
(2003) 10 RAJ CK 0039

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3223 of 1997

Vikas WSP Limited

APPELLANT

Vs

The Commissioner Commercial Taxes

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 4(2)

Citation : (2004) 1 RLW 474

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; K.R. Bishnoi, Dy. G.A., for the Respondent

Judgement

Balia, J.—These two writ petitions arise out of the same judgment passed by the Rajasthan Taxation Tribunal, Bench at Jodhpur. D.B. Writ Petition No. 2391/97 is filed by the Commissioner Commercial Taxes, Rajasthan Jaipur, to the extent that the Tribunal has held that the Assessee M/s Vikas WSP Limited, Sri Ganganagar unit is entitled to the benefit of Notification dated 13.6.1994 in respect of new unit established on plot No. B-86 for manufacturing Gwar Gum Powder with installed capacity of 28 MT Guar Gum Powder is wholly Export Oriented unit which is duly registered with Central Government as Export Oriented Unit. The D.B.C. Writ Petition No. 3223/97 has been preferred by Assessee M/s. Vikas WSP Limited to the extent it was dissatisfied by the order of the Tribunal that it is not entitled to benefit of notification in respect of plant installed at Plot No. B-87, Udyog Vihar, Sri Ganganagar with a capacity of 14 MT production of Gwar Gum Powder per day, which was not a new manufacturing undertaking.

2. The brief facts necessary for the purpose of present controversy needs to be noticed. A Gwar Gum Powder unit was set up on 22.6.88 by M/s. Vikas Chem. (P) Ltd. at plot No. B/87. It started its commercial production on 18.2.89. At that time its production of Gwar Gum Powder capacity was 7 MT per day. On 29th Sept. 1990 on the same Plot No. B/87 another unit was set up with the capacity

of 7 MT production per day. The second new plant went in production in June 1992 and total capacity of two plants situated at Plot No. B/87 cumulatively became 14 MT Gwar Gum Powder production per day.

3. Thereafter M/s Vikas Chem. (P) Ltd. underwent the change and it was converted into public limited, under the name and style of M/s Vikas WSP Ltd., it is that company which is now Assessee in this case. .

4. In September 1992 vide application dated 8th Sept., 1992, said company applied for registration before the Directorate of Ministry of Industries, Government of India, to establish a 100 % Export Oriented Unit (in short EOU) with the production capacity of 42 MT Gwar Gum Powder per day. To reach this capacity, a new plant with the capacity of production of 28 MT production per day was set up at Plot. No. B-86. According to the Assessee after the private limited company was converted into a public limited company, the old units were closed and production was stopped. Thereafter again commercial production in all units started from 24th June 1994 only after its registration as 100% E.S.U. and first raw material was purchased on 29th June 1994. However, prior to that date, Notification dated 13th June 1994 has been issued by the State Govt. in exercise of its powers u/s 4 (2) of the Rajasthan Sales Tax Act, 1954, providing exemption from tax the sale to or purchase by a 100% export oriented new manufacturing unit, of raw material required by such unit for use in the manufacturing of other goods to the extent indicated in the scale mentioned in schedule appended to the notification. For the present purposes, reference to the schedule is not relevant.

5. The claim of the Assessee to exemption on all purchases of raw material made by the assessee after commencement of the said notification dated 13.6.94 was accepted by the Assessing Officer in respect of in all the three units with production capacity totaling to 42 MT of Gwar Gum Powder per day. However, the Commissioner in exercise of his revisional powers held that exemption allowed to the Assessee is erroneous and prejudicial to the interest of Revenue. This order was made on 19.2.97,

6. This order was subjected to appeal before Rajasthan Taxation Tribunal at Jodhpur, Bench Jodhpur. The Tribunal by its order dated 21st March, 1997 found that so far as new plant set up on Plot No. B-86 with the capacity of production of Gwar Gum Powder of 28 MT per day must be held to be a new 100% export oriented manufacturing unit and on the purchases made in respect of said unit must be held entitled to exemption under notification dated 13.6.94. However, the Tribunal said that 2 units set up on Plot No. B-87 prior to the application made by the Assessee for registration of its unit as 100% Export Oriented Unit, the petitioner cannot be held to be entitled to avail the said tax benefit as the said Units were not initially set up for the purpose of elevating exports. The Tribunal noticed that the company was converted into a public limited company and it applied to the Department of Industries, Government of India, for permission to set up a 100% EOU which was granted to it on 30.10.92. The existing unit did produce 14 MT Guawar Gum Powder. Later it had the capacity to

produce 42 MTD including 14 tones per day capacity it had earlier. Its industrial units are situated at Plot Nos. 86 and 87 at Sri Ganganagar and it has been registered as a 100% ESU with the Department of Industries, Government of India. On these premises, the Tribunal reached its conclusion that installation of plants on Plot No. B-86 with the capacity to produce 28 MT per day was set up after application for registration as 100% EOU was made therefore, is the new Industrial Unit which is eligible for all benefits under Notification dated 13.6.94 whereas units producing 14 MT Gwar Gum Powder were existing, prior to making of the application for the registration of the Units as 100% EOU, they cannot be considered be new manufacturing unit within the meaning of said Notification. On these findings, the Tribunal held that industrial unit set up on B-86 with 28 MT capacity shall be treated to be a new manufacturing unit for the purposes of notification dated 13.6.94. It has an existing plant of 14 MT production per day. To raise total production to 42 MT, a new manufacturing unit with installed capacity of 28 MT Gwar Gum Powder was set up at Plot No. B/86 and on that basis it would have claimed exception from tax on sale to or purchase by it of the raw material for the manufacture of goods and tax exemption to be apportioned accordingly.

7. It is against this order dated 21st March, 1997 passed in O.A. No. 64/1997, these two writ petitions are before us.

8. The contention of the counsel for the Revenue is that under Notification the benefit is extended only to a new manufacturing unit and not to existing unit, therefore, the Assessee being existing manufacturer, it is not entitled to benefit under the Notification dated 13.6.94.

9. On the other hand, it is contended by the Assessee that the undertaking has been registered as new industrial unit with the Government of India under the Export Oriented Units (EOUs) and Units in Export Processing Zone (EPZ) 1992-97 as provided thereunder. It is 100% EOU registered with the Government of India. This is the only condition. The fact that partially its production capacity was existing prior to its registration would not alter the situation. The requirement is not that the Unit should be set up after the commencement of Notification. The requirement is that it should be registered as 100% EOU with the Government of India which the Assessee is.

10. We have given careful consideration to rival contentions and considered the scheme of the Notification dated 13.06.1994 as well as the EOUs and EPZ Scheme 1992-97 under which certain concessions have been extended to 100% Export Oriented Unit under different tax laws, and the Notification dated 13.06.1994 is to be viewed in that context.

11. At the out-set one thing is clear that even from the Notification dated 13.6.94 the benefit is not extended to the manufacturer as a person but has been extended to raw material required for manufacture of goods which are meant for exports only at the particular Unit. Manufacturer may have more than

one unit, old as well as new; there should be no confusion between identity of the owner of the one or more units on the one hand and the Unit in respect of which benefit has been extended. From the facts narrated in the Tribunal's order, there is no dispute and as we have noticed above the Assessee has 3 units; in Plot No. B-87 two units and one at Plot No. 86. All the 3 units are registered as 100% EOU in the name of the Assessee Company under a single application, and, therefore, legitimate question arises what is the meaning given to the "new" as pre-fix to manufacturing units for the purpose of Notification.

12. This takes us to the gamut of registration of 100% EOU with Government of India under the Export Import Policy 1992-97. Substantive provisions of Export Import Policy 1992-97 are contained in Chapter IX. Clause 93 of the policy state that Units undertaking to export their entire production of goods may be set up under the Export Oriented Unit (EOU) Scheme of Export Processing Zone (EPZ) Scheme. Such units may be engaged in manufacture, production of software, agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, viticulture, poultry and sericulture. Units engaged in service activities may also be considered on merits.

13. This scheme also provides for conversion of existing units. Clause 118 of the Scheme provides that existing DTA (Domestic Tariff Area) units may also apply for conversion into EOU. So also existing units under Export Promotion Capital Goods (EPCG) Scheme having export obligation can also apply to be converted into E.O.U. On conversion of such existing DTA Units, such units may not avail benefit of tax concession for plant machinery and equipment already installed. Except that on such conversion, such units avail all other benefits including tax concession only exclusion is of such concession as are available in respect of sick plant machinery and equipments installed prior to conversion. After such conversion if any plant equipment or machinery is installed, concession/benefit on such new installation remain unaffected. Clause 118 of the Policy reads as under:-

Conversion.

118. Existing DTA units may also apply for conversion into an EOU but no concession in duties and taxes would be available under the scheme for plant, machinery and equipment already installed. Existing DTA units having an export obligation under the EPCH scheme may also apply for conversion into an EOU. On such a conversion the export obligation under EPCG scheme will be met concurrently from the exports by the Unit as an EOU.

A perusal of aforesaid Clause clearly goes to show that it does not restrict any tax concessions or other benefits which arise under the Scheme to A EOU whether installed a new or converted. Availability of such benefits to converted unit as well as to grant of install of a new are at part.

14. The concession which have been made available to the 100% E.O.U./E.P.Z. unit include benefits for tax concession on supplies from Domestic Tarrif Area

(DTA) and benefits in respect of acquiring plots and standard design, building, factory and shed at concessional rates and Tax Holiday. ESU Units are exempted from payment of corporate tax for a block of five years in the first eight years of operation under Clause 108. This period has changed from time to time.

15. For our purpose Clauses 106 & 107 are relevant which deals with the benefits extended and supplies from DTA to EOU/EPZ units.

Clauses 106 and 107 reads as under:-"Clause 106:

(i) Supplies from the DTA to EOU/EPZ units will be regarded as "deemed exports" and, besides being eligible for the relevant benefits under paragraph 122 of this Policy, will be eligible for the following benefits :

(a) Refund of Central Sales Tax;

(b) Exemption from payment of Central Excise Duty on capital goods, components and raw materials; and

(c) Discharge of export obligation, if any, on the supplier.

(ii) EOU/EPZ units shall, on production of a suitable disclaimer from the DTA supplies, be eligible for obtaining the benefits specified in paragraph 122(b) and (c) of the Policy. For this purpose, they shall get Brand Rates fixed by the DGFT. Such supplies would, however, be eligible for benefits specified in para 106(i) above."

"Clause 107:

The benefits stated under paragraph 106 shall be available provided the goods supplied are manufactured in the country."

16. Perusal of the aforesaid clauses reveal of concession on any supplies made to ESU by units set up in DTA. These supplies include supply of "raw material" for ESUs supplies from Domestic Tarriff Units to EOU/EPZ units will be "deemed exports" for the supplier, Manufacturer, to fulfil its export quota if any. Such supplies apart from being eligible for the relevant benefits under paragraph 122 of the policy, also becomes entitled to refund of Central Sales Tax and exemption from payment of Central Excise Duty on capital goods, components and raw materials. Apparently, supplies from DTA units here includes supplies of capital goods as well as supplies of raw material, to E.G.U.s. Units for manufacturing of goods by them for export. Such supplies of raw materials from DTA Units are also "deemed Exports" provided such supplies made to the EOU themselves are manufactured in India.

17. Chapter-X in this connection too is relevant inasmuch as it defines what is the "deemed Exports" and what are categories of supplies included. Clause 120 defines "Deemed Exports" to mean those transactions in which the goods supplied do not leave the country and the payment for the goods is received by the supplier in India. Such deemed export are eligible to benefits enumerated in

Clause 122. The supplies of goods by the main/sub-contractors to be regarded as "Deemed Exports" under the policy, are enumerated in Clause 121 which include under category (c). Supply of goods to units located in Export Processing Zone (EPZs) or Software Technology Parks (STPs) or to Export Oriented Units (EOUs) or Electronic Hardware Technology Parks (EHTPs); and, under Category (d) supply of capital goods to holders of licences under the Export Promotion Capital Goods (EPCG.) scheme, supplies falling in category (d) is eligible for benefits only under Sub-clause (c) and (d) of Clause 122. Deemed exports are eligible for the following benefits in respect of manufacture and supply of such goods. A Special Import Licence is granted for the duty free import of inputs to main/sub-contractor for the manufacture and supply of goods under the categories contained in Clause 121.

18. Apparently the benefits extended to EOUs are extended to supplies of inputs or raw materials for the end product to be exported. Those goods supplied by DTA to EOU goods manufactured in India or by securing duty free imports from out of the country.

19. These provisions of export policy we have noticed only to trace the benefit or tax concession spelt out in export policy to be given effect to by appropriate legislative action or by exercise of enabling power by concerned authority empowered under taxing statutes. For example, to give effect to the policy of providing Tax Holiday to EOUs and EPZ units from corporate tax for a block of five years, amendment was made in Income Tax Act, 1961, by inserting Section 10-B in the Income Tax Act. Said provision was amended from time to time to bring it in tune with proposed tax holidays in export or axim policy.

20. Once supplies from DTA to EOU/EPZ are "Deemed Export", the benefit under Export Policy envisages refund of Central Sales Tax, as the sale tax on inter State sales or in the course of for export out India is permissible to be levied only by an Act of parliament by virtue of Article 286. State legislature do not have legislative competence in levy tax on sale or purchase forming part of export out of India or Import within India. But for said provision such supplies of raw material would become subject to Central Sales Tax Act. It also envisaged exemption from payment of Central Excise Duty on supply to E.O.U. of raw materials amongst other goods. Not only exemption from Central Tax and Excise Duty is envisaged, it is also envisaged that where supplies of such capital goods or raw material to E.O.U. Units itself have any export obligations, said supplies are deemed in discharge of export obligation. The benefit of paragraph 106 are made available only to supply of goods to EOU engaged in manufacturing of goods for the purpose of export and is available if the goods are manufactured in the country. We have noticed above, E.O.U. Units as well as supplies units are entitled to import inputs for goods manufactured by them without payment of import duty.

21. We may also notice that if any transaction which falls under the category of export in terms of Article 286, cannot be subjected to the Sales Tax or purchase

tax by any State legislation. However, we are not concerned with that broader aspect at this stage as question of validity of Notification or levy of purchase tax on such raw materials which are deemed export out of India is not raised. Assuming that paragraph 106 creates legal fiction only for the purpose of extending benefit under the axim policy, the fact remains that the exemption from tax on sale of raw material applies to supplies by DTA to E.O.U. under Export Import Policy 1992-97. Apparently, Notification dated 13.06.1994 too is issued by the State Government in furtherance to give effect to export policy. Therefore, it must be read in that light, and in furtherance Of said policy of export promotion. It is to be seen that conversion of existing DTA units into an Export Oriented Unit (EOU) does not put it in a different category than a newly installed unit for manufacturing of goods for export only, so far as it relates to the availability of current benefits on regular basis viz. refund of Central Sales Tax, exemption from payment of Central Excise duty on purchase of capital goods, components and raw materials and supplies made to such units are eligible for all benefits without any distinction whether recipient unit is an entirely newly set up unit after the commencement of policy oris an E.O.U. by conversion from existing DTA Unit. The benefit of tax concession spelt in Export Policy flow equally without any distinction of procedure in respect of supplies of raw materials to E.O.U. from any D.T.A. Unit. There is no distinction in procedure for registration of units as 100% E.O.U. Units under the rules or procedure. No distinction either exist in certificate of registration of 100% E.O.U. Units on that basis.

22. Read in that light Notification dated 13.6.94 which defines 100% EOU registered with Government of India clearly reveals that what is of essence is its registration with Government of India as E.O.U. and not when it is set up.

23. The object of Export Import Policy 1992-97 and extension of benefits of tax concession under various statutes cannot be divorced from the Export Import Policy 1992-97. If any other view is taken, the very purpose of extending export promotion benefit to 100% EOU registered with Government of India will be defeated if the 100% E.O.U. are classified de hors the policy statement. The reason is apparent. The primary purpose of the Export Import Policy 1992-97 is not to install new units but to expand the sphere of 100% EOU whether by converting or extending existing units to 100% EOU or by installing a new or additional units after registration. Once they are registered as 100% EOU, whether by conversion or as a unit yet to be installed, they fall in the same category of unit registered as 100% EOU. It is registration with the Government of India as 100% EOU which casts obligation on the unit whether it is converted or newly installed before registration to export all its manufactured goods out of India. Benefits extend to manufacturer of goods flows under scheme uniformly. No benefits of tax concessions flows in respect of already installed plant, machinery and building. But such benefits also flows to plants machineries or equipments installed after registration even to existing units.

24. The Notification which has been issued under State Sales Tax Act is only referable to give effect to the Export-Import Policy 1992-97. To interpret it divorced from the policy document will be nullify the object of it and creates, classification having no nexus with the purpose sought to be achieved with such classification.

25. In view of the aforesaid, the Assessee was entitled to avail the tax benefit under Notification dated 13.6.94 in respect of all purchased raw material required for use of manufacturing of the goods meant for export outside India, in all its units, to utilise its full capacity. It cannot be restricted or denied only on the ground that Units manufacturing 14 MT per day has been installed on Plot B/87 prior to application of 100% EOU.

26. So far as Manufacturing Unit installed on Plot No. B/86 with 28 MT production per day capacity is concerned, it has been installed after registration of undertaking as 100% E.O.U. and has rightly been treated even otherwise as New Industrial Unit.

27. Accordingly, the writ petition filed by revenue is dismissed and one filed by the Assessee is allowed. To that extent order passed by the Tribunal is modified. The assessee is entitled to benefit of Notification dated 13.06.1994 on purchase of raw material for all the Units.

28. No orders as to costs.