have taken risk of establishing their industries in underdeveloped areas should not be put to difficulties by

the State or its officers and the State should see that the schemes framed by it are implemented in its true spirit so that in future whenever such

schemes are framed, more and more industrial units take due advantage of the scheme so as to enable the State to develop its underdeveloped

areas.

20. In view of the above referred direction, the petition is finally disposed of as allowed. Rule is made absolute with no order as to costs.

21. Petition allowed.