

SUPRME COURT OF INDIA

Before :- S. Saghir Ahmad and Mr. R.P. Sethi, JJ.

Civil Appeal No. 789 of 1988. Dvd. 16.11.1999

The Grasim Industries Ltd. - Appellants

Versus

State of Madhya Pradesh - Respondents

WITH

Civil Appeal No. 6542 of 1999. (Arising out of SLP (Civil) No. 3297 of 1998).

The Gwalior Sugar Co. Ltd. - Appellant

Versus

M.P. Electricity Board - Respondents

For the Appellants :- Mr. A.K. Chitale, Senior Advocate with Mr. Neeraj Sharma, Mr. Anil K. Sharma, Mr. Awanish Sinha, Mr. S.K. Gambhir and Mr. J.M. Khanna, Advocates.

For the Respondents :- Mr. S.K. Agnihotri, Advocate.

JUDGMENT

R.P. Sethi, J. - Leave granted in SLP(C) No. 3297 of 1998.

As the point of law involved in both the cases are identical, they are being disposed of by this common judgment.

2. The appellants who had set up their own generating units for the supply of electrical energy in the State of Madhya Pradesh have claimed the benefit of Notification No. F, 10-7-XIII-81 dated 13th March, 1981 issued under Section 3B of the Madhya Pradesh Electricity Duty Act, 1949 (hereinafter referred to as "the Act") exempting with effect from 10th December, 1980 all producers who run industries from payment of duty during the period as specified in the Scheduled attached therewith. The writ petitions filed by the appellants were dismissed by the High Court vide the impugned order holding that only such producers who had set up the generating units after 10.12.1980 were entitled granted vide aforesaid notification.

3. It is contended on behalf of the appellants that the notification was applicable to all producers who run industries by establishing their own generating stations for the purposes of consumption of electrical energy notwithstanding as to whether they had started generating the electricity after or prior to 10.12.1980. In order to appreciate the contentions raised on behalf of the appellants, it is necessary to have a look at the

notification, the benefit of which is claimed by the appellants. The Notification provides :

"Whereas the State Government is of opinion that having regard to the particular circumstances of the industries establishing their own generating station for purposes of consumption of electrical energy by such industries, it is necessary and expedient so to do in the public interest;

Now, therefore, in exercise of the powers conferred by section 3-B of the Madhya Pradesh Electricity Duty Act, 1949 (No. X of 1949), the State Government hereby exempts with effect from the 10th December, 1980 all producers who run industries (from payment of duty, during the period as specified in column (1) of the Schedule below and to the extent as specified in the corresponding entries in column (2) thereof, in respect of the electrical energy consumed by such producers for the purposes of the industries run by them."

Such a notification has been issued under Section 3B of the Act which provides as:

"3B. Power to exempt -- Where the State Government is of opinion that --

(i) in order to encourage the establishment of any particular industry or class of industries in the State; or

(ii) having regard to the particular circumstances of any industry or class of industries ;
of

(iii) in order to extend facilities to such persons or class of persons and for such purposes as the State Government may, by notification, specify;

It is necessary or expedient so to do in public interest, it may, by notification and subject to such conditions, if any, as it may specify in the notification, --

(a) exempt from payment of duty in whole or in part --

(i) any distributor of electrical energy or producer in respect of the electrical energy sold or supplied to such industry for the purposes thereof;

(ii) where any producer or class of producers runs the industry, in respect of the electrical energy consumed by such producer or class of producers for the purpose of such industry;

(iii) any distributor of electrical energy or producer in respect of the electrical energy sold to or used for consumption by person or class of persons and for purposes specified in the notification;

(b) cancel any such notification and again subject, by a like notification, the distributor of electrical energy or producer or class of such producers to the payment of such duty in respect of such sale, supply or consumption of electrical energy."

It is settled position of law that exemption notification particularly in a fiscal matters

has to be strictly construed and the person claiming its benefit is obliged to satisfy the court that his claim was covered by the exemption notification. The notification has to be read in its entirety and not in parts. This Court in *Union of India & Ors. v. Wood Papers Ltd. & Anr.* [1990(4) SCC 256] held:

"Entitlement of exemption depends on construction of the expression 'any factory commencing production' used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification or inequitable burden or progressive approach of fiscal provisions intended to augment State revenue. But once exception or becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. Therefore, the first exercise that has to be undertaken is if the production of packing and wrapping material in the factory as it existed prior to 1964 is covered in the notification."

4. Before the High Court the appellants tried to put extraneous meanings to the notification which, according to them, entitled them exemption. They pleaded that bifurcating the notification for the purposes of getting its benefit being applicable to established units prior to 10.12.1980 as well. The High Court rightly rejected their contention by holding that the notification was to be read as a whole and could not be dissected in the manner urged on behalf of the appellants. If read as a whole, the notification was held to be capable of only one interpretation that "it is only such industries which establish their generating units after 10th December, 1980 and thereby in the capacity of producers generate electrical energy are entitled to the exemption contemplated by the notification in respect of the electrical energy consumed by them for the purpose of the industries run by them. We have referred to the Cabinet decision not as an aid to clear any doubt or ambiguity in the notification because in our opinion there is now and notification is capable of only one interpretation as stated earlier, but only to indicate that the notification faithfully carries out the said Cabinet decision".

5. Learned counsel for the appellants has referred to various judgments of this Court to persuade us to take a different view. However, after examining the aforesaid judgments in depth we do not find any reason to disagree with the conclusions arrived at by the High Court. The language of the notification does not leave any ambiguity as the intention to exempt the industrial unit from 10.12.1980 is evident. The High Court has dealt with various judgments cited before it before dismissing the writ petitions by the impugned reasoned judgment.

6. We agree with the reasoning as well as the conclusions arrived at by the High Court

and find no ground to interfere. The appeals are accordingly dismissed but without any order as to costs