(2015) 02 AHC CK 0187

In the Allahabad High Court

Case No : Trade Tax Revision No. 61 of 1998

Residency Food and Beverages Ltd. APPELLANT

Vs

Trade Tax Tribunal, Lucknow RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Income Tax Act, 1961 — Section 271(1)(c), 43B
State Financial Corporations Act, 1951 — Section 29
Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 18, 2(ee), 3, 3A

Citation : (2015) 81 VST 516

Hon'ble Judges : Manoj Kumar Gupta, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Senior Advocate, S.M.K. Chaudhary, Piyush Agrawal, Sanyuta Singh and Vaibhav Pandey, for the Appellant

Judgement

Manoj Kumar Gupta, J—This revision under section 11 of the U.P. Trade Tax Act, 1948 as amended from time to time (hereinafter referred to as "the Act") is directed against the order of the U.P. Trade Tax Tribunal, Lucknow, dated March 16, 1998, rejecting the appeal filed by the revisionist. As a result thereof, the decision of the State Level Committee, communicated to the revisionist by the Secretary, U.P. Government (Trade Tax), Anubhag 2, Lucknow vide letter dated April 11, 1996, rejecting its request for substituting its name as "successor manufacturer" in place of Pashupati Bottling Pvt. Ltd. in the eligibility certificate issued under section 4A was affirmed. The revision was heard on the following questions of law:

"(a) Whether, in view of the definition of the word ''manufacturer'' as given under section 2(ee) which has to be read under section 4A(2B) of the Act, the applicant-company has to be treated as manufacturer succeeding Pashupati Bottlers to whom the eligibility certificate was granted for the purpose of getting the exemption from payment of sales tax?

(b) Whether all the licences and registration which are mandatory for running the industrial unit having been granted only to the applicant after the unit was taken over by the applicant in continuation of the earlier licence granted to Pashupati Bottlers, the applicant-company as the ''successor manufacturer'' of the new unit entitled for the benefit of exemption for the remaining period mentioned in the eligibility certificate?

(c) Whether in view of the specific amendment under section 4A(2B) of the Act, even if the application has succeeded by means of licence or lease and not by way of sale, the applicant should be treated as ''successor manufacturer'' for the purpose of section 4A(2B) during the relevant period for which eligibility certificate was granted?"

2. For appreciating the controversy, relevant provisions of the Act may be noticed. Section 4A provides for exemption of certain goods from sales tax. It was amended by U.P. Act No. 28 of 1991. The word "manufacturer" defined under section 2(ee) was also amended. Section 2(ee) and relevant part of section 4A as were in existence prior to the amendment read as under:

"2. (ee) ''Manufacturer'', in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture.

4A. Exemption from sales tax of certain goods for specified period. -- (1) Notwithstanding anything contained in section 3 or section 3A, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of industry in the State generally or in any districts or parts of districts in particular, it may on application or otherwise, by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof, shall during such period not exceeding seven years from date of first sale by such manufacturer if such sale takes place within six months from the date of starting production and in any other case from the date following the expiration of six months from the date of starting production and subject to such conditions as may be specified, be exempt from sales tax or be liable to tax at such reduced rate as it may fix.

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or reduction in the rate of tax, shall be admissible,--

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

(b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October 1982; or

(c) only if the manufacturer had not discontinued production of such goods for a period exceeding six months at a stretch;

(d) only if the manufacturer furnishes to the assessing authority an eligibility certificate granted by such officer, in accordance with such procedure, as may be specified.

Explanation.--For the purpose of this section,--

(i) ''new unit'' means a factory or workshop whether set up by a dealer already having an industrial unit manufacturing the same goods at any other place in the State or an industrial unit manufacturing any other goods on, or adjacent to, the site of an existing factory or workshop; but does not include,--

(a) any factory or workshop using machinery, accessories or components already used or acquired for use in any other factory or workshop in India,

(b) any factory or workshop established on, or adjacent to the site of an existing factory or workshop manufacturing the same goods, or

(c) any addition to or extension of an existing factory or workshop, and

(ii) ''date of starting production'' means the date on which any raw material required for use in the manufacture or packing of the specified goods is purchased for the first time or the date of installation of power connection, where needed, whichever is later.

(3) Where the Commissioner of Sales Tax is of the opinion that facility of exemption from, or reduction in the rate of, tax obtained on the basis of an eligibility certificate referred to clause (d) of sub-section (2) has been misused in any manner whatsoever, he may, by order in writing, cancel the eligibility certificate from such date, whether before or after the date of such order, as may be specified therein:

Provided that no order under this sub-section shall be passed without giving the dealer concerned a reasonable opportunity of being heard."

3. These provisions, inter alia, were amended initially with the promulgation of U.P. Act No. 10 of 1990, followed by U.P. Ordinance No. 17 of 1990, 29 of 1990, 19 of 1991 and 26 of 1991 and ultimately by U.P. Act No. 28 of 1991. As a result of the aforesaid legislative exercise, section 2(ee) and relevant part of section 4A reads as under:

"2. (ee) ''Manufacturer'', in relation to any goods means the dealer who makes the first sale of such goods in the Sate after their manufacture and includes a dealer who sells bicycles in completely knocked down form.

4A. Exemption from sales tax of certain goods for specified period. -- (1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or in any districts or part of districts in particular, it may on application or otherwise, in any particular case or generally by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding ten years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may be the date of the notification or a date prior or subsequent to the date of such notification, and where no date is so specified from the date of first sale by such manufacturer if such sale takes place within six months from the date of starting production and in any other case from the date following the expiration of six months from the date of starting production, and subject to such conditions as may be specified, be exempt from sales tax whether wholly or partly or be liable to tax at such reduced rate as it may fix.

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or reduction in the rate of tax, shall be admissible--

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; Or

(b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October, 1982; or and in either case

(c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification, or modernisation on or after April 1, 1990, and which, in case of diversification are different from the goods manufactured before such diversification, and in the case of expansion or modernisation are additional production as a result of such expansion or modernisation; and

(d) only if the manufacturer furnishes to the assessing authority an eligibility certificate granted by such officer, in accordance with such procedure, as may be specified.

(e) with effect from a date prior to the date of the notification. Explanation: . . .

(2A) . . .

(2B) If there is discontinuation of business, within the meaning of sub-section (1) of section 18, of the manufacturer who was eligible for exemption under sub-section (1), whether such exemption was already granted or not, and if he is succeeded by another manufacturer, such successor or manufacturer may, subject to the provisions of sub-section (3), apply to the Commissioner of Sales Tax within 60 days of such succession, for the grant under this section, of exemption for the unexpired portion of the period for which exemption was or could be granted to the former manufacturer:

Provided that where the succession took place before April 25, 1990 such application may be made by September 25, 1990:

Provided further that the Commissioner of Sales Tax may, in his discretion and for adequate and sufficient reasons to be recorded in writing, entertain an application moved within six months of the date of the expiration of the period specified in this sub-section."

4. It is noticeable that the amendments brought within its sweep certain more industries, by extending the period of exemption to those units which are established up to March 31, 1990. The benefits was further extended to those existing units which have undertaken expansion, diversification or modernisation on or after April 1, 1990. Vide section 4A(2B) provision was made for extending the benefit of exemption to a successor manufacturer, if the former manufacturer was eligible for it. If exemption was already granted, the successor manufacturer can avail of the same for the unexpired period.

5. It is not in dispute that Pashupati Bottling Pvt. Ltd. (hereinafter referred to as "PBL") was already having eligibility certificate in respect of its new unit at C-3A, Site I, Industrial Area, Unnao for period of six years with effect from July 9, 1986 to July 8, 1992. During continuance of the exemption period, this industrial unit at Unnao was taken over by PICUP under section 29 of State Financial Corporation Act. It was sold by PICUP to M/s. Meghdoot Hotel Pvt. Ltd. (for short, referred to as "Meghdoot Hotel") on December 8, 1989. Meghdoot Hotel did not run the plant itself, but gave it to the revisionist for running the same for a period of 20 years with effect from January 1, 1990. In this regard, a licence agreement was executed between the parties on January 30, 1990 whereunder all rights and obligations for manufacturing the aerated water and beverages which were being manufactured by PBL in the new unit, were given to the revisionist, who used the said unit for manufacturing aerated water and beverage under the brand name "Pepsi". The licensee was given full right to modify and modernize the plant. It was made responsible to secure necessary licence/ permission for enabling it to run the unit. In pursuance thereof, the factory''s registration which was initially in the name of PBL was transferred and renewed in the name of revisionist up to December 31, 1994; it also obtained licence under the Food Product Control Order in its own name on April 9, 1994.

6. It is not disputed that the eligibility certificate granted to PBL was valid till July 8, 1992. Thus, in case Meghdoot Hotel had itself run the unit, it would have been entitled for exemption for the remaining period being a "successor manufacturer". There is no dispute about it. Accordingly, Meghdoot Hotels gave disclaimer certificate, to enable the revisionist to avail of benefit of tax exemption for the remaining period. However, the Department is not ready to extend such benefits to the revisionist who had admittedly run the unit during this period, in pursuance of the licence agreement. This is in view of the stand that the successor manufacturer can only be a person who itself owns the unit and not one who merely is a lessee or licensee. Accordingly, application of the revisionist for substituting its name in the eligibility certificate, as a "successor manufacture" has been rejected by the State Level Committee and was communicated vide letter dated April 11, 1996 and appeal filed before the Tribunal, affirmed the stand taken by the Department, vide impugned order

dated March 16, 1998.

7. It is noticeable that section 2(ee) and 4A were further amended by U.P. Act No. 11 of 1997 and after such amendment, section 2(ee) defines "manufacturer" as under:

"2. (ee) ''Manufacturer'' in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture and includes,--

(i) a dealer who sells bicycles in completely knocked down form,

(ii) a dealer who makes purchases from any other dealer not liable to tax on his sale under the Act other than sales exempted under sections 4, 4A and 4AAA."

8. In sub-section (2B) of section 4A of the Principal Act, the words "if he is succeeded by another manufacturer, such successor manufacturer" the words "if he is succeeded by another manufacturer, by means of sale, licence, contract, lease, managing agency or in any other manner, such successor manufacturer may" stood substituted. Thus, section 4A(2B), after amendment, reads as under:

"4A(2B). If there is discontinuation of business, within the meaning of sub-section (1) of section 18, of the manufacturer who was eligible for exemption from or reduction in rate of tax under sub-section (1), whether such exemption from or reduction in the rate of tax was already granted or not, and if he is succeeded by another manufacturer, by means of sale, licence, contract, lease, managing agency or in any other manner, such successor manufacturer may, subject to the provisions of sub-section (3), apply to the officer competent to grant eligibility certificate under clause (d) of sub-section (2), within sixty days of such succession, for the grant, under this section of exemption from or reduction in the rate of tax for the unexpired portion of the period for which exemption from or reduction in the rate of tax was or could be granted to the former manufacturer:

Provided that the aforesaid officer may, in its discretion and for adequate and sufficient reasons to be recorded in writing, entertain an application moved within six months of the date of the expiration of the period specified in this sub-section:

Provided further that such manufacturer and successor manufacturer for the purpose of liability of tax shall be treated as the transferor and the transferee under section 3C."

9. The aforesaid provisions now make it amply clear that successor manufacturer includes licensee and lessee as well, thus, the successor manufacturer can also be a person who does not own the manufacturing unit but runs it as a lessee or a licensee. However, the Tribunal refused to extend the benefit of the amendment to the revisionist, being of the opinion that the relevant provision of the amended Act, is prospective in nature and will apply with effect from August 8, 1997, the date on which the Governor gave its assent.

10. Sri Bharat Ji Agrawal, learned Senior Advocate, appearing on behalf of the revisionist, submitted that the view taken by the Tribunal is manifestly illegal, inasmuch as, the amendment is retrospective in nature. It does not confer any new rights, it only make the existing provision more explicit. The amendment is thus clarificatory in nature. He urged that the object of granting exemption is to promote setting up of new industries irrespective of the person who owns it. It is contended that even Industries Department of the State had accepted that the revisionist is entitled to benefit of exemption being a successor manufacturer. The Tribunal was not justified in overlooking the view of the Industries Department and in accepting the stand of the Sales Tax Department. Alternatively, it is contended that section 4A(2B) as inserted vide U.P. Act No. 28 of 1991, subsequently amended by U.P. Act No. 11 of 1997 is only procedural in nature. The benefit was available to the successor manufacturer, even before insertion of section 4A(2B). Thus, in any view, the impugned orders are erroneous and are liable to be set aside. On the other hand, Sri Sanjeev Shankhdhar, learned counsel appearing on behalf of the Revenue, supported the stand taken by the Tribunal. He placed reliance on the judgment of the apex court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, (2003) 90 ECC 628 : (1994) 73 ELT 769 : (1994) 6 JT 80 : (1994) 4 SCALE 122 : (1994) 3 SCC 606 Supp : (1994) 3 SCR 549 Supp .

11. The main question which thus falls for consideration by this court is whether the amendment to sub-section (2B) of section 4A by U.P. Act No. 11 of 1997 is retrospective or prospective in nature. Justice Sri G.P. Singh in his treatise "Principles of statutory interpretation" 11th Edition 2008 has explained the criterion for judging whether a statute is retrospective or not, as follows:

"... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ''to explain'' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ''shall be deemed always to have meant'' or ''shall be deemed never to have included'' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the Constitution came into force, the amending Act also will be part of the existing law."

12. In Commnr. of Income Tax-I, Ahmedabad Vs. Gold Coin Health Food Pvt. Ltd., (2008) 218 CTR 359 : (2008) 304 ITR 308 : (2008) 9 JT 312 : (2008) 11 SCALE 492 : (2008) 9 SCC 622 : (2008) 172 TAXMAN 386 : (2008) 2 UJ 1144 ,

the apex court quoted with approval the aforesaid passage and concluded by holding that amendment to section 271(1)(c) of the Income-tax Act, by the Finance Act 2002 was only clarificatory in nature, as penalty in addition to tax was payable even earlier, if the assessee concealed and/or furnished incorrect particulars. It was held that the amendment was made to remove confusion, to make things more explicit and is thus retrospective.

13. Applying the same principle of statutory interpretation, the apex court in Allied Motors (P.) Ltd. Vs. Commissioner of Income Tax, Delhi, AIR 1997 SC 1361 : (1997) 224 ITR 677 : (1997) 3 JT 418 : (1997) 2 SCALE 575 : (1997) 3 SCC 472 : (1997) 2 SCR 780 : (1997) 91 TAXMAN 205 : (1997) AIRSCW 1473 : (1997) 3 Supreme 255 upheld the view of the Patna High Court that first proviso to section 43B of the Income-tax Act, inserted by amendment is retrospective in nature. It was observed as under (pages 683, 686 and 687 in 224 ITR):

"... The amendment which was made by the Finance Act of 1987 in section 43B by inserting, inter alia, the first proviso, was remedial in nature, designed to eliminate unintended consequences which may cause undue hardship to the assessee and which made the provision unworkable or unjust in a specific situation.

...

. . . The Gujarat High Court in the above case held the amendment to be curative and explanatory and hence retrospective. The Patna High Court has also held the amendment inserting the first proviso to be explanatory in the case of Jamshedpur Motor Accessories Stores Vs. Union of India (UOI) and Others, (1991) 91 CTR 19 : (1991) 189 ITR 70 : (1991) 54 TAXMAN 521 . It has held the amendment inserting first proviso to be retrospective. The special leave petition from this decision of the Patna High Court was dismissed (see [1991] 191 ITR (St.) 8). The view of the Delhi High Court, therefore, that the first proviso to section 43B will be available only prospectively does not appear to be correct. . ."

14. In R.B. Jodha Mal Kuthiala Vs. The Commissioner of Income Tax, Punjab, Jammu and Kashmir, Himachal Pradesh and Patiala, AIR 1972 SC 126 : (1971) 82 ITR 570 : (1971) 3 SCC 369 : (1972) 1 SCR 639 , the apex court said that one should apply the rule of reasonable interpretation. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section and is required to be read into the section to give the section a reasonable interpretation, requiring to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole.

15. In K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, AIR 1981 SC 1922 : (1981) 24 CTR 358 : (1981) 131 ITR 597 : (1981) 3 SCALE 1315 : (1981) 4 SCC 173 : (1982) 1 SCR 629 , on which reliance was placed by Sri Bharat Ji, Agrawal, learned counsel for the revisionist, it is held that a statute should be construed having regard to the object and purpose, which the

legislation had in view in enacting the provision and in the context of the setting in which it occurs. In Tata Engineering and Locomotive Co. Ltd. Vs. The State of Bihar and Another, (2000) 2 JT 406 Supp : (2000) 4 SCALE 27 : (2000) 5 SCC 346 , their lordships of the apex court held that statute, it is often said, should be considered not as theorems of Euclid but with some imagination of the purposes which lie behind them and to be too literal in the meaning of words is to see the skin and miss the soul. For the same proposition, is the judgment in the case of District Mining Officer and Others Vs. Tata Iron and Steel Co. and Another, (2001) 6 JT 183 : (2001) 4 SCALE 680 : (2001) 7 SCC 358 : (2002) WritLR 42 : (2001) AIRSCW 2927 : (2001) 5 Supreme 545 , on which reliance was placed by the counsel for the revisionist.

16. However, Sri Sanjeev Shankhdhar, learned counsel for the Revenue placing reliance on the judgment of the apex court in case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, (2003) 90 ECC 628 : (1994) 73 ELT 769 : (1994) 6 JT 80 : (1994) 4 SCALE 122 : (1994) 3 SCC 606 Supp : (1994) 3 SCR 549 Supp contended that where there is ambiguity, the benefit must go to the State. That was a case where the question was whether the article manufactured would be covered by item No. 6 of exemption notification. It was held that for availing of benefit of exemption, the article must clearly be covered by the entry, on it''s plain meaning, failing which it will be liable to tax. There cannot be any doubt about the above proposition of law. However, in the instant case, the question is slightly different. The Legislature by Act No. 11 of 1997 has spelled out the meaning of "successor manufacturer." The question is whether the amendment is prospective or retrospective. This, as held by various decision of apex court, has to be judged by ascertaining whether the amendment is declaratory/clarificatory in nature, enacted with intent to supply an obvious omission, in which case it would be retrospective, or it creates new rights and liabilities, and thus generally prospective. It therefore becomes necessary to cull out the legislative intent behind section 4A and the amendments made from time to time. A perusal of section 4A reveals that it has twin objects, first to encourage the production of any goods, and second, to promote the development of any industry in the State generally, or in any district or part of district in particular. A conjoint reading of section 4A(1) and (2) reveals that the first objective is achieved by exempting or reducing sales tax/trade tax, on such good(s), of which the production is sought to be increased. The benefit is admissible, generally in respect of all such goods irrespective of whether such goods are produced by existing unit or a new unit. On the other hand, the second objective is secured by issuing notification exempting only the goods which are manufactured in a new unit or which have undergone expansion, diversification or modernisation. The exemption is available generally in respect of all goods manufactured by any such unit, as the objective is to encourage development of industry in particular area and not to increase production of any specified goods. Explanation (i) to section 4A defines "new unit" as industrial undertaking set up by a dealer on or after October 01,

1982 but not later that March, 31, 1990, subject to fulfillment of certain conditions.

17. In the instant case, Government had invoked its power under latter part of section 4B, which empowers it to exempt sales tax on goods manufactured by new units, set up in particular area, in order to promote development of industries in such areas. Notification dated January 29, 1985 issued in this regards reads as under:

"Whereas the State Government is of the opinion that it is necessary so to do for promoting the development of industry in the State generally and in certain districts and parts of districts in particular; Now, therefore, in exercise of the powers under section 4A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), and in supersession of Notification No. ST-II-6468/X9-(208)-1981-U.P. Act XV-48-Order-84, dated August 27, 1984, the Governor is pleased to declare that in respect of any goods manufactured in an industrial unit, which is a new unit as defined in the aforesaid Act of 1948 established in the areas mentioned in column 2 of the Table below, the date of starting production whereof falls (on or after the twenty-ninth day of January, 1985 but not later than twenty-fifth day of December, 1985) no tax under the aforesaid Act of 1948 shall be payable by the manufacturer thereof on the turnover of sales of such goods for the period specified in column 3 against each, which shall be reckoned from the date of first sale, if such sale takes place not later than six months from the date of starting production, or in other cases, from the date following the expiration of six months from the date of starting production subject to the condition that the said industrial unit has not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year:

18. A Division Bench of this court in Jagat Machinery Manufacturers Pvt. Ltd., Ghaziabad v. State of U.P. [1987] UPTC 1358 had the occasion to consider the object of section 4A. In that case, exemption was refused to the petitioner therein, on the ground that electric connection was in the name of erstwhile partnership firm and not in the name of the petitioner who was reconstituted as a private limited company. Under the relevant provisions of law, the benefit is available to the unit only if first sale takes place within 6 months of starting production. Date of starting production, inter alia, means the date of installation of power connection. It was held that change of ownership from partnership firm to private limited company, was immaterial as the object of granting exemption is to promote setting up of new industries and not to extend benefit to any person or individual. It is of no consequence as to who owns the unit. The judgment is based on interpretation of section 4A as it stood prior to insertion of sub-section (2B). It was held as under:

"13. One aspect of the matter, which was emphasised by the learned Standing Counsel, was that the power connection, according to the finding of the

Divisional Level Committee, was in the name of the partnership firm and not in the name of the petitioner-company and, as such the petitioner could take no advantage of the date of the power connection in the present case. This argument overlooks the basic object for which section 4A has been enacted. The object is to grant exemption whether total or partial from sales tax, to the goods produced in a new unit. The production of goods in a new unit is, therefore, the predominant consideration to be kept in view. It is the unit which, if ''new'' within the meaning of the term as defined in section 4A, gets advantage of the tax exemption on the goods produced by it. Who owns the unit is not material. What is material is the character of the unit as a ''new unit''. This is clear from the definition of the word ''new unit'' mentioned in the Explanation to section 4A itself.

Clause (a) of Explanation (i) to section 4A excludes from the definition of a ''new unit'' any factory or workshop using machinery, accessories or components already used or acquired for use in any factory or workshop in India. This clearly means that if any machinery is acquired for use in the factory which is the new unit and the machinery had not been acquired for use in any other factory in India, the fact of acquisition of the machinery by the earlier owner would not render the owner of the new unit ineligible for grant of an eligibility certificate under section 4A.

14. In the present case, the finding of the Divisional Level Committee is that the list of machineries showed that 16 items of machinery had been purchased by the old partnership firm prior to November 1, 1982 and only two had been purchased in the name of the company after that date. There is no finding that 16 machines had been purchased by the partnership firm for use in any other factory or workshop in India and that they were not acquired for use in the factory/workshop that was now being set up. The impugned order of the Divisional Level Committee proceeds upon an erroneous impression about the legal position. This court has repeatedly observed that the object of section 4A is to grant exemption to manufacturers with a view to promote setting up of new industrial units. Irrespective of the reconstitution of a firm, the industrial unit run by it was entitled to exemption, (see Commissioner, Sales Tax Vs. Good Luck Rubber and Allied Industries, (1983) 53 STC 388 and Commissioner of Sales Tax v. General Engineering Corporation [1986] UPTC 305).

15. The object and purpose with which section 4A has been enacted rules out the view, strenuously canvassed for by the learned standing counsel, that the ownership of the unit is the predominant factor for determining the question whether it was a new unit entitled to exemption from tax and that the change in ownership would alter the character of the unit as a ''new unit''. The emphasis clearly is upon the nature of the unit being a new unit and not upon the ownership of the unit. If the Legislature wished to exclude availability of exemption from tax on the ground of ownership of the new unit. It would have specifically said so in some clause of the definition of ''new unit''. The matter

would not have been left for speculation.

16. If one looks at section 3C of the U.P. Sales Tax Act, one finds it provided in sub-section (2) that where the ownership of the business of any dealer liable to pay tax is transferred, the transferor and the transferee shall jointly and severally be liable to pay the tax including penalty, if any, payable in respect of such business till the time of such transfer, whether the assessment is made or the penalty is imposed prior to or after such transfer. As a necessary corollary, it must follow that where the goods produced in a ''new unit are granted exemption from payment of sales tax for a specified period, the exemption should be available to them irrespective of the fact that the ownership of the unit is transferred during the period for which the exemption has been granted, subject, of course, to the fulfillment of the conditions under which the exemption is to operate."

19. Following the principles laid down in the said decision, this court in subsequent judgment of Panchsheel Industries Vs. The Commissioner of Trade Tax and Divisional Level Committee held that reconstitution of a partnership firm will not mean that the machinery in its possession are old machineries, purchased by the erstwhile firm. Its application for exemption is to be considered on the basis of first sale, irrespective of the person constituting the firm. It was observed as under:

"8. This court has repeatedly held that the object of section 4A was to grant exemption to the manufacturer with the view to promote setting up a new industrial unit and irrespective of reconstitution of firm industrial unit run by it was entitled to exemption."

20. The apex court also had the occasion to consider the object of section 4A of the Act in the case of Commissioner of Sales Tax Vs. Industrial Coal Enterprises, AIR 1999 SC 1324 : (1999) 2 JT 6 : (1999) 1 SCALE 626 : (1999) 2 SCC 607 : (1999) 1 SCR 871 : (1999) 114 STC 365 : (1999) AIRSCW 1020 : (1999) 2 Supreme 296 . It was held as under (pages 374 and 375 in 114 STC):

"11. In Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., AIR 1989 SC 1490 : (1989) 77 CTR 75 : (1989) 177 ITR 431 : (1989) 2 JT 264 : (1989) 1 SCALE 1151 : (1989) 2 SCC 523 Supp : (1989) 2 SCR 772 , this court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, AIR 1992 SC 1622 : (1992) 104 CTR 116 : (1992) 196 ITR 188 : (1992) 3 JT 185 : (1993) 4 SCALE 367 : (1992) 1 SCALE 912 : (1992) 3 SCC 78 : (1992) 2 SCR 765 : (1992) 62 TAXMAN 480 , it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, AIR 1992 SC 1622 : (1992) 104 CTR 116 : (1992) 196 ITR 188 : (1992) 3 JT 185 : (1993) 4 SCALE 367 : (1992) 1 SCALE 912 : (1992) 3 SCC 78 : (1992) 2 SCR 765 : (1992) 62 TAXMAN 480 is applied, there is no doubt whatever that the exemption granted to the respondent from August 9, 1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of Rs. 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises, which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there was any mala fides on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below Rs. 3 lakhs and increasing the capital investment subsequently to an amount exceeding Rs. 3 lakhs with a view to defeat the provisions of any of the relevant statutes. The bona fides of the respondent have never been questioned by the appellant."

21. It is seen that the Government in the past, had often invoked power 22 under section 4A to provide impetus to setting up of industries in various backward areas, which it felt could be developed by attracting capital investment in form of new industrial units. It not only creates new job avenues for the local populace, but also results in strengthening of the infrastructure in the area, as a result of increased industrial activity. The Government, while attracting capital investment, is not concerned with the person or individual who sets up the industry, as the object is to "promote the development of industries in the State, generally and in certain district and parts of district in particular", as mentioned in the opening lines of notification dated January 29, 1985 itself. The provision to extend tax benefits for certain years, is thus, linked to the new unit irrespective of the person who runs it. The judgment of this court in the case of Panchsheel Industries Vs. The Commissioner of Trade Tax and Divisional Level Committee when takes the view that the change in constitution of partnership firm will not defeat the entitlement to exemption from tax with respect to goods manufactured in the new unit, is in recognition of the above proposition of law.

22. It is to be noted that the Bill resulting in enactment of U.P. Act 28 of 23, 1991 in its opening lines, states the object and reason for introducing the Bill as under:

"In order to remove the difficulty experienced in the implementation of certain provisions of the Uttar Pradesh Sales Tax Act, 1948 and to clarify certain provisions, raise financial resources of the State, grant in the interest of development of industries exemption from the tax to certain units and to validate certain Acts."

23. Section 8(c) of U.P. Act No. 28 of 1991 provides that sub-section (2B) 24 shall be deemed to be inserted to section 4A on October 12, 1983. The relevance of October 12, 1983 is that the provision of exemption in substantially its existing form was substituted with effect from such date, by U.P. Act 22 of 1984. Thus, to cover all past transfers, it is made retrospective since October 12, 1983. The use of words "is deemed to have been inserted on October 12, 1983", is suggestive of the fact that the amendment is merely curative or declaratory of the previous law, and is thus to be applied retrospectively. It has been passed to supply an obvious omission, i.e., it provides the procedure for extending tax holiday to successor manufacturers, a meaning which was otherwise implicit in the existing legislation itself.

24. Sub-section (2B) which extends benefits to all past successions, reinforces the aforesaid legislative intendment. The only rider is that application in this regard is to be made by September 25, 1990, which time was extended to December 31, 1991, vide U.P. Act No. 8 of 1992. Even thereafter, the Commissioner of Sales Tax is invested with power to entertain application for adequate and sufficient reasons. Sub-section (2B) thus only provides for the mechanism for availing of tax holiday by a successor manufacturer. It does not create any new right, but only clarifies and declares the existing provisions of law. It thus fulfills the object of enactment, viz., "remove difficulty experienced" by successor manufacturer in availing of benefit of exemption, "clarifies" existing position of law that tax exemption is linked to a new unit, irrespective of the person running it.

25. Sub-section (2B) of section 4A was further amended by U.P. Act No. 11 of 1997. Amendments seeks to define the words "successor manufacturer" which was hitherto not defined anywhere in the Act, thus removing confusion regarding its extent and scope. It is an inclusive illustrative definition and comprehends the entire gamut of possibilities by which transfer could take place. Even where title is not being transferred, like in case of license, contract, lease, or managing agency, the benefit shall be available. The common thread which brings them under one genus is the change of management by any one of the modes of transfer stipulated irrespective of whether title is being transferred or not. The use of phrase "in any other manner" exhausts all cognate modes of transfer, where there is change of management and not necessarily the title. Exemption is thus linked to new units and its benefits devolves on the successor, running the unit.

26. The aforesaid interpretation is in keeping with the object of the legislation, i.e., to extend tax holiday to "new units", irrespective of person running it, thus achieving the ultimate aim of providing impetus to industrialisation in the State.

The statement of objects and reasons for bringing about such amendments vide U.P. Act No. 11 of 1997, as disclosed in the prefatory note is to make "reasonable the definition of successor manufacturer". The word reasonable means, sensible, rational, logical, fair, just, equitable, practicable, within bounds of common sense. The word "successor manufacture" as noted above was not defined earlier. The definition provided by the amendment is not a new definition, but an attempt by the Legislature to make matters logical, sensible and reasonable. It makes the things more explicit and clear, thus obviating unintended consequences. It supplies obvious omission, i.e., by providing the definition of successor manufacturer. Thus, the legislation in this respect is explanatory or clarificatory in nature rather than creating new rights.

27. Accordingly, I am of the considered opinion that the amendment has to be applied retrospectively, otherwise, the object of amendment will stand defeated. So construed, there is no scope from the conclusion that the revisionist herein will be covered by the phrase "successor manufacturer" and would thus, be entitled to benefit of tax exemption for the remaining period under the eligibility certificate. The questions of law are answered accordingly. The view taken by the Tribunal is illogical, irrational, leading to consequences never intended by the legislation and cannot be accepted.

28. The result of foregoing discussion is that the impugned orders cannot be sustained and are hereby set aside. The State Level Committee or whoever be the competent authority, is directed to issue the eligibility certificate to the revisionist for remaining period, treating it to be successor manufacturer and extend all benefits flowing out of such exemption to the revisionist.

29. The revision is accordingly allowed.

30. No order as to costs.

Pankaj Mithal, J.

The judgment prepared by the honourable judge who heard the matter and is not available today at Lucknow is being pronounced by me in accordance with rule 1(3) of Chapter VII of the Rules of the Court, 1952 on being so assigned by the honourable senior judge.

