

# **SUPREME COURT OF INDIA**

Tata Iron and Steel Company Limited

Vs

State of Jharkhand (And another Appeal)

Civil Appeal No. 1912 of 2004 With Civil Appeal No. 2269 of 2005. Civil Appeal No. 1912 of 2004 Is From the Judgment and Order Dated August 12, 2003, of the Jharkhand High Court At Ranchi In W.P. (T) No. 2003 of 2003.

(B.P.Singh and S.B.Sinha)

30/03/2005

## **JUDGMENT**

**S.B.SINHA, J.**

1. Leave granted in S.L.P.(C) No. 15419 of 2004.

2. Interpretation and application of the notifications bearing Nos. 65, 66 and 67 dated January 12, 2002, issued by the State of Jharkhand pursuant to the Jharkhand Industrial Policy, 2001, falls for our consideration in these appeals which arise out of the judgments and orders dated August 12, 2003, and March 16, 2004, passed by a division Bench of the Jharkhand High Court whereby and whereunder the writ petition filed by the appellants herein was disposed of with certain directions.

Background facts:

3. The fact of the matter is being noticed from Civil Appeal No. 1912 of 2004.

The appellant, an existing company within the meaning of the Companies Act, 1956, is a producer of saleable steel and other alloy products having a production capacity of 17.4 lakh tons. It at all material times was and still is producing steel through its Hot Rolled Mill (HRM). It is registered as a dealer both under the Central Sales Tax Act, 1956, and the Bihar Finance Act, 1981 ("the 1981 Act"). It was granted an industrial licence for expansion of its existing industrial unit located at Jamshedpur for production of steel to the extent of 21 lakh tons per annum.

Exemption claimed for new industrial unit:

4. The Government of Bihar issued an Industrial Policy in the year 1995. With a view to give effect thereto it issued two notifications bearing Nos. 478 and 479 dated December 22, 1995, granting exemption to dealers in terms of section 7(3)(b) of the 1981 Act in respect of tax on purchase or sale of certain goods manufactured by new/expanded/diversified/modernised units. Pursuant to or in furtherance of the said Industrial Policy as also the notifications issued pursuant thereto, the appellant herein undertook diversification of its product-saleable steel by establishing a cold rolling mill.

On or about January 10, 1998, the Government of Bihar acknowledged that the appellant was "going to diversify its plant". In terms of the Bihar Re-organisation Act, 2000, the State of Jharkhand was created with effect from November 15, 2000, as a result whereof, inter alia, the 1981 Act was extended to the State of Jharkhand.

5. The appellant claimed benefits of the aforementioned Notifications Nos. 478 and 479 dated December 22, 1995, whereupon by an order dated December 16, 2000, the benefit of exemption in respect of its Cold Rolled Product (CRP) was granted treating the "diversified capacity" as a new unit. Such grant of exemption, however, was withdrawn by the Commissioner of Commercial Taxes in exercise of its suo motu power of revision holding that as both Cold Rolled Product and Hot Rolled Product find mention in the same entry issued in terms of section 14 of the Central Sales Tax Act, 1956, they are not entitled to the benefits claimed.

6. Aggrieved, the appellant filed a writ petition before the Jharkhand High Court which was marked as C.W.J.C. No. 1426 of 2001. The division Bench of the High Court disposed of the said writ petition upon setting aside the order of the Commissioner of Commercial Taxes, dated April 3, 2001, and remitting the matter back to the Commissioner of Commercial Taxes for reconsideration of the question as to whether the cold rolled product is a new and distinct product vis-a-vis hot rolled product.

7. An application for grant of special leave from the said order was filed before this Court by the appellant herein and leave having been granted in the appeal, the matter was marked as C.A. No. 2188 of 2002. This Court by judgment and order dated August 25, 2004 [since reported int ] held that the product manufactured by the appellant in its new unit is a cold rolled mill (CRM) product and not hot rolled mill product. It was opined:

*"21.....Based on a promise made in the industrial policy of the State of Bihar, at every stage the appellants tried to verify and confirm whether they are entitled to the benefit of exemption or not and they were assured of that exemption. It is based on these assurances that the appellant invested a huge sum of money which according to the appellant is to the tune of Rs. 2, 000 crores but the State says it may be to the tune of Rs. 1, 400 crores. Whatever may be the figure, the fact still remains that the appellants have invested huge sums of money in installing its new industrial unit. At every stage of the construction, progress and installation of the machineries, the concerned Government/authorities were informed and at no point of time it was suspected that the new unit was going to manufacture HRM. The process of manufacturing HRM and CRM as could be seen from the experts' opinion is totally different and the material on record also shows that the plant design for a new unit is for the purpose of manufacturing CRM. These factors coupled with the fact that at no stage of the proceedings which culminated in the judgment of the High Court, the respondent-State had questioned this fact except for the technical ground taken by the Joint*

*Commissioner which is found to be erroneous, we find the ends of justice would not be served by remanding the matter for further inquiry." \**

Exemption claimed for existing industrial unit:

8. In the meanwhile the State of Jharkhand declared its Industrial Policy on or about August 25, 2001, for the period November 15, 2000 to March 31, 2005 ; para. 28.1 whereof, inter alia, provided for set-off or adjustment to dealers in respect of new industrial units as well as the existing units. Para 28.2 provided for a uniform rate of tax at 2 per cent in view of the provision of set-off.

9. Three notifications bearing Nos. 65, 66 and 67 dated January 12, 2002, were issued thereafter in terms of sections 22, 23 and 13(1)(b) respectively. S.O. No. 65 refers to facility of set-off and adjustment on intra-State sales. S.O. No. 66 refers to inter-State sales whereas S.O. No. 67 provides for concessional rate of sales tax on purchase of raw material and other items at the rate of 2 per cent. Such facility is to be allowed to those industrial units who come under the purview of set-off of tax.

10. The appellant as regards its existing unit, viz., HRM, applied for eligibility certificate before the Deputy Commissioner of Commercial Tax stating that it had been

*"engaged in manufacture and sale activities of various iron and steel products and other materials"*  
\*

. The said application of the appellant was rejected by the Deputy Commissioner of Commercial Tax by an order dated March 13, 2002, opining that it being a dealer with one registration under sales tax laws, was not entitled thereto. The said order came to be affirmed by the Commissioner of Commercial Tax by an order dated March 25, 2003.

11. A writ petition there against was filed which was marked as W.P. (T) No. 2003 of 2003. By reason of the impugned judgment, while setting aside the aforementioned orders dated March 13, 2002, and March 25, 2003, passed by the Deputy Commissioner of Commercial Taxes and the Commissioner of Commercial Taxes, respectively, the High Court held (although not finally) that the appellant as a whole, including its diversification into CRP, is one existing unit, but as the litigation in relation to CRP was pending before this Court, the matter was remitted granting leave to the appellant to make a fresh claim under the Industrial Policy, 2001, on the premise that if it is found not entitled to the benefit of 1995 Policy in respect of CRP, it would be able to claim the benefit under the 2001 Policy of the State of Jharkhand.

Contentions:

12. Mr. Dushyant A. Dave and Mr. Gaurav Banerjee, learned Senior Counsel appealing on behalf of the appellant, took us through the Industrial Policy of the State of Jharkhand as also the aforementioned Notifications Nos. 65, 66 and 67 dated January 12, 2002, and would submit:

(i) The Industrial Policy covers both new unit as well as existing units and CRM having been treated

to be a new unit, the High Court committed an error in not directing grant of benefits to its HRM as an existing unit.

(ii) Such Industrial Policy as also the notifications having not referred to "company", " assessee" or " dealer", each unit of the appellant was entitled to the benefit of the notifications irrespective of the fact as to whether they are new or existing units.

(iii) The notifications should be given a liberal construction having regard to the object of the policy, viz., to optimally utilise the available resources of the State in a planned manner and to accelerate the industrial development of the State. CRM having a separate industrial licence having been set up for manufacturing separate goods by going into commercial production which may not be multiple ones, the High Court should not have laid too much emphasis on clause (6) of the notification as it was a machinery provision and, thus, not a part of the policy.

13. Mr. Punit Dutt Tyagi, learned counsel appearing on behalf of the appellant, in S.L.P. (C) No. 15419 of 2004, would contend that the appellant supplied gas to TISCO where for sales tax at the rate of 2 per cent was charged on the premise that it had already filed application for grant of set-off and/or adjustment although the rate of tax was 3 per cent. A writ petition was filed as the State of Jharkhand stopped issuance of the concession forms on the premise that it did not deposit the tax at the rate of 3 per cent. It is accepted that the fate of this appeal would depend upon the result of the first matter.

14. Mr. Sunil Gupta, learned Senior Counsel appearing on behalf of the respondents, would submit that :

(a) All the aforementioned three notifications dated January 12, 2002, having been issued under sections 22, 23 and 13(1)(b) of the 1981 Act ; are required to be construed in terms thereof.

(b) As the provisions of the 1981 Act envisage the company as an assessee, exemptions can be claimed only by it as a whole and not in relation to each of its units.

(c) Industrial Policy being a multi-faceted policy, although a diversified activity of the appellant in terms thereof will be treated as a new unit, but having regard to the statutory scheme and on proper reading of the notifications, it has rightly been held by the High Court that the benefits of adjustment and set-off were available only to a dealer/asses see as the State exercised its jurisdiction only in terms of sections 22 and 23 of the Act in respect of entirety of its activities and the units belonging to it.

(d) Effective date in terms of the notification and Industrial Policy being same in respect of both existing as well as new unit, the appellant having obtained the benefit in respect of its cold rolled mill was not entitled to any further benefit by way of adjustment or set-off in respect of its hot rolled mill which was an existing unit.

(e) Eligibility clause contained in the Industrial Policy must receive strict construction.

Statutory provisions of 1981 Act:

15. Section 2(e) defines "dealer" to mean any person who carries on the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or valuable consideration which, inter alia, includes a company which

carries on such business.

16. Section 3 provides for charge of tax in terms whereof sales tax or the purchase tax, as the case may be, is required to be paid by every dealer. Such tax is payable to a dealer to whom clause (a) of sub-section (1) applies on sales and purchases made inside Bihar on and from the date of commencement of the 1981 Act and by a dealer to whom clause (b) of the said sub-section applies on such sales or purchases made on or from the date immediately following the day mentioned in the said clause (b). Sub-section (9) of section 3 provides that the provisions of the Central Sales Tax Act, 1956, shall apply for determination when a sale shall be deemed to have taken place inside Bihar.

17. Section 7 provides for exemption. Section 7(3)(b) empowers the State Government to exempt any dealer from payment of sales tax or purchase tax by issuing an appropriate notification and subject to such conditions or restrictions, as the case may be, inter alia, sales of any goods or class or description of goods to or by any class of dealers.

18. Section 12 provides for rate of tax whereas section 13 provides for special rate of tax on certain sales or purchases. Section 13(1)(b) of the 1981 Act reads as under :

*"13. Special rate of tax on certain sales or purchases.-(1) Notwithstanding anything contained in this part but subject to such conditions and restrictions as may be prescribed-*

*(b) sales to or purchases by a registered dealer of goods required by him directly for use in the manufacture or processing of any goods for sale ;" \**

19. Section 14 provides for registration of dealers. Section 16 mandates filing of return by a dealer. Section 22 empowers the State Government to permit any dealer, or class or description of dealers who are running manufacturing units in the State of Bihar to adjust the amount of tax paid on the purchases of raw materials which has been used for manufacture of goods for inter-State sale against the tax payable on sale of finished product within the State in such manner as may be laid down in the order allowing permission, if it is satisfied that it is necessary to do so in the interest of industrial growth.

20. Section 23 similarly empowers the State Government to permit adjustment or set-off of tax in respect of inter-State sales.

Bihar Industrial Policy, 1995

21. The Industrial Policy of 1995 was issued by the State of Bihar with a view to create an environment conducive to growth of industries in the State.

22. Clause 16.2 deals with sales tax on sale of finished goods for new units, in terms whereof new units, in addition to the benefit of exemption/set-off of sales tax on purchases, will also have the option to choose deferment or exemption of sales tax [both Bihar sales tax and Central sales tax] on sale of finished goods for a period of 10 years for category "A" and 8 years for category "B" districts from the date of production of the unit with a ceiling of 100 per cent of the fixed investment made by it.

23. Clause 16.3 of the said Policy reads as under:

*"16.3. Units undertaking expansion /diversification.-Such units should be given identical treatment as new units for their expanded/ diversified capacity and incremental both in purchase of raw materials and for sales tax on finished goods. All such incentives will be admissible to such units which are covered by the definition of expansion/diversification as given in the annexure. Incremental production means:*

*The incremental production shall mean the excess of actual production over 2/3 of the originally installed capacity or the highest production in 3 years immediately preceding the year in which such expansion/diversification commenced whichever of the two is higher'." \**

The said Policy was to remain in force for a period of 5 years with effect from September 1, 1995.

24. The following definitions mentioned in annexure appended to the said Policy and which are relevant for our purpose read as under:

*"1. Effective date : Effective date means the date of which the provision of this Policy come into force, i.e., September 1, 1995. This Policy will remain in force for 5 years from September 1, 1995.*

*2. Industrial units / industrial concern : Industrial units/concern means any unit/concern or to be engaged in manufacturing/processing/servicing industry belonging to the following categories :*

*(a) Industries listed under the First Schedule of the Industries (Development and Regulation) Act, 1951, and amended from time to time.*

*(b) Thrust industries listed in para 15 of the Policy statement.*

*(c) Industries falling within the purview of the following boards/ agencies :*

*(i) Small-scale Industries Board*

*(ii) Coir Board*

*(iii) Silk Board*

*(iv) All India Handloom and Handicrafts Board*

*(v) Khadi and Village Industries Commission*

(vi) Any other agency constituted by the GOI or GOB for industrial development....

3. Existing industrial unit : Existing industrial unit means an industrial unit which has gone into production before the effective date.

4. New industrial unit : New industrial unit means an industrial units which has come into production between September 1, 1995, and August 31, 2000.

7. Expansion/modernisation/diversification :Expansion/modernisation/diversification of an existing industrial unit would mean additional fixed capital investment in plant and machinery of 50 per cent or more of the undepreciated value of fixed capital investment in the existing unit leading to incremental production capacity which would not be less than 50 per cent of the initial installed capacity. In order to qualify for the sales tax incentives a unit undertaking expansion/modernisation/diversification should send intimation to the General Manager, District Industries Centres or the Managing Director, Industrial Area Development Authorities and Deputy Commissioner, Commercial Taxes, as the case may be, in respect of Small-scale Industry or the Director of Industries/Director, Technical Development and Commissioner, Commercial Taxes in case of medium and large industries before undertaking expansion/modernisation programme. Such intimation should be accompanied by detailed expansion/modernisation/diversification proposal giving the specific period of proposed investment." \*

25. S.O. No. 479 dated December 22, 1995, was issued by the State of Bihar in exercise of its power under clause (b) of sub-section (3) of section 7 of the 1981 Act whereby and whereunder exemption was granted to those new industrial units which started production from September 1, 1995 to August 31, 2000, on the sales of finished goods produced by them under the terms and conditions specified therein, clause (c) whereof reads thus:

"(c) For exemption from sales tax, industrial unit means such unit which manufactures goods for sale and for the purpose of it the meaning of 'manufacture' shall be the same as defined in Part 1 of the Bihar Finance Act, 1981 (Bihar Act No. 5 of 1981)." \*

Jharkhand Industrial Policy, 2001

26. We may, at this juncture notice certain provisions of Jharkhand Industrial Policy.

"28.1 New industrial units as well as existing units which are not availing any facility of tax-deferment or tax-free purchases or tax-free sales under any notification announced earlier, shall be allowed to opt for set-off, of Jharkhand sales tax paid on the purchases of raw materials within the State of Jharkhand only against sales tax payable either JST or CST on the sale, excluding stock transfer or consignment sale outside the State, of finished products made out from such raw materials subject to a limitation of six months or the same financial year from the date of purchase of such raw materials.

*28.2 Clause 13(l)(b) of the Adopted Bihar Finance Act, 1981, provides for two (2) rates of concessional sales tax on purchases of raw materials and other inputs. These are 2 per cent and 3 per cent against form IX. Both these rates will be reduced to 2 per cent in view of the provision for set-off as aforesaid." \**

#### Definitions

:-

Effective date : Effective date means November 15, 2000, from which date the new State of Jharkhand has been created, the date on which the provision of this Policy come into force, i.e., November 15, 2000. This policy will remain in force till March 31, 2005.

"Unit" means any industrial project in large and medium scale having approval in the form of letter of intent, industrial licence or registration certificate, as the case may be, under the Industries (Development and Regulation) Act, 1951 (65 of 1951) or an acknowledgement in the form of secretariat for industrial Assistance, reference number from Central Government excluding those mentioned in the negative list of industries at annexure III.

#### Explanations:

(i) For the purpose of concessions/benefits relating to sales tax, only such units shall be deemed to be industrial units which carry on the business of manufacturing goods for sale.

(ii) If any doubt arises as to whether a unit/concern is an industrial unit/industrial concern or not for the purposes of this Policy, the same shall be referred to a committee headed by the Finance Commissioner with Industrial Development Commissioner/Secretary, Industry and Commercial Taxes Commissioner as its members and the decision of the Committee shall be final.

Existing industrial unit : Existing industrial unit means an industrial unit which has gone into commercial production before the effective date.

New industrial unit : New industrial unit means an industrial unit which has come into commercial production between November 15, 2000 and March 31, 2005.

#### *"Notifications :*

*27. We have noticed hereinbefore that the Notifications Nos. S.Os. 65 and 66 dated January 12, 2002, were issued respectively under sections 22 and 23 of the Bihar Finance Act, 1981. As they are identically worded, we shall refer only to S.O. 65, the relevant clauses whereof are as under ;" \**

In exercise of powers conferred under section 22 of the Bihar Finance Act, 1981 (Bihar Act 5 of 1981) (adopted), State Government provides facility of set-off to new industrial units and existing

units subject to the following conditions and restrictions :

1. For permission of this :

Industrial unit means such unit which, -

'Unit' means any industrial project of large and medium scale having approval in the form of letter of intent, industrial licence or registration certificate, as the case may be, under the Industries (Development and Regulation) Act, 1951 (65 of 1951) or an acknowledgement in the form of secretariat for industrial assistance, reference number from Central Government excluding those mentioned in the negative list of industries at annexure III.

Explanations :

(i) For the purposes of concessions/benefits relating to sales tax, only such units shall be deemed to be industrial units which carry on the business of manufacturing goods for sale.

(ii) If any doubt arises as to whether a unit/concern is an industrial unit/industrial concern or not for the purposes of this Policy, the same shall be referred to a committee headed by the Finance Commissioner with Industrial Development Commissioner/Secretary, Industry and Commercial Taxes Commissioner as its members and the decision of the Committee shall be final.

2. Existing industrial unit.- Existing industrial unit means an industrial unit which has gone into commercial production before the effective date.

3. New industrial unit.-New industrial unit means an industrial unit which has come into commercial production between November 15, 2000 and March 31, 2005.

4. Meaning of date of production shall be.-The date of start of production of an industrial unit shall mean the date on which the unit actually starts commercial production of the item for which the unit has been registered. As regards the date of production of a SSI unit, the certificate issued by the General Manager, District Industries Centre or Managing Director, Industrial Area Development Authority will be accepted. In case of any dispute in the date of production the decision of the Director of Industries in this regard shall be final.

5. Meaning of effective date shall be.-Effective date means November 15, 2000, from which date the new State of Jharkhand has been created. From this date provision of this policy shall be made effective. This policy shall remain in force till March 31, 2005.

2. The facility of set-off to the existing units shall be available only to those units which are not availing any facility like deferment of tax or tax-free purchases or tax-free sales under any notifications announced earlier before the effective date.

3. The benefit of this facility shall be available only on Jharkhand sales tax paid on raw material (for direct use in manufacturing activities) purchased within the State of Jharkhand under section 13(1)(b) of the Bihar Finance Act, 1981 (adopted) against the Jharkhand sales tax payable on sale excluding stock transfer or consignment sale outside the State.

4. This set-off shall be available on the finished products manufactured from such raw material subject to purchases within six month or the same financial year from the date of purchase of such raw material.

5. The benefit of set-off under this notification shall be available to only those industrial units which have been issued eligibility certificate by the Circle In-charge (Commercial Taxes) of that area.

6(a). The verification of monthly/quarterly return filed by each of the industrial units shall be done by the concerned Commercial Tax Officer. Every unit shall enclose the photocopy of the purchase invoices along with the return. After verification of returns and purchase invoices, Commercial Tax Officers shall inform the Industrial unit as to how much amount of set-off they will adjust against the next returns.

(b) The competent Commercial Tax Officer after verification of file shall inform the industrial unit in writing within 15 days as to how much less or more amount of set-off has been done by them and how much amount of set-off they will adjust in the next return.

(c) Each of the industrial units along with its monthly/quarterly returns, they will file the following statements in duplicate along with a declaration certifying therein that the items shown in the purchase invoices have been purchased by them and the same have been directly used for production of products for sale.

*"Admitted fact:*

*28. The appellant started its cold rolled mill in terms of a fresh industrial licence. It was granted a new industrial licence by the Ministry of Industry of the Central Government on or about November 9, 1998, for manufacture of cold rolled/galvanised/coated/ corrugated/painted/v arm" \**

Shed steel sheets/strips/coils in the integrated steel plant for a proposed capacity of 12, 00, 000 ton. It, in view of the judgment of this Court, as referred to hereinbefore, became entitled to the benefit of set-off and/or adjustment from the tax paid on purchase of raw materials in terms of the Bihar Industrial Policy which was in force for 5 years from September 1, 1995.

29. The Government of Jharkhand has declared its Industrial Policy on or about August 25, 2001, the effective date therefor being November 15, 2000. The said policy was put in force from November 15, 2000. The appellant's cold rolled mill as also hot rolled mill, thus, are existing units within the meaning of the Jharkhand State Policy, in terms whereof if a benefit is granted under one Policy, no other benefit would be available.

Industrial Policy-Restricted new units alone :

30. The Industrial Policy of the State of Jharkhand is a multi-faceted one. As many as 20 strategies have been laid down therein. Emphasis therein has been laid on the infrastructure, inter alia, having regard to the United Nations Development Programme Co-operation Framework for India Report. The mining and mineral base industries are in the forefront of the identification of thrust areas. With that in view, under the heading "Commercial Tax Reforms", clause 28.1 seeks to grant tax benefits both to new industrial units as also existing units. Even under its notifications dated January 12, 2002, issued under the provisions of the Bihar Finance Act, 1981, facilities of set-off both in relation to inter-State and intra-State sale are to be given to new industrial units as also existing units. Thus, despite the fact that the appellant, as a juristic person is an assessee or a dealer within the meaning of the 1981 Act ; and, thus, was required not only to get itself registered as such but also file one single return in respect whereof there may be one order of assessment ; but the same, in our opinion, does not prevent an assessee from claiming separate tax exemptions and/or other tax benefits both in respect of its new industrial units as also its existing units. The Industrial Policy permits the same.

High Court judgment :

31. The High Court in its impugned judgment held that the cold rolling mill is an independent unit established by the company. The company sought the benefit of the Industrial Policy, 2001, in respect of its units other than cold rolling mill although all are existing units having gone into production before November 15, 2000.

Referring to the dictionary meaning of "project" and "unit", it was opined :

*"So any industrial enterprise that is carefully planned and designed to achieve a particular aim will be an industrial project. Clause 6 of the Notification S.O. No. 65 relates to the verification of the returns filed by an industrial unit. Sub-clause (c) thereof seems to suggest that an industrial unit contemplated therein is a unit which files monthly/quarterly returns, for, it provides that each of the industrial units along with its monthly/quarterly returns, will file certain documents in duplicate regarding purchases made and that they have been directly used for production of the products for sale. It can be said that clause 6 of the Policy tends to support the submission of learned counsel for the department that the industrial unit referred to in the notification is the assessee or in this case the company as a whole and not each of its individual lines or components.*

*No doubt, under the Industrial Policy, 1995, even a diversification was treated as a new industry for the purpose of benefit under that Policy. But here, there is no such fiction. Here, what is contemplated is a new industry that has come into existence or an existing industry which has not claimed benefit under any of the earlier notifications granting benefit pursuant to the Industrial Policy. Merely because a unit is defined as meaning any industrial project, it is not possible without anything more, to accept the argument that the cold rolling mill of the company should be treated as*

*a separate industrial project and the rest of the production units of the company should be treated as different individual industrial projects within the meaning of the Notification S.O. No. 65."*

*It was further held :*

*" Different lines of production or manufacture can in a given circumstance be an industrial project, but if the different lines are for achieving creation of the ultimate marketable product of the company, (the different products may themselves be used as raw materials for the ultimate product), then, can it be said that each branch or line of production is an independent industrial unit ?" \**

Determination :

The provisions of the statute must be assigned a meaning having regard to the text and context thereof. In a given situation, it is possible to hold that the cold rolling mill of the appellant as well as its hot rolling mill should be treated as separate industrial projects. It may also be possible for an assessee to claim different exemptions under different heads if such a situation exists or different fiscal benefits are granted to different units under the same or different notifications. Only because the appellant is a dealer, that by itself cannot be a ground for denying to it fiscal benefits if it is otherwise entitled thereto.

32. We do not agree with the High Court that the expression " industrial unit"or" existing unit" should be used in a generic sense to indicate the industry in its entirety and not each of its component.

33. Despite the fact that sections 22, 23 as also section 13(1)(b) of the 1981 Act refer to a dealer and section 14 thereof refers to registration of dealers mandating filing of return in respect of its activities, the same would not mean that the State cannot grant the same or different benefits to different units producing different products of the same assessee. The State has the power not only to grant exemptions, but also direct such grant relating to a class or description of goods. If the State has the power to issue a notification, it has the power to amend, vary or rescind the same and exercise such power from time to time as and when occasion arises therefor.

34. The notifications in question, however, are not exemption notifications. They provide for set-off or adjustment of tax. A dealer in terms of the 1981 Act must be taxed but it may be granted exemption therefrom in respect of certain items or adjustment or set-off thereof in relation to its particular products manufactured in a new or existing industry. A notification may be issued under section 22 or 23 in respect of one or more products or in respect of one or more units. However, whether a dealer would be entitled to the benefit of set-off unit-wise or not will depend upon the language employed keeping in view the object the notifications seek to achieve.

It will not be proper for a court of law to prescribe limitations or restrictions when there is none or

vice versa.

35. The notification contemplates units which manufacture products for sale. The Explanation appended to clause 1 expressly provides

*"for the purposes of concessions/benefits relating to sales tax, only such units shall be deemed to be industrial units which carry on the business of manufacturing goods for sale". Clause 2 of the notification defines "existing industrial unit" to mean "an industrial unit which has gone into commercial production before the effective date" whereas "new industrial unit" in terms of clause 3 means "an industrial unit which has come into commercial production between November 15, 2000 and March 31, 2005. Meaning of "date of production" as contained in clause 4 refers to actual commencement of commercial production of the item and for which the same has been registered. Clause 5 imposes a restriction while defining the existing date to say that the facility of set-off to the existing units shall be available only to those units which are not availing any facility like deferment of tax or tax-free purchases or tax-free sales under any notifications announced earlier before the effective date.*

36. *The notification dated January 12, 2002, although it extends the tax benefits both to the new units as also the existing units, but thereby it does not contemplate that the grant of benefit should be extended to separate existing units although they may be producing the same but technically different products. The manufactured item is saleable steel. Quality of manufactured steel from CRM and HRM may have difference but as on the date of coming into force of the Jharkhand Industrial Policy as also the notifications issued under the 1981 Act both CRM and HRM were existing units, each one of them cannot get the benefit thereof.*

37. *Mr. Gupta in support of its contention that all units of the assessee must be treated in their entirety referred to a recent decision of this Court in Commissioner, Trade Tax, U.P. v. D.S.M. Group of Industries\* 1. In that case the assessee had different units. It expanded only some units by making a fixed capital investment of Rs. 50 crores or more in terms of the Industrial Policy as also the exemptions notifications issued under the U.P. Trade Tax Act. The State, however, raised a contention that such sum of Rs. 50 crores must be spent on each unit of the company and not on its industrial undertaking as a whole. The provisions of the notification dated February 21, 1997, as also section 4A(6) of the Uttar Pradesh Trade Tax Act, 1948, it was held, did not justify the contention that for the purpose of grant of exemption, each unit is to be considered to be a separate unit stating\* : " \**

14. It is an undisputed fact that the principal place of business of the company is Dhampur, District Bijnore. The exemption claimed by the respondent, under the notification dated February 21, 1997, was for expansion, modernisation or diversification. What is a 'unit' for purposes of expansion, diversification or modernisation has been defined in section 4A(6), Explanation (5), which has been set out hereinabove. Under this, 'unit' means an 'industrial undertaking' of a dealer who is not a defaulter and who meets the requirements as set out in sub-clause (b) thereof. The dealer, indisputably, is the respondent-company. The industrial undertaking of the respondent is the

company. It is the company which will be paying the tax and which will get the benefit of exemption, if entitled to it.

*"38. This Court therein was dealing with a reverse situation. It accepted the principle of law that the notifications have to be interpreted keeping in view the object, and the object being to encourage investments and production, it was held that a liberal interpretation which advances the object of the notification should be ascribed. The court took recourse to the doctrine of "purposive interpretation", saying:" \**

25. As we have already seen, section 4A defines the term 'unit' to mean an industrial undertaking, which has undertaken expansion, modernisation and diversification. Even under the General Clauses Act, where the context so requires the singular can include the plural. A plain reading of the notification shows that for 'expansion, modernisation and diversification' it is the industrial undertaking which is considered to be the 'unit'. This is also clear from the fact that in the notification wherever the words 'expansion, modernisation or diversification' are used, there are no qualifying words to the effect 'in any one unit'. In none of the clauses is there any requirement of the investment being in one unit of the industrial undertaking. Words to the effect 'in a particular unit' or 'in one unit' are missing. To accept Mr. Sunil Gupta's submission would require adding words to a notification which the Government purposely omitted to add."

It was further observed:

" 26. Even otherwise, the purpose of notification being to encourage increased production and to give benefit to industries which have invested Rs. fifty crore or more in the State and whose production has thus increased, an interpretation must be given which would extend the benefit to such industries. There would be no purpose in denying an industry which has invested Rs. fifty crore or more and whose production in the State has as a result increased, the benefit of the exemption granted by this notification merely because the whole of the investment is not in any particular unit. Thus even where the investment is made by the company in more than one unit, so long as the total investment is Rs. fifty crore or more, the benefit of the notification would be available. Such benefit would then be distributed in the manner set out in the schedule depending on where a unit in which expansion, diversification or modernisation has taken place, is situated.

*"The said decision, therefore, was rendered in a different fact-situation.*

*39. Eligibility clause, it is well-settled, in relation to exemption notification must be given a strict meaning.*

*40. In Collector of Customs v. Maestro Motors Ltd. (2004) 10 Scale 253 (SC), this Court held:" \**

It is settled law that to avail the benefit of a notification a party must comply with all the conditions of the notification. Further, a notification has to be interpreted in terms of its language.

*"41. The principle that in the event of a provision of a fiscal statute is obscure such construction*

*which favours the assessee may be adopted, but it would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption, [see Novopan India Ltd. v. Collector of Central Excise and Customs 8.*

42. *In State Level Committee v. Morgardshammar India Ltd. 4, referring to a large number of decisions, this Court held:" \**

10.....It must be remembered that no unit has a right to claim exemption from tax as a matter of right. His right is only in so far as it is provided by section 4A. While providing for exemption, the Legislature has hedged it with certain conditions. It is not open to the court to ignore those conditions and extend the exemption.

43. Mr. Banerjee has relied upon a large number of decisions for the proposition that such notifications must receive a liberal construction.

We may now notice them.

44. *In Textile Machinery Corporation Ltd., Calcutta v. Commissioner of Income-tax, West Bengal, Calcutta, this Court while construing section 15C of the Income-tax Act held:*

*"20. Section 15C partially exempts from tax a new industrial unit which is separate physically from the old one, the capital of which and the profits thereon are ascertainable. There is no difficulty to hold that section 15C is applicable to an absolutely new undertaking for the first time started by an assessee. The cases which give rise to controversy are those where the old business is being carried on by the assessee and a new activity is launched by him by establishing new plants and machinery by investing substantial funds. The new activity may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business. These products may be consumed by the assessee in his old business or may be sold in the open market. One thing is certain that the new undertaking must be an integrated unit by itself wherein articles are produced and at least a minimum of ten persons with the aid of power and a minimum of twenty persons without the aid of power have been employed. Such a new industrially recognisable unit of an assessee cannot be said to be reconstruction of his old business since there is no transfer of any assets of the old business to the new undertaking which takes place when there is reconstruction of the old business. For the purpose of section 15C the industrial units set up must be new in the sense that new plants and machinery are erected for producing either the same commodities or some distinct commodities. In order to deny the benefit of section 15C the new undertaking must be formed by reconstruction of the old business. Now in the instant case there is no formation of any industrial undertaking out of the existing business since that can take place only when the assets of the old business are transferred substantially to the new undertaking. There is no such transfer of assets in the two cases with which we are concerned." \**

45. The said decision was, therefore, rendered on interpretation of section 15C of the Income-tax Act, 1922, and on the factual matrix obtaining therein.

46. Section 15C of the Income-tax Act is not in pari materia with the provision of section 13(l)(b) of the 1981 Act.

47. In *Municipal Commissioner, Chinchwad New Township Municipal Council v. Century Enka Ltd.* 7, a finding of fact was arrived at by this Court that Unit No. 2 had been set up to effect substantial expansion of the existing business.

48. In *Commissioner of Income-tax v. Straw Board Manufacturing Co. Ltd.* , it was held that the expression "paper and pulp" includes paperboard and strawboard having regard to the provisions of the Industries (Development and Regulation) Act, 1951. The said decision has been followed in *Bajaj Tempo Ltd., Bombay v. Commissioner of Income-tax, Bombay City-III, Bombay* 2 and *Commissioner of Sales Tax v. Industrial Coal Enterprises*

49. These decisions again were rendered in the fact-situation obtaining therein and have no application herein.

50. In *Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P., Lucknow* , the court noticed that although the State declared exemptions from payment of sales tax with a view to increase industrial activity within the State by encouraging setting up of new industrial units or expansion/diversification or modernisation by the existing industrial units, it did not desire to extend that benefit to all such industries. This decision, therefore, runs counter to the submission of Mr. Banerjee.

51. In *Commissioner of Central Excise v. M.P.V. and Engg. Industries* , a division Bench of this Court of which one of us (B.P. Singh, J.) is a member, has clearly held :

*"11.....In dealing with the submissions the Tribunal noticed the decision of this Court in CCE v. Parle Exports P. Ltd. wherein this Court held that exemption should be strictly construed although the exemption clause in the notification may be construed liberally. In other words, eligibility criteria should be construed strictly but a liberal approach may be adopted in construing other conditions....." \**

52. We are concerned in this case with the eligibility criteria.

53. This is also not a case where the appellant altered its position pursuant to or in furtherance of a promise made to it by the State. The doctrine of promissory estoppel, therefore, is not applicable. It is not even a case where the doctrine of legitimate expectation could be invoked, [see *Hira Tikkoo v. Union Territory* .

54. We, however, are not oblivious that the doctrine of promissory estoppel would be applicable where a representation has been made by the State in exercise of its power to exempt or abolish a commodity as taxable commodity. Such promise, however, must be made by the persons who have the power to implement the representation.

55. The appellant furthermore had also understood the legal position in the same manner as would appear from its letter dated February 11, 2002, wherein it was contended that it is an existing industry prior to November 15, 2000, and further stated :

*"Tisco is, thus, eligible to avail benefits of set-off of sales tax paid on purchases of raw materials within the State of Jharkhand from the admitted sales tax payable on sales of products within the State of Jharkhand as well as on sales in course of inter-State sales ex-State of Jharkhand in terms of Notifications Nos. S.O. 65 and 66 both dated January 12, 2002.*

*We would, therefore, request you to kindly issue to us the eligibility certificates w.e.f. November 15, 2000, as required under these notifications to enable us to avail the benefit of 'set-off of sales tax which we are entitled to.' \**

56. We, therefore, conclude that as both hot rolled mill and the cold rolled mill are existing units, and one of them having received the benefits under a different policy, the appellants are not entitled to any further relief in terms of the notifications dated January 12, 2002.

57. For the reasons aforementioned, these appeals are dismissed. No costs.