

**(1986) 02 PAT CK 0024**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 3294 of 1981

Pradeep Rubber Industries

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 24-02-1986

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 6, 8  
Constitution of India, 1950 — Article 226

**Citation :** (1986) 61 STC 402

**Hon'ble Judges :** S. Shamsul Hasan, J

**Bench :** Single Bench

**Advocate :** B.P. Rajgarhia and Pawan Kumar, for the Appellant; N.K. Sinha, Standing Counsel No. V, Shantanu Kumar, Junior Counsel to Standing Counsel No. V and Pradeep Kumar, Junior Counsel to Standing Counsel No. IV, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Shamsul Hasan, J.—The question involved in this application under Article 226 of the Constitution of India is prima facie a minor one but with far-reaching effect to any new entrepreneur. The petitioner claims relief granted u/s 8(2A) of the Central Sales Tax Act, 1956, claiming non-application of the explanation of that sub-section.

2. The petitioner is a proprietorship concern, having small-scale industrial unit manufacturing cycle tubes and other rubber goods. It started its production from 10th October, 1974, and got itself registered as small-scale industry under the Industries Department of the State Government. The State Government issued a notification dated 9th September, 1969, exempting newly established small-scale industries from payment of sales tax for a period of five years from the date of their production. This benefit was extended again up to 31st March, 1979, by another notification dated 14th March, 1974. The Government has further granted exemption from the levy of both general sales tax and special sales tax

on the finished products by the newly set up industries at the first stage of sale. The case of the petitioner further is that in view of the provisions of Section 8(2A) of the Central Sales Tax Act it was exempt from paying the Central sales tax in view of the exemption granted from payment of State sales and purchase tax till 10th October, 1979, that is, for a period of five years from the date of commencement of production, i.e., 10th October, 1974. This claim was based on the aforesaid Government circular. The petitioner took the job-work of M/s. Mining and Allied Machinery Corporation Ltd., Durgapur, West Bengal, for logging rubber on the conveyor drums supplied by the said corporation for use in the conveyor belt during the period 1976-77 and supplied the same but the assessing officer imposed Central sales tax on the amount received by the petitioner from the said corporation. The petitioner went in revision before the Commissioner of Commercial Taxes where too it lost, leading to the filing of the present application.

3. The moot question involved is whether the petitioner is entitled to the exemption of Central sales tax as claimed by it. The relevant section of the Central Sales Tax Act is Section 8(2A), which may usefully be quoted below :

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or in Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name) shall be nil, or, as the case may be, shall be calculated at the lower rate.

Explanation -For the purposes of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

4. According to the petitioner, it is entitled to the exemption of Central sales tax for the specified period in view of the exemption admittedly available in regard to the payment of the Bihar sales tax, since the exemption was not affected by any specified condition nor was it granted under any specified circumstances. The short point that has to be determined is whether the explanation to Section 8(2A) in terms has justified the stand of the department that the petitioner is not exempted from the payment of Central sales tax because the exemption was couched with specified condition and was under the specified circumstances. In other words, it was not a general exemption, since it imposed the condition that the exempted person must be a new entrepreneur and the period was limited to five years from the date of production. It has, therefore, to be examined whether these conditions are such that would come within the embrace of the explanation

aforesaid.

5. Learned counsel for the petitioner has cited several decisions to show that similar conditions have been held to be of a character that cannot be brought within the ambit of "specified circumstances or under specified conditions". The following decisions were cited and relied upon as stated above: (i) Commissioner of Sales Tax, Madhya Pradesh v. Kapoor Dori Niwar & Co., Gwalior [1968] 22 STC 152 and (ii) Indian Aluminium Cables Ltd. v. State of Haryana [1976] 38 STC 108. In the case of Kapoor Dori Niwar & Co. [1968] 22 STC 152 the Madhya Pradesh High Court has interpreted the expression "in specified circumstances or under specified conditions" and held that such circumstances or conditions the non-existence or non-performance of which precludes the grant of exemption; so that if those circumstances do not exist or those conditions are not performed then the sales of goods cannot be exempted from tax even if they are effected by a class of dealers to whom exemption is granted and during the period for which exemption is granted. In other words, the generality of Section 8(2A) is destroyed by the explanation only if the exemption is dependent upon non-existence or non-performance of any circumstance. In this decision, the sale of "niwar" was exempted for a specified period from the State sales tax. The fixation of the period of exemption was held to be outside the ambit of the specified condition or circumstances within the meaning of the explanation.

6. The decision, which was cited by the petitioner and also relied upon by the State is the aforementioned case of Indian Aluminium Cables Ltd. [1976] 38 STC 108. In this case the sale of poles and cables to a particular class of purchaser was held to be a specified circumstance or under specified conditions and hence deprived the assessee of any exemption of Central sales tax. It held that inter-State tax exemption was not general in character. While holding thus the Supreme Court has observed as follows :

Section 8(2A) of the Central Sales Tax Act, 1956, exempts goods from inter-State sales tax where a tax law of the State has exempted them from sales tax. The explanation to Section 8(2A) takes away the exemption where it is not general and has been granted in specified circumstances or under specified conditions. The provisions contained in Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948, exclude sales which are made under specified circumstances or specified conditions. The specified circumstances are that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence or sanction granted under the Indian Electricity Act, 1910. The specified condition is that the goods purchased by the undertaking must be used for the generation or distribution of electrical energy. If the circumstances do not exist or if the conditions are not performed, then the sales of goods cannot be exempted from tax. Where the exemption from taxation is conferred by conditions or in certain circumstances, there is no exemption from tax generally within the meaning of Section 8(2A) of the Central Act. The goods should be totally exempt from tax under the State Act before similar exemption from the

levy of Central sales tax can become available.

Applying the ratio as enunciated above to the case of the petitioner it is clear that there is no condition imposed upon the petitioner the non-performance or non-existence of which would render the exemption inapplicable, because the condition here was only related to the fixation of a period of exemption, the sale being entirely without any condition.

7. In the result, the claim of the State based on annexures 1, 2 and 4 does not have the sanction of law and they are, accordingly, quashed. The application is allowed, with costs.