

# SUPREME COURT OF INDIA

Bani Polymers

Vs.

Assistant Commissioner, Commercial Taxes

(J Verma and S V Manohar JJ.)

22.11.1996

## ORDER

1. Leave granted.

2. The appellant M/s. Bani Polymers is a registered dealer under the West Bengal Finance (Sales Tax) Act, 1941 and the West Bengal Sales Tax Act, 1954. It started business on 1-3-1979. It is also registered as a small-scale industry with the Directorate of Cottage & Small-Scale Industries with effect from 25-2-1980. It is a manufacturer of rubber goods. The appellant applied to the Assistant Commissioner of Commercial Taxes for grant of eligibility certificate under Rule 3(66) of the Bengal Sales Tax Rules, 1941 read with Section 4-AA of the West Bengal Sales Tax Act, 1954. The application for eligibility certificate was rejected by the Assistant Commissioner by order dated 29-4-1981 specifying the grounds of rejection.

3. The appellant challenged the above order by a writ petition filed in the Calcutta High Court which stood transferred to the West Bengal Taxation Tribunal for decision. The Tribunal by the impugned judgment dated 24-7-1990 has rejected that petition. Hence this appeal by special leave.

4. The only question for decision is about the meaning of the word "investment" in Rule 3(66), the relevant part of which is as under:

"(i) with an investment up to rupees twenty lakhs on plant and machinery, excluding land and building."

5. There is no dispute that if the total investment of the appellant on the plant and machinery excluding land and building was up to Rs 20 lakhs and not in excess thereof, the appellant would be entitled to grant of the eligibility certificate. The Tribunal took the view that the expression connotes purchase or capital expenditure on purchase and that expenditure on lease is not investment, nor is it an expenditure of capital nature. From the additional material produced by the appellant before The Tribunal which remained unrebutted, it is clear that the total investment on plant and machinery of the appellant amounted to Rs 3,05,203.62 p. only which is much less than Rs 20 lakhs which is the limit prescribed in Rule 3(66) as quoted above.

6. Learned counsel for the respondents contended that the figure does not appear to be real in view of the fact that the transaction of purchase of the leased machinery was with a sister concern. Apart from this bald assertion, there is no material produced by the respondents at any stage to support their claim that the price is not the real price. Moreover, the margin between the total amount of investment in the present case and the permissible limit of Rs 20 lakhs specified in Rule 3(66) is considerable, so that a bare assertion of this kind is alone not sufficient to reject the appellant's claim. The appellant was, therefore, entitled to grant of the eligibility certificate as claimed by it.

7. Consequently, the appeal is allowed. The impugned orders of the Assistant Commissioner and the Tribunal are set aside.