(2012) 02 SC CK 0121

In the Supreme Court Of India

Case No : Civil Appeal No''s. 1942-1943 of 2012 with C.A. No. 1945 of 2012

Sriniwas Cable Components APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 08-02-2012

Acts Referred:

Citation : (2012) 279 ELT 166 : (2012) 10 SCC 421

Hon'ble Judges : H.L. Dattu, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Jaydeep Mjumdaar, Ms. Saimina Shekh and Chiraranjan Addey, for the Appellant; Pramod Swarup, Sr.Advocate, C.D. Singh, Sunny Chudhary, B.S. Banthia and Vikas Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted. These appeals are directed against the judgment and order passed by the High Court of Madhya Pradesh in Writ Petition No. 865/2008 dated 12-10-2009 and also the Review Petition No. 14/2010 dated 3-2-2010.

2. Facts in nutshell are, the Appellant is manufacturer of different plastic products such as L.D. Polyethylene black sheathing compound, black polyethylene tape, colour identification tape, polyester tape, polypropylene tape, nylon insulating & sheathing compound, high density polyethylene black sheathing compound, polyethylene coated steel tape, polyethylene aluminium laminates and polyester laminated free edge tape used in the manufacture of telephone cables in the notified Thrust Sector at Industrial area Mulanpur District Bhind.

3. The State Government has issued a Notification bearing No. A-3-24-94-ST-V (108) dated 6-10-1994 granting exemption from payment of Sales tax to new industrial units in Madhya Pradesh. The only clause in the said notification which is relevant for the purpose of these appeals is Clause 5 of the notification and the same reads as under:

5. If a dealer availing of the facility of exemption from payment of tax under this notification in respect of a new industrial unit established by him undertakes modernization or diversification in such industrial unit during the period of its eligibility, the dealer shall be eligible to avail of the aforesaid facility in respect of the additional principal products, by-products and waste products as also the additional raw-material consumed or used or incidental goods used in manufacture and the packing material used in the packing of such products after such modernisation or diversification for the unexpired period of eligibility.

4. Clause 5 of the notification envisages that if a dealer availing of the facility of exemption from payment of tax under this notification in respect of a new industrial unit established by him undertakes modernization or diversification in such industrial unit during the period of its eligibility, the dealer shall be eligible to avail of the aforesaid facility in respect of the additional principal products, by-products and waste products as also the additional raw material consumed or used or incidental goods used in manufacture and packing material used in the packing of such products after such modernization or diversification to the unexpired period of eligibility.

5. In the instant case, the Assessee has diversified his production apart from principal products, to DVD boxes (electronic goods), television sets and sanitary napkins. When an exemption was sought for under the aforesaid Notification, the same came to be rejected by the State Level Committee vide its order dated 31-10-2003. Aggrieved by this order, the Assessee filed an appeal before the State Appellate Forum, the same was dismissed vide Order dated 16-10-2007. This Order of the State Appellate Forum was confirmed by the High Court vida its Order dated 12-10-2009 in Writ Petition and vide its Order dated 11-1-2010 in Review Petition. It is the correctness or otherwise of the refusal to grant the benefit under the said exemption Notification, is challenged by the Appellant-assessee before us in these appeals.

6. We have noticed the principal products that the Assessee is manufacturing in its industrial establishment. The Assessee was taking benefit of the exemption Notification dated 6-10-1994. On a later date, the Assessee also started manufacturing DVD boxes (electronic goods), television sets and sanitary napkins which activity is no way related to the manufacture of the principal products which we have narrated earlier. Therefore, the question is, whether the Assessee is entitled to take benefit of the exemption from payment of the sales tax under the said Notification. As we have already noticed Clause 5 of Chapter-1 of the said Notification which specifically states that products, by-products and the waste products, if they are manufactured by an Assessee along with the principal products, then only he will be entitled to take the benefit of the exemption Notification. The products, that the Assessee is manufacturing after diversification, by no stretch of imagination can be termed as additional principal products, by-products and waste products and therefore, the Assessee is not entitled to exemption of benefit under the notification. The exemption

Notification requires to be strictly construed and it is only when the Assessee falls under that Notification, liberal construction should be placed. In G.P. Ceramics Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., ,

29. It is now well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries (SCC para 26); TISCO v. State of Jharkhand (SCC paras 42 to 45); State Level Committee v. Morgardshammar India Ltd.; Novopan India Ltd. v. CCE & Customs; A.P. Steel Re-rolling Mill Ltd. v. State of Kerala and Reiz Electocontrols (P) Ltd. v. CEE.]

7. This Court, again, in CC (Preventive) Amritsar Vs. Malwa Industries Ltd., has observed thus:

11. An exemption notification should be read literally. A person claiming benefit of an exemption notification must show that he satisfies the eligibility criteria. Once, however, it is found that the exemption notification is applicable to the case of the Assessee, the same should be construed liberally.

In view of the above, we find no infirmity in the judgment and order passed by the High Court. Accordingly, appeals are dismissed.

