

M/s. Continental Chemicals Ltd.

Vs

Sales Tax Officer

Civil Appeal No. 3850

(M. Srinivasan, U. C. Banerjee JJ)

02.02.1999

M. Srinivasan J.

1. The appellant commenced a manufacturing unit with manual labour without getting it registered under the Factories Act or before the Directorate of Industries. It got a sales tax registration certificate on 23.11.1985. Earlier it had purchased raw material and started trial run pursuant to which the first sale was effect on 1.11.1985.
2. The appellant, however, purchased land and building and started manufacturing unit on a property of its own and at that time it applier for an obtained permanent registration from the Deputy Director of Industries as small scale unit. The actual registration certificate was issued on 11.9.1986 by the Deputy Director of Industries. That unit started production on 3.3.1986 and the first sale was effected on 5.3.1986. The appellant had also applied for a loan from the U.P. Financial Corporation for a sum of Rs. 49 lakhs in October 1986 of which a sum of Rs. 35 lakhs was sanctioned. On December 6, 1986, the appellant applied for exemption under Section 4-A of the U.P. Sales Tax Act, 1948 (for short "the Act") for a period of six year from payment of sales tax under the Notification dated 26.12.1985 stating that the date of first sale was 5.3.1986.
3. The 2nd respondent issued a sales tax exemption certificate on 25.7.1989 for a period of four year from 1.11.1985. The reasoning of the 2nd respondent was that the appellant had on its own showing commenced trial run, purchased raw material and started production in November 1985 and the first sale was effected on 1.11.1985. At that time, as the appellant was entitled to exemption of Rs. 3 lakhs, the appellant was entitled to exemption only for a period of four years from the date of first sale, namely, 1.11.1985. On that basis, the claim of the appellant for exemption for six years from 5.3.1986 was rejected.
4. Aggrieved by the same, the appellant filed civil miscellaneous writ petition in the High Court. That writ petition was dismissed by the High Court.
5. We are very sorry to note that the High Court has not written a judgment but only passed an order dismissing the writ petition. In support of that dismissal, the High Court has relied upon the 2nd Explanation to Section 4-A of the Act by which the "date of production" was defined. But as rightly pointed out by learned counsel for the appellant, that definition was introduced for the first time by Amendment Act 28 of 1991 which came into force long after the relevant date in the present case. By utilising that definition and the last part of the reasoning found in the order of the 2nd respondent, the High Court took the view that the appellant had started production as required by the Notification on 1.11.1985 with a capital investment below Rs. 3 lakhs and, therefore, the appellant was entitled to exemption for a period of four years only from 1.11.1985.

6. Unfortunately, the High Court has overlooked the definition of 'industrial unit' found in the Notification of Exemption dated 26.12.1985 which was passed in supersession of earlier Notification dated 29.1.1985. 'Industrial Unit' has been defined in the Notification as follows :

"Industrial Unit" means and industrial unit holding permanent registration with the Directorate of Industries, Uttar Pradesh as on small, handloom of handicraft industry or an industrial licence registration granted by the Iron & Steel Controller or the Textile Commissioner or the Director, Sugar or the Director-General of Technical Development or the Government of India; and (a) registered under the Factories Act, 1948 or established after obtaining a Term Loan from the U.P. Financial Corporation or from a Scheduled Commercial Bank, in the case of units with a capital investment not exceeding three lakh rupees; or (b) registered under the Factories Act, 1948 or having applied for registration under the said Act and deposited the required fee for the purpose, in the case of units other than those referred to above;"

7. The 'date of starting production' has also been defined in the Notification as follows :

"Date of starting production" and new unit shall have the meaning assigned to them in the explanation to Section 4-A of the Uttar Pradesh Sales Tax Act, 1948;"

8. There is no dispute that the appellant got permanent registration with the Directorate of Industries only on 11.9.1986 and became an industrial units as defined by the Notification. That industrial unit had commenced production only on 3.3.1986 and the first sale was effected by that unit on 5.3.1986. Hence, the relevant date for the purpose of granting exemption is 5.3.1986 and not 1.11.1985 as decided by the 2nd respondent and the High Court. That industrial unit had a capital investment of much more than Rs. 3 lakhs. Consequently, the industrial unit is entitled to get exemption for a period of six years from 5.3.1986 provided the other conditions are satisfied. There is no dispute in this case that all the other conditions are satisfied and the appellant is entitled to get exemption under the relevant Notification.

9. Learned counsel for the respondents contends that the appellant purchased raw material in 1985 and utilised the same for the purpose of manufacture and consequently, the relevant date will be 1.11.1985, the date of first sale for this purpose. Learned counsel places reliance on the definition of 'date of starting production' found in Act No. 22 of 1984 as was in force from 12th October, 1983. The definition was in the following terms :

"date of starting production' means the date on which any raw material required for use in the manufacture or packing of the specified goods is purchased for the first time or the date of installation of power connection where needed, whichever is later."

10. There is a fallacy in this contention. The date of starting production as defined in that Explanation would be relevant only if the unit applying for exemption is an industrial unit within the meaning of the Notification. As already pointed out by us, the appellant became an industrial unit as defined by the Notification only from 11.9.1986. Hence the relevant date will be only 5.3.1986 and not 1.11.1985.

11. Learned counsel for the respondent also contends that none of the contentions urged by the appellant in this Court were put forward before the High Court. We are unable to accept this

contention. As stated already, the judgment of the High Court contained all the relevant facts and the contentions. The High Court has not dealt with any of them. On the other hand, the High Court has framed only one question for determination as to 'whether the petitioner before it was entitled to exemption for six years or for four years.' That question was wide enough to consider all the relevant facts and decide the case. The High Court has failed to take into account the relevant facts in this matter. Nor has the High Court adverted to the relevant provisions in law. The High Court has chosen to refer to a provision of law which came into force much later than the relevant date, which ought not to have been done.

12. In the result, we have no hesitation to set aside the judgment of the High Court and allow this appeal with costs.