(2010) 07 GUJ CK 0098

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1163 of 2001 in Special Civil Application No. 2630 of 2001

State of Gujarat and Others — APPELLANT

Vs

Maruti Textiles — RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:
Bombay Electricity Duty Act, 1958 — Section 3, 3(2)

Citation : (2010) 07 GUJ CK 0098

Hon'ble Judges : D.H. Waghela, J;Bankim N. Mehta, J

Bench : Division Bench

Advocate : H.K. Patel, Asstt. Government Pleader, for the Appellant; Anuj K. Trivedi for Mihir H. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

Bankim N. Mehta, J.—Appellant-State and the authorities under the Bombay Electricity Duty Act, 1958 (for short, ''the Act''), have preferred this appeal from judgment dated 28.8.2001 of learned single Judge of this Court in SCA No. 2630 of 2001, whereby petition of the respondent herein was allowed and the orders impugned therein were set aside. The respondent had established their industry in Gujarat in the year 1996 and applied for exemption from payment of electricity duty as a small scale unit.

2. Under the provisions of Section 3 of the Act, a new industrial undertaking was exempt from payment of duty and such industrial undertaking is defined, inter alia, as an undertaking which is not formed by transfer to a new business or undertaking of building, machinery or plant previously used in the State for any industrial purpose, of such value in relation to total investment, as the State Government may, by notification in the Official Gazette, specify. The State Government had issued notification dated 08.07.1992 in exercise of the aforesaid power and specified that: ''...the value of the building, machinery or plant previously used in the State for any industrial purpose shall not be more than 10

percent of the total investment''. The respondent based its claim for exemption from duty on the submission that the cost of land on which the building had been constructed should be considered for arriving at the cost of new investment or previously used investment. However, ignoring the cost of land, the specified authority under the Act held that the cost of previously used investment in building, machinery or plant taken together was more than 10% of the total investment of the respondent. Thus, it was held to be not qualifying for exemption. And order dated 15.4.2000 of the Assessment Officer rejecting the application for exemption was upheld. Appeal of the respondent before Deputy Secretary to the Government in Energy & Petrochemicals Department was also rejected after holding that the cost of previously used building, machinery and plant were more than 10% of the total investment, without addressing the real issue.

3. After adverting to the scheme of the Act and legislative intent in enacting the provisions of Sub-section (2) of Section 3 of the Act, learned single Judge took the view that the words ''total investment'' should include the investment made in the land as well. It was argued before us by learned A.G.P. that the language of notification dated 08.07.1992 was clear and when only the value of building, machinery or plant previously used in the State for calculating 10% of the total investment were to be considered, the same yardstick ought to be applied for calculating the total investment and the component of cost of land must be excluded for arriving at the amount of total investment of which 10% could be the building, machinery or plant previously used. No rational basis could be provided for such submission. It was, however, submitted that if the cost of land, which is always substantially high, were to be included in the total investment, the purpose of granting exemption to new industrial undertaking would be defeated as the purpose of granting exemption to new investment in building, plant and machinery was to attract investors to invest in new productive investments. It was again argued that while the cost of land was excluded from the value of previously used building, machinery or plant for arriving at the total figures of old investment, value of the land should also be excluded in calculation of total investment.

4. Even without reference to judgments of the Supreme Court in State of Karnataka and Others Vs. Balaji Computers and Others, and Polestar Electronic (Pvt.) Ltd. Vs. Additional Commissioner, Sales Tax and Another, relied upon by learned Counsel Mr. Anuj Trivedi, appearing for the respondent, it is clear and unambiguous in the language of the notification that value of the land could be ignored only for the purpose of determining the value of previously used building, machinery or plant and there was no reason to apply the same analogy to determination of total investment. The meaning and import of the notification being clear and unambiguous, no rule of interpretation is required to be employed. And the words ''total investment'' having not been defined in the Act, the meaning attached to those words in common and commercial parlance had to be given to those words, as held by learned single Judge.

5. Therefore, we do not find any reason to interfere with the impugned judgment and the appeal is accordingly dismissed with no order as to costs.