

SUPREME COURT OF INDIA

State of U.P.

Vs.

Mayur Rubber Pvt. Ltd.

(S Bharucha and V Khare JJ.)

14.10.1998

ORDER

CA No. 14084 of 1996

1. The order under appeal was delivered by a Division Bench of the High Court at Allahabad on a writ petition filed by the respondents. The appeal by special leave is filed by the State.

2. The respondents are engaged in the business of manufacturing rubber belting. They sought an exemption from the payment of sales tax under the provisions of Section 4-A of the U.P. Sales Tax Act on the ground that the machinery that they used in their unit was new. The claim was rejected by the Divisional Level Committee which found that the respondents had used an old boiler. The High Court observed that even assuming that the total cost of the machinery was Rs 3,88,840, as averred by the State, the question for consideration was whether the machinery could be branded as old simply because an old boiler worth Rs 18,400 had been used. The High Court followed an earlier decision, namely, *Amit Plastic Industry v. Divisional Level Committee, Meerut* where it had been held that if a substantial part of the machinery was new, then the claim under Section 4-A could not be rejected merely on the ground that a part of the machinery, of insignificant value, was old. Accordingly, the writ petition by the respondents was allowed.

3. For the purposes of Section 4-A of the U.P. Sales Tax Act, a new unit, during the period with which we are concerned here, has been explained to be one "using machinery, accessories or components not already used, or acquired for use, in any other factory or workshop in India". Learned counsel for the State drew our attention to the judgment of this Court in State Level Committee v. Morgardshammar India Ltd. And submitted that the judgment of the Allahabad High Court in the case of Amit Plastic Industry had, implicitly, been set aside. In any event, he submitted that the respondents had used a boiler of the value of Rs 18,400 on their own showing and this was not something of such insignificant value that it could be ignored.

4. Learned counsel for the respondents submitted that the explanation, to the extent set out above, had no nexus with the object sought to be achieved and in that behalf he drew our attention to the explanation relevant to a new unit set up after 31-3-1990. He submitted that, in any event, the position was covered by a circular issued by the Office of the Commissioner of Sales Tax, U.P. on 10-3-1987 regarding exemption of sales tax to be allowed to new industrial unit established between 1-10-1982 and 31-3-1990. The relevant clause thereof reads thus:

"In case where the unit has installed railway engine marine or gold generator/boiler used in the engine, exemption will be allowed because it is not possible that such generator/boiler/diesel engine could have been used in another workshop. In this connection, a question has been raised that Railways or Marine Department cannot sell boiler/generator/diesel engine directly to the consumers, rather they are bought through another dealer in auction who sells to the consumers after necessary repairs. For the purpose of allowing such generator etc. for exemption it has been decided that, if it is confirmed that those generators/boilers which are installed were purchased from the dealer, railway or marine engine and not from elsewhere, then recognizing it, the unit shall be allowed exemption."

Lastly it was submitted that the cost of Rs 18,400 was insignificant when compared to the total cost of machinery taken at Rs 3,88,840.94 and should be ignored for the present purposes.

5. Learned counsel for the respondents submitted that the judgment of this Court in Morgardshammar India Ltd. cited by the learned counsel for the State had no application to the facts of the case. We will assume that submission to be correct and ignore that judgment for the present purpose.

6. The terms of the explanation as set out are, admittedly, applicable to the unit of the respondents. They had not challenged the provisions thereof on the ground now stated or any other and must, therefore, be bound by the same. A new unit such as that established by the respondents is one that has used machinery, accessories or components which have not already been used or acquired for use in any other factory or workshop in India. The boiler that the respondents acquired was a used boiler. The boiler was part of the machinery of the unit. The respondents' unit, therefore, did not

qualify to be called a new unit entitled to the benefit of the exemption. As to the circular issued by the Commissioner of Sales Tax, we do not find reference to it in the judgment of the High Court. There are no means of knowing whether the terms thereof were satisfied. Lastly, we do not consider that the amount of Rs 18,400 spent on the acquisition of the old boiler is so insignificant when compared to the total cost of machinery of Rs 3,88,840 that it could be ignored.

7. The appeal is, therefore, allowed and the judgment and order under appeal is set aside. The writ petition filed by the respondents is dismissed.

8. The respondents may, if so advised, make such representations as are permissible in law to seek exemption from payment of the tax on the ground that it has not been recovered in view of a certificate earlier issued.

9. No order as to costs.

CA No. 5149 of 1998 (in SLP No. 2571 of 1998)

10. Leave granted.

11. We have heard learned counsel for the parties. We do not think that any interference is called for. We appreciate that the principal case of the appellants was that they were using their own boiler, which had already been functioning in an earlier plant, and that, according to them they were entitled to the benefit of a circular which applied when steam was purchased from another source. Clearly, in the instant case, steam was not purchased from another source. It was produced in an old boiler owned by the appellants themselves and situated in an existing, adjoining plant. The circular cannot apply to a situation like this. The appeal is, therefore, dismissed.

12. The appellants may, if so advised, make such representations as are permissible in law to seek exemption from payment of the tax on the ground that it has not been recovered in view of a certificate earlier issued.

13. No order as to costs.