

Commercial Tax Officer and others

Vs

Emkay Investments Pvt. Ltd.

Civil Appeal No. 3848 of 1996

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

23.02.1996

### JUDGMENT

1. Heard counsel for the parties.
2. Leave granted.
3. This appeal is preferred against the judgment of the West Bengal Taxation Tribunal. The respondent is a new unit engaged in the manufacture of plywood. It is entitled to exemption from payment of sales-tax, being a new industry as contemplated by Rule 3 (66-A) of the West Bengal Sales-tax Rules, 1941. It, however, appears that in respect of a portion of its products, it is using the brand name "M/s. Merinoply" which brand name belongs to another company called "M/s. Marinoply and Chemicals Limited".
4. Relying upon the Explanation to Rule 3 (66-A), the sales-tax authorities denied the certificate enabling the respondent to claim exemption from sales-tax. Their case was that since the respondent is using the brand name of another unit, which is not entitled to the said exemption, the respondent is disentitled from claiming any exemption. However, when the matter reached the Tribunal, it held in favour of the respondent by a majority of 2:1. It found that the Marinoply brand name is not applied to all the products manufactured by the respondent but only to a certain portion of its products. Notwithstanding this finding, it allowed the respondent's appeal in full and declared it to be entitled to exemption in respect of all the products manufactured by it. Rule 3 (66) insofar as it is relevant reads thus :

"Rule 3.(66-A) (i). Sales by a newly set up small scale industry of goods or class of goods, other than those included in Schedule X appended to this clause, manufactured by it during the period of three years, if the said industry is situated within the area of the Calcutta Metropolitan Planning Area as described in the first Schedule to the West Bengal Town and Country (Planning and Development) Act, 1979 (West Bengal Act XIII of 1979) or five years, if it is situated elsewhere in West Bengal, since the date of its first sale of such manufactured goods :

Provided that the dealer claiming the benefit of this clause will be so eligible only if he keeps separate accounts in respect of such newly set up small scale industry, issues serially numbered cash/credit memos for sales of goods manufactured in such industry, keeps vouchers and other documents for purposes of plant and machinery for establishment of such industry and maintains other records to prove that sales claimed exempt under this clause were of goods manufactured in such industry set up

by him.

Provided further that the dealer claiming the benefit of this clause will be eligible, if he possesses a valid certificate of eligibility in Form No. XXXVIA granted by the appropriate Assistant Commissioner in this behalf, for such period as mentioned in the said certificate :

Provided also that .....Section 4-AA of that Act.

Explanation :- for the purpose of this clause 'newly set up small scale industry' means a new industrial unit,-

(i) to (v) .....

(a) to (b) ..... (vi) which does not use the trade mark of the brand name of any product of an existing industrial unit,

(vii) ....."

(Extract from the Paper Book)

5. Clause (vi) of the Explanation is very clear and unambiguous. It says that the said benefit of exemption from sales-tax is available only to such newly set up small scale industry which does not use the trade mark or the brand name of any product of an existing industrial unit. In this view of the matter, the respondent-industry cannot claim the benefit of exemption. But the question is whether it would be reasonable to read with the said Explanation literally which would mean that if a manufacturer uses the brand name of trade mark of an existing industrial unit even in respect of a small portion of its production, it would be totally deprived of the benefit of the said exemption. We are of the opinion that having regard to the object and purpose underlying the said Rule, it would be reasonable to say that the respondent shall not be entitled to the benefit of the said exemption in respect of the goods, for which the trade mark or brand name of an existing industrial unit is used. But insofar as other products for which the brand name is not used are concerned, it will be entitled to claim the benefit of the aforesaid sub-rule. The burden of clearly establishing that in respect of certain of its goods manufactured by it, the trade mark or brand name of an existing industrial unit is not being used, shall be squarely upon the manufacturer.

6. The appeal is allowed accordingly and the Order of the Tribunal is set aside. No costs. Order accordingly.