
(2001) 11 AP CK 0093

In the Andhra Pradesh High Court

Case No : T.R.C. No's. 8 and 9 of 1994 and 27, 28, 29 and 30 of 1996

S.L.S. Textiles Ltd. and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-11-2001

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 12(2), 12(5), 2, 6, 9(1)
Central Sales Tax Act, 1956 — Section 8(2A)

Citation : (2002) 126 STC 132

Hon'ble Judges : S.R. Nayak, J; S. Ananda Reddy, J

Bench : Division Bench

Advocate : C. Natarajan, for A.K. Jaswal, in T.R.C. Nos. 8 and 9 of 1994, S. Krishna Murty, in T.R.C. Nos. 27 to 30 of 1996, for the Appellant; Bhasker Reddy, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This batch of tax revision cases is filed by the dealers aggrieved by the orders of the Sales Tax Appellate Tribunal, Hyderabad.

2. The petitioners in all these cases are the dealers and manufacturers of cotton hank yarn. During the relevant previous year the petitioners have effected inter-State sales on hank yarn. In respect of the turnover relating to the sale of hank yarn, the dealers claimed exemption and the assessing officer accepted the said claim and granted exemption. The Deputy Commissioner of Commercial Taxes, however, initiated revisional proceedings u/s 20(2) of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act" or "the State Act"). According to him, the exemption granted by the assessing officer is not in accordance with law, as the exemption granted under the G.O., issued u/s 9(1) of the State Act, is only conditional and not general and therefore the benefit of exemption is not available in respect of the inter-State sales in terms of Section 8(2A) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act"). The Deputy Commissioner, therefore, after issuing show cause notice and

giving an opportunity of being heard, revised the assessments holding that the turnover which was exempted by the assessing officer was in fact liable to tax at the rate of 4 per cent since it is covered by "C" declaration forms. The said order was assailed before the Sales Tax Appellate Tribunal, unsuccessfully. Hence, the present tax revision cases before this Court.

3. The learned Senior Counsel Sri C. Natarajan, appearing for the dealers in T.R.C. Nos. 8 and 9 of 1994, contended that the exemption granted in terms of G.O. Ms. No. 1067, dated September 19, 1985 issued u/s 9(1) of the State Act is a general exemption with reference to the sales to all the registered dealers in the State, apart from the consumers specified therein. When once the exemption granted by the said G.O., issued u/s 9(1) of the State Act, is a general exemption with reference to transactions within the State, the said general exemption would be equally applicable in respect of inter-State transactions that are effected in terms of Section 8(2A) of the Central Act. Therefore, the turnover representing the sale of hank yarn on inter-State transactions are entitled for exemption.

4. Referring to the relevant provisions, the learned counsel contended that the notification issued by the State Government u/s 9(1) of the Act is intended to the benefit of handloom sector as a whole. Therefore, the benefit has to be extended even with reference to the consumers outside the State. Adverting further to the provisions of Section 9 of the State Act, it is contended that the said provisions do not contemplate the sale to the registered dealers for consumption, which is entitled for exemption. The learned counsel also specifically referred to the provisions of Section 12(2)(a) and Section 12(5) of the State Act and contended that hank yarn falls under the Third Schedule to the Act and with reference to the dealers carrying on business in all or any of the goods mentioned in that Schedule, have to get themselves registered irrespective of the quantum of the turnover. The Act does not contemplate any dealer to deal with the goods specified in Third Schedule without getting themselves registered under the Act. When once the Act does not contemplate any other category of dealers to deal with the goods specified in Third Schedule, the notification issued u/s 9 of the State Act, providing exemption in respect of the sales to the registered dealers, would cover and encompass all the dealers in the State. Therefore, if it is contended that when once the sale of hank yarn to all dealers, who are referred in the notification as a registered dealers, is exempted, the said exemption is of a general in nature and it does not depend upon any conditions or circumstances. When once the registered dealers in the State are exempted from the tax payable under the State Act in terms of the G.O., by virtue of the provisions of Section 8(2A) of the Central Act, the dealers in respect of the inter-State transactions are also entitled to the benefit of the exemption. The learned counsel also contended that the notification in question was issued under Subsection (1) of Section 9, which contemplates the exemption with reference to the sale or purchase of any specified class of goods at all or any specified points and by any specified class of persons in regard to the whole or any part of their turnover. As the said notification was not issued under Subsection (2) of Section

9, the restrictions or conditions specified and referred to in that Sub-section are not applicable. Therefore, in respect of the specified goods, by specified class of persons dealing with such goods, are entitled for exemption without fulfilling any conditions. In other words, the exemption does not depend upon the fulfilment of any specific conditions. According to the learned counsel, the restrictions or conditions, if any, stipulated should be read from the notification and cannot be inferred from outside. According to the learned counsel, the relief of exemption cannot also be denied on any extraneous considerations. In support of his contention the learned counsel relied upon the following decisions :

State of Madras Vs. N.K. Nataraja Mudaliar, , Indian Aluminium Cables Ltd. Vs. State of Haryana, , State of Haryana Vs. Dalmia Dadri Cement Ltd., , Bashir Oil Mills v. Maharashtra Sales Tax Tribunal [1993] 90 STC 195 (Bom), Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others, , Pinakini Seeds Vs. State of Andhra Pradesh, and Anandi Roller Flour Mills Ltd. Vs. Commissioner of Commercial Taxes, .

The learned counsel therefore, sought for setting aside the order of the Tribunal and to restore the order of the assessing officer.

5. The learned counsel Sri S. Krishna Murthy, appearing for the dealers in the other T.R.Cs., has adopted the above arguments of the Senior Counsel.

6. The learned Special Government Pleader Sri Bhaskar Reddy, on the other hand, supported the orders of the Tribunal. According to him, the notification issued u/s 9 of the Act, contemplates the fulfilment of the restrictions and conditions imposed therein. Unless the dealer fulfils those conditions, he is not entitled for the relief of exemption from the said tax. The learned counsel referred to the terms "dealer", "seller", "buyer" and the. "goods" and contended that the notification issued by the State provides exemption in respect of the sales of hank yarn to the registered dealers in the State, apart from a variety of consumers, who consume hank yarn in their industry in the State. Therefore, the learned counsel contended that what was contemplated under the G.O., is only exemption with reference to a specified class of dealers and the consumers, who fulfil the conditions specified therein. Therefore, the exemption granted under the said G.O., could not be considered as of general exemption, but is only under specified circumstances and conditions, as provided in the explanation u/s 8(2A) of the Central Act. The learned counsel also referred to similar notifications, where the exemption was granted with reference to the particular class of goods and contended that the State Government has got the power u/s 9 to grant exemption not only with reference to a particular class of goods but also in respect of the specified class of dealers and subject to the fulfilment of the conditions specified therein. Therefore, according to the learned Government Pleader, the exemption granted by notification issued u/s 9 of the State Act is not a general exemption. Therefore, the same would not extend the benefit of exemption to inter-State transactions in terms of Section 8(2A). Therefore, the Tribunal has rightly denied the exemption claimed by the dealers in question.

The learned Government Pleader relied upon the following decisions, in support of his contention :

State of Uttar Pradesh and another Vs. M/s. Hindustan Safety Glass Works (P) Ltd., , Union of India v. Southern Distributors [1996] 102 STC 509 (Mad.), Bangarimath Brothers v. State of Tamil Nadu [1999] 113 STC 503 (Mad), Union of India v. Rapidur (India) Pvt. Ltd. [2000] 119 STC 18 (SC), and Atlas Engineering Works (Pvt.) Ltd. v. Commissioner of Commercial Taxes [2000] 120 STC 588 Ori.

7. The learned counsel also contended that in case of any ambiguity in the exemption notification issued by the Government, the benefit of the said ambiguity must be given to the State. In support of the said contention, he relied upon the decision of the Supreme Court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad,

8. The common issue that arises for consideration in this batch of tax revision cases is "whether the exemption granted by the State Government u/s 9(1) of the State Act (under notification in G.O. Ms. No. 1067, dated September 19, 1985) qualifies exemption u/s 8(2A) of the Central Act ?".

9. Before considering the merits of the rival contentions, it would be appropriate to refer to the relevant provisions of the Act as well as the notification issued u/s 9 of the State Act.

"Section 2(e). "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods or delivering goods on hire purchase or on any system of payment by instalments, or carries on or executes any works contract involving supply or use of material directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes--

(i) local authority, a company, a Hindu undivided family or any society (including a co-operative society), club, firm or association which carries on such business ;

(ii) a society (including a co-operative society), club, firm or association which buys goods from, or sells, supplies or distributes goods to its members ;

(iii) a casual trader, as hereinbefore defined ;

(iii-a) any person, who may, in the course of business of running a restaurant or an eating house or a hotel (by whatever name called), supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) ;

(iii-b) any person, who may transfer the right to the use of any goods for any purpose whatsoever (whether or not for a specified period) in the course of business to any other person ;

(iv) a commission agent, a broker, a del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal or principals.

Explanation.--....."

"Section 2(h) : "Goods" means all kinds of movable property other than actionable claims, stocks, shares and securities, and includes all materials, articles and commodities including the goods (as goods or in some other form), involved in the execution of a works contract or those goods used or to be used in the construction, fitting out, improvement or repair of movable or immovable property and also includes all growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale and also includes motor spirit ;

Explanation.--....".

"Section 2(n) : "Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods whether as such goods or in any other form in pursuance of a contract or otherwise by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration or in the supply or distribution of goods by a society (including a co-operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on goods."

"Section 9 : Power of State Government to notify exemptions and reductions of tax (or interest).--(1) The State Government may, by notification in the Andhra Pradesh Gazette, make an exemption, or reduction in rate, in respect of any tax or interest payable under this Act--

(i) on the sale or purchase of any specified class of goods, at all points" or at any specified point or points in series of sales or purchases by successive dealers ; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover.

(2) Any exemption from tax or interest or reduction in the rate of tax notified under Sub-section (1)--

(a) may extend to the whole of the State or to any specified area or areas therein ;

(b) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees."

"Section 12 : Registration of dealers.--(1) Every dealer (other than casual trader) whose total turnover in any year is not less than Rs. 50,000 shall and any other dealer may get himself registered under this Act.

(1A).....

(2) Notwithstanding anything contained in Sub-section (1) every dealer--

(a) carrying on business in all or any of the goods mentioned in the First, Second, Third, Fifth and Sixth Schedules ;

(b).....

shall get himself registered under this Act irrespective of the quantum of his turnover.

.....

(5) No dealer who is liable to get himself registered under Subsection (1) or Sub-section (2) or Sub-section (4) shall carry on business as a dealer unless he has been registered and is in possession of a certificate of registration."

Notification II issued in G.O. Ms. No. 1067, Revenue Department, dated September 19, 1985 :--

In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act No. VI of 1957), the Governor of Andhra Pradesh hereby exempts with effect from 13th September, 1985, from the tax payable u/s 6 of the said Act the sales of hank yarn in plain reels to the registered dealers in the State or to the weavers, master weavers, cooperative societies or other recognised associations of weavers for consumption in their industry in the State."

10. A perusal of Section 9 shows that Clause (i) of Section 9(1) refers to the exemption on the sale or purchase of any specified class of goods at all points or at any specified point or points in a series of sales by successive dealers. Clause (ii) of Section 9(1) refers to any specified class of persons in regard to the whole or any part of their turnover. Sub-section (2) of Section 9 specifies that the exemption from tax or interest or reduction in the rate of tax notified under Sub-section (1), under Clause (a) may extend to the whole of the State or to any specified area or areas therein, and under Clause (b) that such exemption or reduction may be subject to such restrictions and conditions as may be specified in the notification.

From the above it is clear that Sub-section (1) of Section 9 provides for exemption in respect of tax payable by any specified class of persons ; whereas Sub-section (2) provides the specified restrictions or conditions for the grant of exemption or reduction in the rate of tax.

11. The G.O. Ms. No. 1067 referred to earlier was issued under Sub-section (1) of Section 9 of the State Act, exempting the tax payable u/s 6 of the State Act, on the sales of hank yarn in plain reels to two classes of purchasers--(i) registered dealers in the State, and (ii) to weavers, master weavers, co-operative societies or other recognised associations of weavers for consumption

in their industry in the State. By virtue of the above, local sales of hank yarn in plain reels effected by the petitioners in favour of persons mentioned in the said notification during the present assessment years are admittedly eligible for exemption from the payment of tax contemplated u/s 6 of the State Act. Now the claim of the petitioners is that even with reference to the inter-State sales they are entitled to the benefit of exemption in respect of sale of hank yarn in plain reels in terms of Section 8(2A) of the Central Act. Section 8(2A) reads as follows :

"Section 8 : Rate of tax on sales in the course of inter-State trade or commerce.--
(1).....

(2).....

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or 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."

12. The above provision starts with a non obstante clause showing that it overrides the provisions of Sub-section (1A) of Section 6 and Sub-section (1) or Clause (b) of Sub-section (2) of Section 8, with reference to the tax payable under the Central Act, by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods. If the sale or purchase of the goods under the sales tax law of the appropriate State is exempt from tax generally or subject to a tax generally at a lower rate than 4 per cent ; then the dealer is entitled for the relief under the Central Act, as contemplated under the State Act. The explanation u/s 8(2A) provides the meaning of "exemption from tax generally". According to the said explanation, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the State Act if under that law the sale or purchase of such goods is exempt only in specified circumstances or specified conditions on the tax levied on the sale.

From the above provisions, it is clear that if the exemption from tax under the State Act is not subjected to the specified circumstances or specified conditions, then the exemption shall be deemed to be a general exemption. Therefore the G.O., issued u/s 9(1) of the State Act has to be examined-whether the exemption granted under the said G.O., is available under the specified

circumstances or under specified conditions or of general in nature.

13. Reverting back to the notification, the exemption contemplated under the abovesaid G.O. relates to the sale of hank yarn in plain reels to the registered dealers in the State. If we omit the other part of the notification, which confers the benefit of exemption, to the purchasers for their consumption in the State, there is no condition or restriction as to the exemption available in respect of the sales effected to the registered dealers in the State. But the contention of the learned Government Pleader is that there are many classes of dealers, but only one class of dealers are exempted from tax, i.e., with reference to the registered dealers in the State. But, as noticed earlier the provisions of Section 9(1) provides for the grant of exemption to a specified class of persons ; while Sub-section (2) provides for the grant of exemption either to the whole of the State or to any specified area or areas but also subject to such restrictions and conditions as may be specified in the notification. Admittedly, the notification issued in the present case is only under Sub-section (1) of Section 9, granting exemption in respect of a specified class of persons, i.e., the sales of hank yarn in plain reels effected to the registered dealers in the State. According to the learned counsel for the petitioners, the said exemption should be construed as a general exemption applying to all the dealers in the State. In support of his contention the learned counsel referred to and relied upon the provisions of Section 12. Section 12 deals with "registration of dealers". Sub-section (2) of Section 12 contemplates that every dealer carrying business in all or any of the goods mentioned in First, Second, Third, Fifth and Sixth Schedules shall get himself registered under the Act irrespective of the quantum of his turnover. Therefore, according to the learned counsel, there is no other category of dealers, dealing with hank yarn, which is falling under item No. 10 of the Third Schedule. According to the learned counsel Sub-section (5) of Section 12 also prohibits any dealer carrying on the business as a dealer, unless one gets himself registered in terms of Sub-section (1) or (2) or (4) of Section 12. Therefore, according to the learned counsel any dealer, who is dealing with any of the items specified in the Third Schedule has to get himself registered under the Act. The said requirement of registration is mandatory and no dealer can deal with the goods specified in Third Schedule without such registration. When once the registration as dealer to deal with the goods in question is mandatory, the exemption contemplated under the G.O., in respect of the sales to the registered dealers is available to the entire class of dealers dealing with hank yarn. In the light of the above, according to the learned counsel, there are absolutely no further restrictions or conditions for getting the benefit of exemption for a dealer dealing with hank yarn in the State. Therefore, according to the learned counsel, the exemption provided under the notification with reference to the tax payable on the sale of hank yarn in plain reels to the registered dealers in the State is a general exemption. When once the exemption contemplated under the notification issued u/s 9 is a general exemption, the petitioners are therefore entitled for exemption in terms of Section 8(2A) of the Central Sales Tax Act.

Though the learned Government Pleader contended by referring to the terra "dealer" that there are a variety of dealers, such as unregistered dealers, the State Government and the Central Government, etc., who could also deal with the item in question. But the exemption was granted by the notification only in respect of the sales effected to the registered dealers in the State. But the learned Government Pleader, could not dispute the claim of the learned counsel for the petitioners that in terms of Section 12(2)(a) read with Section 12(5) that only registered dealers in the State could alone deal with sale and purchase of hank yarn. In the light of the above, the contention of the learned Government Pleader is clearly devoid of merit.

14. Coming to the other category of purchasers referred in the notification, the sale of which is also exempt from the tax, are weavers, master weavers, co-operative societies and other recognised associations of weavers for consumption in their industry in the State. This class of persons specified in the notification are second category and totally different from the other category, i.e., the registered dealers in the State. With reference to the sales in favour of this category of persons referred to, is conditional as the sale must be to the above category of persons for consumption in their industry in the State. It is not the case of the dealers that they have effected sale of hank yarn in plain reels to any of the above category of persons, specified in the notification. The case of the dealers in all these cases relates to the sales effected in the inter-State transactions and claims the benefit of exemption in terms of Section 8(2A) of the Central Sales Tax Act. Therefore, this part of the notification granting exemption to the sales effected to the purchasers who consume the goods within State is not relevant for the purpose of the present case.

15. Coming to the decisions relied upon by the learned counsel for the petitioners, the first judgment is in the case of *Indian Aluminium Cables Ltd. Vs. State of Haryana*, . In this case, the apex Court considered the term "exemption from tax generally", as contained in Section 8(2A) of the Central Sales Tax Act, while considering Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948. The provisions contained in Section 5(2)(a)(iv) of the said Act exclude sales which are made under specified circumstances and specified conditions. The specified conditions 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. The dealer in that case effected inter-State sale of electricity poles and cables to State electricity undertaking for use by it in the generation and distribution of electrical energy and claimed exemption on the ground that the exemption contemplated u/s 5(2)(a)(iv) of the said Act is a general exemption. Negating the contention of the dealer, the apex Court held that the exemption granted under the said provision of the Act under specified circumstances and conditions. Therefore it is

not a general exemption within the meaning of Section 8(2A) of the Central Act and the dealer is therefore not entitled for the benefit of the said provisions of the State Act.

16. The next decision is in the case of State of Haryana Vs. Dalmia Dadri Cement Ltd., . In this case also the apex Court considered the provisions of the same Section 5(2)(a)(iv) of the Punjab General Sales Tax Act, 1948, but with reference to the sale of cement. In this case the respondent-dealer supplied cement in the years 1964-65 and 1965-66 to the Punjab State Electricity Board on the basis of the certificates issued by the Board to the effect that cement was required for the use in the generation or distribution of electrical energy. In the original assessment proceedings the sales of cement were exempted on the basis of those certificates in view of Section 5(2)(a)(iv) of the Act. Thereafter, the assessments were sought to be reopened by the Deputy Commissioner on the ground that the deduction had been wrongly granted as the respondent was not able to establish actual use in an activity directly connected with the generation or distribution of electricity and a part of the cement supplied by it was used by the Board in the construction of staff quarters and other constructions which could not be said to be directly connected with the generation or distribution of electrical energy. There was however no material to show that the certificates had been falsely issued by the Board having another use in mind or that they were fraudulently obtained by the respondent in collusion with the Board. On the basis of the above facts, the apex court held that in order to get the exemption u/s 5(2)(a)(iv) of the Punjab General Sales Tax Act, it was not necessary for the cement supplied by the respondent to be actually used in the generation or distribution of electrical energy. The words "for use" in that section meant "intended for use". The certificates issued by the Board clearly showed that the intention of the Board was that the cement should be used for a purpose directly connected with the generation or distribution of electrical energy. In the absence of there being material to show that the certificates were falsely issued or issued in collusion with the respondent, the mere fact that some of the cement supplied was, in fact, used by the Board for activities not directly connected with the generation or distribution of electrical energy could not make any difference regarding the availability of the exemption. No such circumstances existed in the case enabling the Assessing Authority to go behind the certificates. The exemption was not wrongly granted to the respondent in the original proceedings.

17. In the case of State of Madras v. N.K. Nataraja Mudaliar [1968] 22 STC 376, the apex Court considered the constitutionality of the provisions u/s 8(2A) along with other provisions. The apex court while upholding the constitutional validity made the following observations with reference to Section 8(2A) : "Section 8(2A) is incorporated with a view to see that the consumers in the States to which goods are imported are not placed at a disadvantage as compared to the consumers in the State from which the goods are imported. In fact this provision is bound to facilitate inter-State trade. The purpose behind this section is to see that the State Governments do not place the local consumers in a better position

than the consumers outside."

18. In the case of Commissioner of Sales Tax, Jammu and Kashmir v. Pine Chemicals Ltd. [1995] 96 STC 355, the apex Court considered, the exemption under a G.O., issued by the State of Jammu and Kashmir. Under the said G.O., the Government accorded sanction for granting incentives and facilities to large and medium scale industries in the State of Jammu and Kashmir. The incentives relate to the grant of exemption from the State sales tax both on the raw materials and finished products for a period of five years from the date the unit goes into production. For attracting the exemption provided by the State Government, it has to be established that the goods, the sale or purchase of which is claimed to be exempt from tax, are manufactured by a large or medium scale industry and that the said goods are manufactured and sold within five years from the date the said industrial unit has gone into production. The claim of the assessee was rejected by the High Court. However, on appeal the Supreme Court accepted the claim of the dealer as per its decision in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, . But, however, on a review petition filed by the department, the Supreme Court reviewed its decision and held that the exemption that was granted is not a general exemption and therefore, the dealer is not entitled to the benefit of Sub-section (2A) of Section 8 of the Central Sales Tax Act. The relevant portion of the judgment is as under :

"The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period. For the purposes of the Government order, the nature, class or category of goods is irrelevant ; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax generally ? Certainly not. Exemption provided by Government Order No. 159, to repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods. Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid Government order does not satisfy the requirements of Section 8(2-A)."

19. In the case of Bashir Oil Mills v. Maharashtra Sales Tax Tribunal [1993] 90

STC 195, the High Court of Bombay, Nagpur Bench, considered the notification issued by the State of Maharashtra under the Bombay Sales Tax Act, 1959, whether the exemption granted under the said notification is a general exemption so as to extend the benefit of exemption u/s 8(2A) of the Central Act. By a notification, dated July 24, 1981, issued by the State of Maharashtra u/s 41 of the Bombay Sales Tax Act, the State Government exempted all sales of oil-cakes including oil-cakes for the purpose of cattle feed within the State of Maharashtra from payment of the whole of tax payable under the provisions of the Act. The petitioner claimed that since by virtue of the notification, all sales of oil-cakes in the State of Maharashtra were exempted from tax under the Bombay Sales Tax Act, no sales tax could be levied on the inter-State sales of oil-cakes by virtue of the provisions contained in Section 8(2A) of the Central Sales Tax Act. The Tribunal held that since under notification issued u/s 41, sales of oil-cakes alone were exempt, without mentioning anything about the tax on purchases thereof, it could not be termed as a general exemption which would attract Section 8(2A) of the Central Sales Tax Act. When the said order was assailed before the Bombay High Court, while allowing the writ petition, it was held "(i) that looking at the notification dated July 24, 1981, it was clear that all sales of oil-cakes including oil-cakes used as cattle feed within the State of Maharashtra were exempt from the whole of tax without any condition. The notification under the column "condition" clearly mentioned "nil". The use of the expression "within the State of Maharashtra" was not a condition as admittedly the power of the State Government under the State sales tax law was to levy tax or to grant exemptions only in respect of sales or purchases taking place within the State ; (ii) that on a careful perusal of the scheme of the Bombay Sales Tax Act, in particular Section 13 thereof, it was clear that purchase tax was leviable under certain specified circumstances in respect of purchases of those goods only which were liable to sales tax under the Act. Section 13 therefore, did not make the goods wholly exempt from sales tax in the State, liable to purchase tax ; and, (iii) that, therefore, "sales of oil-cakes in the State of Maharashtra were generally exempt from tax under the sales tax law of the State within the meaning of Section 8(2A) of the Central Sales Tax Act by virtue of the notification dated July 24, 1981. There were no conditions attached to the exemption. That being so, Section 8(2A) was attracted and the inter-State sales of oil-cakes were also exempt from tax."

20. The learned counsel also relied upon a judgment of this Court in the case of *Anandi Roller Flour Mills Ltd. v. Commissioner of Commercial Taxes* [2001] 122 STC 597. In the said case, this Court considered the notification in G.O. Ms. No. 377, Revenue, dated May 2, 1991 issued by the State Government "whether the exemption granted in respect of roller flour mills was a general exemption or a conditional exemption", so as to avail of the benefit in respect of inter-State transactions u/s 8(2A) of the Central Act. In G.O. Ms. No. 377, dated May 2, 1991 issued u/s 9(1) of the State Act all roller flour mills were entitled for exemption from the levy of tax payable on the sale or purchase of wheat and

wheat products within the State for a period of five years from the date of the notification. This Court after considering the terms of the notification, though found that the said notification exempts only a class of dealers, viz., roller flour mills only, but held that it cannot be inferred that the said exemption is not of a general nature, but is restricted and conditional. This Court found that there are no conditions or restrictions to be fulfilled by the roller flour mills in order to get the benefit of exemption. Therefore in the absence of any such conditions or circumstances under which the exemption is available, the exemption shall be construed as general and was available even in respect of the inter-State sales in terms of Section 8(2A) of the Central Act.

21. In the case of Pinakini Seeds Vs. State of Andhra Pradesh, this Court considered the notification issued in G.O. Ms. No. 604, Revenue, dated April 9, 1981. In terms of the said notification, sales or purchases of all varieties of certified or truthfully labelled seeds for agricultural purposes, are exempt under the State Act. This Court accepted that the exemption granted under the said G.O., is a general exemption and as such it qualifies for exemption under Sub-section (2A) of Section 8 of the Central Act. According to this Court, the requirement of certified or truthfully labelled seeds for agricultural purposes is a concept borrowed from the Seeds Act, 1966, which is a Central Act enacted with the object of regulating the quality of seeds of any kind or variety to be sold for the purposes of agriculture. The requirements of the G.O., are only indicative of the nature of the goods which are entitled to exemption and do not specify any circumstance or condition under which the seeds are entitled to exemption. The expression "for agricultural purposes" qualifies the term "seeds" but does not specify a condition or circumstance and labelling or certification of the seeds is only for the purposes of agriculture under the Seeds Act.

22. Coming to the decisions referred to and relied upon by the learned Government Pleader, the first judgment is of the apex Court in the case of State of Uttar Pradesh v. Hindustan Safety Glass Works (P.) Ltd. [1996] 101 STC 529. In this case the apex Court considered the term "exemption from tax generally" found in Section 8(2A) of the Central Sales Tax Act, The apex Court also considered the notification dated January 9, 1970 issued u/s 4-A of the U.P. Sales Tax Act, 1948. Under the said notification the Government of U.P., granted exemption from payment of sales tax in respect of seven industrial undertakings mentioned in the Schedule with reference to the goods manufactured by them shown in column II of the Schedule with effect from the date of production specified in column III of the Schedule. The claim of the respondent/dealer was that it is entitled for exemption in respect of transactions effected on inter-State sales by virtue of the provisions of Section 8(2A) of the Central Act. The apex Court following its own judgment in the case of Commissioner of Sales Tax v. Pine Chemicals Ltd. [1995] 96 STC 355 negatived the claim of the assessee holding as under :

"In the instant case, the exemption has not been granted to the goods generally.

Specified goods (mirrors and toughened glass) produced by a specified company have been exempted from payment of sales tax for a specified period of time. It is not the case of the assessee that mirrors and toughened glass have been generally exempted from payment of tax. Therefore, in view of the ratio laid down in the aforesaid case of Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others, , it must be held that the assessee will not be entitled to get benefit of Section 8(2A) of the Central Sales Tax Act in the facts of this case."

23. In the case of Union of India v. Southern Distributors [1996] 102 STC 509, the Madras High Court considered the notification issued u/s 19 of the Pondicherry General Sales Tax Act, 1967. Under the notification issued in G.O. Ms. No. 37/70/ Finance (ST) dated August 21, 1970 the exemption was granted in respect of the tax payable under the local Act on the sales of pesticides meant for agricultural purpose in the whole of the Union Territory of Pondicherry. The assessee claimed that the said exemption is a general exemption and therefore the inter-State transactions are also entitled to exemption in terms of Section 8(2A) of the Central Act. The Madras High Court after considering the terms of the notification held that the exemption granted under the Pondicherry General Sales Tax Act, 1967 was conditional, i.e., for agricultural use in the Union Territory of Pondicherry and therefore no exemption could be allowed under the Central Act.

24. In the case of Bangarimath Brothers v. State of Tamil Nadu [1999] 113 STC 503, the Madras High Court considered the notification issued in G.O.P. No. 1433, C.T. & R.E., dated December 17, 1983 with reference to the nature of the exemption. The Government of Tamil Nadu have exempted the purchase of coconuts from levy of the tax as per the notification dated March 8, 1970. Thereafter by G.O.P. No. 239 dated March 3, 1979 the said exemption was restricted to a limit of Rs.25,000. On a further notification in G.O.P. No. 1433 dated December 17, 1983, exemption was granted from the payment of tax for the purchase from March 4, 1979 to March 23, 1979, subject to the condition that the dealer has not actually collected the tax during that period. The benefit of this notification was claimed by the dealer contending that the exemption was of general nature. Hence, the benefit should accrue even in respect of the inter-State sales by virtue of Section 8(2A) of the Central Sales Tax Act. The Madras High Court negated the said contention holding that the exemption granted under the above notifications is not general in nature but conditional.

25. In the case of Union of India v. Rapidur (India) Pvt. Ltd. [2000] 119 STC 18, the apex Court considered the claim of the dealer u/s 8(2A) of the Central Sales Tax Act with reference to the exemption available in respect of the goods under entry 68 of the Second Schedule to the Goa, Daman and Diu Sales Tax Act, 1964. The respondent, a registered company with the Government of Goa, Daman and Diu as a small-scale industry, assailed the correctness of an order of assessment under the Central Sales Tax Act, in relation to the inter-State sales

during the year ending December, 1978, of goods manufactured by it, on the ground that under entry 68 of the Second Schedule to the Goa, Daman and Diu Sales Tax Act, 1964, sales of all goods manufactured by a registered small-scale industry were exempted totally from local sales tax for a period of five years from the date of first sale on or after the validity of the registration. This benefit was claimed u/s 8(2A) of the Central Sales Tax Act, 1956, in respect of the inter-State sales. The High Court held that the turnover relating to the inter-State sales of goods was exempt from Central sales tax u/s 8(2A) of the Central Sales Tax Act. When this was assailed by way of appeal before the apex Court, the apex Court allowed the appeal following its judgment in the case of Commissioner of Sales Tax, J and K and Others Vs. Pine Chemicals Ltd. and Others, , holding that the inter-State sales were not exempt from Central sales tax.

26. In the case of Atlas Engineering Works (Pvt.) Ltd. v. Commissioner of Commercial Taxes [2000] 120 STC 588, the Orissa High Court considered the notification issued under the Orissa Sales Tax Act, 1947 with reference to the claim on the inter-State sales u/s 8(2A) of the Central Act. In this case the petitioner is a private limited company, registered under the Companies Act, manufacturing and selling of T.V. receiver sets. It had originally disclosed a gross turnover of Rs. 16,700 in the annual return for the year 1986-87. In the course of assessment proceedings, it had submitted a revised return indicating gross sale turnover at Rs. 11,77,677.50 paise and claimed that the entire sales disclosed in the revised return are exempted sales on the ground that they were tax free sales, in as much as it has not charged or collected sales tax in the course of inter-State. The assessing officer found that the State Government in the Finance Department had not extended the benefit of tax exemption to the petitioner on sales on T.V. receiver sets and accordingly taxed the entire turnover. As the petitioner was unsuccessful in appeals, the petitioner filed writ petition before the Orissa High Court and relied upon a judgment of the same Court in the case of Magnetix (India) Ltd. [1993] 75 CLT 405. Basing on the said judgment the petitioner claimed exemption from the Central sales tax u/s 8(2A) of the Central Act. The Orissa High Court found that the judgment relied upon by the petitioner was based on the ratio of the Supreme Court in Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , which was subsequently reviewed and reversed by the apex Court. Further by referring to the notification issued by the State Government, the court found that the exemption granted under the notification was subject to the conditions and exceptions mentioned therein. Therefore, the benefit of the said notification is not available to the assessee as the exemption was not a general exemption to have the benefit u/s 8(2A) of the Central Act.

27. The learned counsel also relied upon a decision of the apex Court in the case of Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, in support of his contention that the exemption notification should be construed strictly and further if there is any doubt or ambiguity, then that

ambiguity must be construed in favour of the State. If so construed, the assessee is not entitled to the benefit of the exemption. The apex Court while interpreting the exemption notification issued under the Central Excises and Salt Act, 1944 held that the principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee, assuming that the said principle is good and sound, does not apply to the construction of an exception or an exempting provision ; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.

28. If we examine the facts of the present case in the light of the ratio laid down in the above referred decisions, the exemption under the notification in G.O. Ms. No. 1067, dated September 19, 1985 is with reference to particular goods, viz., "hank yarn in plain reels" when sold to the registered dealers in the State (leaving the other category mentioned in the notification) and not with reference to the industrial units manufacturing the same. As already held, there is only one category of dealers in the State in view of the provisions of Section 12(2) read with Section 12(5) of the Act, viz., the registered dealers. Therefore, the exemption under the notification could be inferred as a general exemption, as it relates to a particular goods, viz., hank yarn in plain reels. When once it is held that the exemption granted under the notification in question is a general exemption, the benefit of such exemption would get extended to the inter-State transactions by virtue of the provisions of Section 8(2A) of the Central Act. We, therefore, hold that the exemption under the notification in G.O. Ms. No. 1067, dated September 19, 1985 issued u/s 9(1) of the Act is a general exemption in so far as the sales effected to the dealers are concerned and extend the benefit of exemption in respect of inter-State transactions also by virtue of the provisions of Section 8(2A) of the Central Act.

29. Under the above circumstances, we set aside the impugned orders of the Sales Tax Appellate Tribunal in all the T.R.Cs., and restore the orders of the assessing officer.

30. In the result all the tax revision cases are allowed. No costs.