**(1983) 06 CAL CK 0031**

**In the Calcutta High Court**

**Case No :** Civil Order No. 10723 (W) of 1982

Nayek Associate alias Nayek Paper and Board Mills and Another — APPELLANT

Vs

Additional Commissioner of Commercial Taxes and Others — RESPONDENT

**Date of Decision :** 14-06-1983

**Acts Referred:**
West Bengal Sales Tax Act, 1954 — Section 4AA

**Citation :** (1985) 59 STC 295

**Hon'ble Judges :** G.N. Ray, J

**Bench :** Single Bench

**Advocate :** Bhagabati Prasad Banerjee and Lakshmikanta Pal, for the Appellant;Samarendranath Dutt, for the Respondent

**Final Decision :** Allowed

## Judgement

G.N. Ray, J.—This writ petition is heard as a contested application and is directed against an order dated 20th August, 1982 passed by the Additional Commissioner of Commercial Taxes, Durgapur, in Case No. 15/81-82 affirming the order dated 25th August, 1981 passed by the Assistant Commissioner of Commercial Taxes, Asansol Circle, rejecting the application for issue of eligibility certificate under the provisions of the West Bengal Sales Tax Act, 1954 and the Rules framed thereunder. The petitioner, M/s. Nayek Associate alias Nayek Paper & Board Mills is a registered partnership firm and the petitioner No. 2 is the partner of the said partnership firm. The said firm is a registered dealer under the West Bengal Sales Tax Act and the said firm was registered as a small-scale industry under the Government of West Bengal. The State Government issued a Notification No. 1809-F.T. dated 15th April, 1976 u/s 4AA of the West Bengal Sales Tax Act, 1954 and the said notification was subsequently amended by another Notification No. 1658 dated 1st April, 1980. Under the said notification, an assessee is entitled to the certificate of eligibility under which he will not be required to pay sales tax for the period specified in the said notification provided the following conditions are fulfilled : (i) the newly set up small-scale industrial unit is registered with the Government of West Bengal, (ii) the investment of the dealer on plant and machinery excluding land and building does not exceed Rs. 10 lakhs, (iii) the dealer starts production for the first time after 31st March, 1976, (iv) the dealer keeps separate accounts in respect of such. newly set up small-scale industrial unit, issues serially numbered cash/credit memos, for sale of goods manufactured in such industrial unit, keeps vouchers and other documents for purchases of plant and machinery for establishment of such industrial unit and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such an industrial unit set up by him and that no amount by way of tax under the Act has been realised by him in respect of such sales, and (v) the newly set up small-scale industrial unit is not established solely or substantially with the plant or machinery of another newly set up small-scale industrial unit which earlier availed of the exemption under this notification and which is not engaged in the business of manufacturing such plant or machinery.

2. It is the case of the petitioner that the petitioner had invested a sum of Rs. 8,18,586.92 on 16th April, 1980 for the plant and machinery required for the purpose of setting up a paper mill. It is the admitted case of the petitioner that besides the said investment for the plant and machinery, the firm had to incur other expenses for installing the said plant and machinery and if the installation charges are also included within the costs for the plant and machinery then the total cost will be more than Rs. 10,00,000. The first production of the petitioner-firm started sometime in April, 1977 and the first sale of the products of the petitioner-firm also commenced sometime in May, 1977. On 23rd May, 1977 the petitioner-firm applied for eligibility certificate before the Commercial Tax Officer, Burdwan Range, for three years. The petitioner contends that the Commercial Tax Officer, Burdwan Range, did not dispose of the said application for eligibility certificate of the petitioner and as one of the conditions for issue of the eligibility certificate is that the assessee will not realise any sales tax from the customers, the petitioner-firm also did not realise any sales tax on the sale of the products manufactured by the petitioner-firm. It appears that on 7th March, 1980 after about three years, the Commercial Tax Officer, Burdwan Range, asked the petitioner to show cause why the petitioner-firm should not furnish a security for Rs. one lakh for the grant of the eligibility certificate. On 27th April, 1981 the petitioner-firm again applied for the eligibility certificate before the Assistant Commissioner of Commercial Taxes, Asansol Circle, for seven years in view of the fact that by a subsequent notification the State Government extended the period of tax holiday for a period of seven years. Such notification was issued on 1st April, 1980 by the State Government. By an order dated 12th January, 1981 the Commercial Tax Officer, Burdwan Range, dropped the proceedings against the petitioner-firm demanding security of Rs. 1,00,000 u/s 5(1)(c) of the West Bengal Sales Tax Act, 1954 and the said order is annexure C to the writ petition. On 25th May, 1981 the Commercial Tax Officer, Burdwan Range, completed the

 

assessment for the period, 4th quarter of 1384 and 1385 B. S., inter alia holding that the petitioner-firm was not entitled to get the eligibility certificate as the total investment on plant and machinery of the petitioner-firm was more than Rs. 10 lakhs and the Assistant Commissioner of Commercial Taxes, Asansol Circle,, also rejected the application for eligibility certificate of the petitioner. The petitioner thereafter made an application for revision before the Additional Commissioner of Commercial Taxes against the said decision of the Assistant Commissioner of Commercial Taxes, Asansol Circle, rejecting the application for eligibility certificate and the Additional Commissioner of Commercial Taxes, Durgapur, also rejected the said revisional application affirming the order passed by the Assistant Commissioner, Asansol Circle.

3. In the instant writ petition the said decision of the Additional Commissioner of Commercial Taxes rejecting the revisional application and affirming the order of the Assistant Commissioner of Commercial Taxes, Asansol Circle, rejecting the application for eligibility certificate is under challenge. It appears that at the hearing before the Additional Commissioner of Commercial Taxes the petitioner-firm referred to the decision of the Government of India, Ministry of Industries and Civil Supplies, and the press note issued in that regard which were circulated by the State Government. Such decision of the Central Government including the notification and the press note by which the definition of small-scale industries and small-scale ancillary industries were revised, have been made annexure E to the writ petition. It appears that such decision of the Central Government was made sometime in May, 1975 and in the press note, certain clarifications and explanations on the definition of "small-scale industries" were published. It appears from the press note issued by the Government of India that the costs of equipment such as tools, jigs, dies, moulds and spare parts for maintenance and the cost of consumable stores will be excluded in computing the value of plant and machinery. Similarly, the cost of installation of plant and machinery will also be excluded. The petitioner-firm contended before the Additional Commissioner of Commercial Taxes that after the said decision of the Central Government as noted in the press note which was circulated by the State Government, the notification u/s 4AA was issued by the State Government and in the said notification one of the conditions for the eligibility certificate is that the investment of the dealer on plant and machinery excluding the cost for land and building will not exceed Rs. 10 lakhs. The petitioner-firm contended that as actual investment on plant and machinery did not exceed Rs. 10 lakhs, the petitioner was entitled to the exemption u/s 4AA on the basis of the notification issued by the State Government and the costs of installation charge should not be included in computing the costs of plant and machinery. The Additional Commissioner of Commercial Taxes, however, did not accept the said contention of the petitioner-firm inter alia on the ground that although in the press note issued by the Government of India costs of installation of plant and machinery were not to be included in calculating the value of plant and machinery but the said guideline provided for in the press note was relevant for determining

 

whether a particular industry was a small-scale industry or not and in the present dispute as to whether or not the costs of installation would also be included in the computation of the total investment in plant and machinery, the said guideline was not at all relevant. According to the Additional Commissioner of Commercial Taxes, the expression "investment of the dealer on plant and machinery excluding land and building" has a comprehensive import and such expression is unambiguous and clear and does not admit two interpretations. The intention of the notification is not to extend the benefit of tax holiday to all and sundry small-scale industrial units and it was not the intention of the press note that simple registration of a small-scale industrial unit with the small-scale industries department of the Government of West Bengal ipso facto will earn a tax holiday. The use of the expression "excluding land and building" in the notification issued by the State Government for grant of eligibility certificate by necessary implication means that excluding the costs for land and building all other costs are to be included. A plant is to be viewed in its totality and de hors installation there is no plant. Accordingly, the Additional Commissioner of Commercial Taxes was of the view that besides the actual value of the plant and machinery the entire costs of intallation charges are to be included for computing the investment in plant and machinery and viewed from that angle the petitioner-firm had admittedly invested more than Rs. 10 lakhs and as such the petitioner-firm was not entitled to the eligibility certificate and the Assistant Commissioner of Commercial Taxes was justified in rejecting the application.

4. Mr. Banerjee, the learned Counsel appearing for the petitioner, has contended that one of the conditions for getting "tax holiday" under the said notification is that the assessee must be registered with the small-scale industries department, Government of West Bengal, and the definition of "small-scale industry" both with the State Government and the Central Government is that the cost of plant and machinery does not exceed Rs. 10 lakhs excluding, however, the costs of installation. He also submits that the press note issued by the Government of India was circulated by the State Government and the notification u/s 4AA was issued after the said decision was made by the Central Government. In the circumstances the intention of the State Government is quite clear that the State Government by the said notification means that actual investment in plant and machinery should not exceed Rs. 10 lakhs and in computing such investment in plant and machinery, the installation charges are to be excluded as decided by the Central Government. Mr. Banerjee has contended that if the installation charge is to be included in the computation of investment on plant and machinery then injustice will be done to a large number of assessees who because of their lack in technical expertise had to spend more in installing the plant and machinery although the same plant and machinery can be installed in lesser costs by some other person having a better technical expertise. As an illustration, Mr. Banerjee has submitted that if X and Y both purchase a plant and machinery for a particular industry at Rs. 9,50,000 but if X can instal the same by spending Rs. 40,000 and Y installs the same by spending Rs. 60,000 then for

the same plant and machinery X will be exempted from payment of sales tax but Y will be saddled with the liability of sales tax and will not get the benefit of tax holiday simply because he had lesser, technical expertise and the costs of installation because of the distance from the place from which the plant and machinery was purchased or for similar reasons were more in the case of Y. Mr. Banerjee has also contended that the petitioner on the basis of the notification issued by the State Government financially altered his position for getting tax holidays and as a matter of fact made an application for eligibility certificate sometime in the year 1977. As one of the conditions for getting such eligibility certificate is that the assessee should not charge sales tax from the customers, the petitioner-firm had also not realised any sales tax. Such application for eligibility certificate was not disposed of for about three years and only on 7th March, 1980 the Commercial Tax Officer asked the petitioner-firm to show cause why the firm should not furnish a security for Rs. 1 lakh. After the petitioner-firm had showed cause on 16th May, 1981 such proceeding was also dropped by the Commercial Tax Officer, Burdwan Range. By rejecting the application of the petitioner to get the eligibility certificate after four years from the date of making the application, the petitioner-firm is being saddled with the liability of huge amount of sales tax not realised from the customers. As a result, the very existence of the petitioner-firm will be at stake. Mr. Banerjee has also contended that if the expression "investment of the dealer on plant and machinery excluding land and building" is also capable of being interpreted as the actual investment on the plant and machinery and not the installation charges, then the assessee having altered his position by such assurance given by the State Government must get the benefit of the favourable interpretation in his favour and such favourable interpretation is the accepted principle in a fiscal legislation. He has also submitted that in the instant case, admittedly the petitioner had fulfilled all the conditions and only on the score that the total investment of the petitioner on account of plant and machinery and also the costs of installation had exceeded Rs. 10 lakhs, the eligibility certificate was refused to the petitioner-firm. He, therefore, submits that the order passed by the Additional Commissioner of Commercial Taxes and also the Assistant Commissioner of Commercial Taxes must be quashed and the petitioners having admittedly fulfilled all the conditions, the respondents should be directed to issue the eligibility certificate to the petitioners as prayed for.

5. Mr. Dutt, the learned Counsel appearing for the respondents, has, however, submitted that the reasonings given by the Additional Commissioner of Commercial Taxes are quite correct and no contrary view should be taken by this Court. He has submitted that for the purpose of interpreting the true import of the expression "the investment of the dealer on plant and machinery excluding land and building" the decision of the Central Government and/or the State Government that for the purpose of being registered as a small-scale unit the cost of plant and machinery excluding the installation charges should be taken into consideration is irrelevant. The said decision and/or the press note was

 

issued entirely for a different purpose and the Additional Commissioner of Commercial Taxes is justified in his contention that the intention of the State Government in issuing the said notification for eligibility certificate is quite clear that the total investment of the assessee for plant and machinery including the costs of installation should be taken into consideration because without the installation of the plant and machinery no useful purpose can be served and the plant and machinery cannot be utilised for manufacture and plant and machinery must be viewed in their totality and de hors installation, the plant cannot be conceived of. Mr. Dutt has also submitted that the dropping of the proceeding for furnishing security and/or the adjudication on the application for eligibility certificate after a lapse of several years will not ipso facto entitle the petitioner to get the eligibility certificate. On the face of the notification, the petitioner was aware that the total investment made by the petitioner-firm towards the plant and machinery including the installation charge was to be considered for being entitled to get the eligibility certificate and as the petitioner-firm had to incur total expenditure for the plant and machinery including the installation charges for more than Rs. 10 lakhs, the petitioner-firm was aware from the very beginning that the petitioner-firm was not eligible to get such a certificate. He has submitted that if in such circumstances, the petitioner-firm had failed to realise sales tax from the customers, the petitioner-firm had acted to its own detriment and on that score he is not entitled to claim any special advantage.

6. After considering the respective submissions made by the learned Counsel appearing for the parties, it appears to me that for the purpose of being entitled to get the said eligibility certificate the firm is required to be registered as a small-scale industry under the Government of West Bengal and for being registered as a small-scale industry under the State Government or under the Central Government, the costs of plant and machinery should not have exceeded Rs. 10 lakhs excluding the costs of installation. The notification which was issued by the State Government u/s 4AA is capable of the interpretation which is being made by the petitioner and the State Government not having expressly stated in the notification that the investment of the dealer on plant and machinery excluding land and building will also include the installation charges as contrary to the requirements for being registered as a small-scale industrial unit, the dealer is entitled to the benefit of an interpretation which is favourable to the dealer.

7. In my view, Mr. Banerjee is justified in his contention that the cost of installation is a variable cost depending on various factors including the distance between the place of purchase of plant and machinery and the site for installation, the expertise of the person installing the plant and some other factors. In the circumstances, for the same plant and machinery installed by two dealers and manufacturing similar products, one dealer will get the benefit of tax holiday and the other will not get it. Such anomalous position cannot be held to be the intention of any Government. In my view, the expression "the investment of the dealer on plant and machinery" may also mean the actual investment on

 

plant and machinery and not the cost of installation charges of such plant and machinery and such interpretation being also a reasonable and possible interpretation and favourable to the assessee should be accepted in preference to the other possible interpretation. That apart, if reference is made to Clause (iv) of the conditions for entitlement to eligibility certificate, it will also appear that the requirement is that assessee keeps "vouchers and other documents for purchases of plant and machinery for establishment of such industrial unit and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such an industrial unit set up by him and that no amount by way of sales tax has been realised by him in respect of such sales". There is no requirement to maintain vouchers or records relating to installation charges. In my view, in the aforesaid facts, it may be reasonably contended that the cost for purchase of plant and machinery and not the cost of installation was meant in the expression "investment of the dealer on plant and machinery excluding land and building" as referred to in the preceding clause, namely, Clause (ii).

8. In the circumstances, this writ petition succeeds and the respondents are directed to issue the eligibility certificate as prayed for by the petitioner-firm.

9. There will be no order as to costs.

10. Mr. Dutt, the learned Counsel appearing for the State-respondents, has asked for stay of the operation of the judgment. Let the operation of the judgment be stayed for a period of four weeks from today.