

Divisional Level Committee

Vs

Harswarup Drug Udyog

Civil Appeal No. 3543

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

02.02.1999

JUDGMENT

M. Srinivasan J.

1. The Divisional Level Committee constituted under Section 4-A of the U.P. Sales Tax Act, 1948 (for short "the Act"), and the State of U.P. are aggrieved by the order of the High Court passed in Civil Misc. Writ Petition No. 485 of 1992 quashing the order of the Committee rejecting an application filed by the respondent for exemption from payment of sales tax under Section 4-A of the Act.
2. The order of the Joint Director of Industries rejecting the application of the respondent dated 28.1.1992 shows that the rejection was on the ground that the registration of the lease deed was made on 27.3.1990 after the date of the first sale, namely, 19.5.1989 and, therefore, the lease deed having been registered after the date of the availability of the facility of exemption, the respondent was not entitled to claim the benefit of Section 4-A. The High Court has held that the lease deed having been registered on 27.3.1990, the respondent was entitled to get the exemption with effect from that date. The High Court has not, however, made it clear whether the respondent would get exemption for a period of four years from 27.3.1990.
3. Learned counsel for the appellants contends that the respondent not having fulfilled all the conditions prescribed in Section 4-A of the Act for getting the exemption on the date on which the first sale was effected, is not entitled at all to get the exemption for any period whatsoever. According to him, the relevant date for grant of exemption is the date of first sale as contemplated by sub-section (1) of Section 4-A of the Act. According to him, if on that date, all the conditions are not fulfilled and they are fulfilled at a later date, the assessee will not be entitled to get the exemption.
4. We are unable to agree with this contention. Sub-section (1) of Section 4-A itself contemplates the grant of exemption whether 'wholly or partly'. That is sufficient to indicate that an assessee can get exemption for a part of the period subject to fulfillment of all the conditions. In the present case, the relevant condition is found in sub-clause (c) of Clause 1 of Explanation to the Section. Under that clause, a land or building or both should be owned or taken of lease for a period not less than seven years by the dealer concerned. In the present case though the lease was taken much earlier, the registration was made only on 27.3.1990. The lease being one for a period of seven years, required registration and will satisfy the requirement of the Section from the date of registration. Hence the High Court is right in holding that all the conditions are fulfilled on 27.3.1990.

5. Sub-section (5) of the Section 4-A reads as follows to the extent relevant:

"(5) A manufacturer shall be entitled to the facility of exemption from, or reduction in, the rate of tax notified under sub-section (1) -

xxx xxx xxxx

(b) if he applies for such facility later than the date specified in clause (a) only for a part of the period notified under sub-section (1) which shall be computed from the date of application till the end of the period of facility;

xxx xxx xxx"

In the present case, the said sub-section governs the situation. The respondent no doubt applied for exemption for the entire period but the conditions were fulfilled only on 27.3.1990 and the exemption can be granted only for the remaining period after that date. In other words, the respondent will be entitled to exemption for a period of 3 years 1 month and 4 days from 27.3.1990. In the present case, there is no dispute with regard to the other conditions set out in the Section having been fulfilled by the respondent.

6. Learned counsel for the appellants contends that the matter should be remitted back to the High Court inasmuch as the respondent did not apply for exemption for a part of the period and the application was for the entire period of four years. We are unable to accept this contention. There is no need for remitting the matter as all the facts are clear. The respondent has no doubt applied for a larger relief but the court is entitled to mould the relief and grant a smaller relief than what is prayed for.

7. In the circumstances of the case, the judgment of the High Court is confirmed with the clarification that the exemption will be for a period of 3 years 1 month and 4 days from 27.3.1990. The appeal is dismissed with the above clarification, with costs.