

SUPREME COURT OF INDIA

Polycan Industries

Vs.

Commissioner of Trade Tax, U.P., Lucknow

C.A.No.3348 of 2000

(Tarun Chatterjee, S. N. Variava and S. H. Kapadia JJ.)

17.08.2005

JUDGMENT

Tarun Chatterjee, J.

1. This appeal is against the judgment dated 17th May, 1999 passed by the Allahabad High Court.

2. Briefly stated the facts are as follows:

The appellant, claiming to be a new unit, applied for exemption from sales tax under the provisions of the *Uttar Pradesh Trade Tax Act, 1948* (hereinafter referred to as "the Act"). The Divisional Level Sales Tax Exemption Committee (hereinafter called "the Committee") rejected the application of the appellant, inter alia, on the following grounds:

"1. Capital investment is more than 3 lakhs. Permanent registration has not been issued under the Factories Act.

2. Agreement of the land has been completed on Stamp-paper of Rs. 10 which is under registration.

3. Lists of the machines have not been received. Value of the building has not been certified from C.A.

4. On the date of production, the unit has not been registered."

3. The appellant filed an appeal before the Trade Tax Tribunal. The Trade Tax Tribunal held that there was force in the submission that the committee should have given an opportunity of hearing to the appellant. However, it refused to interfere on the ground that admittedly the appellant's unit was on land in respect of which the appellant only had a registered agreement to sell. The Tribunal held that to avail of the exemption both land and building must be owned by the unit.

4. The revision filed before the Allahabad High Court had been dismissed by the impugned judgment. The High Court has only considered one aspect, i.e., whether both land and building must be owned by the unit. The relevant provision reads as follows:

"On land or building or both owned or taken on lease for a period of not less than seven years by such dealer or allotted to such dealer by any Government company or any corporation owned or controlled by the Central or the State Government."

5. The High Court has held that a strict interpretation must be given to this clause as it deals with an exemption provision. The High Court has held that on a strict interpretation unless the land was actually owned by the unit, the exemption would not be available.

6. After this appeal was admitted, a conflict between the decisions of this Court in the case of State Level Committee v. Morgard-shammar India Ltd. reported in 4 and in the case of Commissioner of Sales Tax v. Industrial Coal Enterprises reported in was noticed. The matter was thus referred to a 3-Judge Bench in order to consider whether the above-mentioned provision should receive a strict or a liberal interpretation. It is, therefore, before this Bench.

7. Having heard parties and perused the documents, we are of the view that the interpretation must be in accordance with the wording of the provision. As stated above, the relevant wordings are "on land or building or both". A plain and simple reading of these words indicates that to avail of the exemption, even presuming the term "owned" means "actually owning", the ownership could be either of the land or of the building or of both. Therefore, the decisions of the Tribunal and the High Court which proceeded only on the basis that the land was not owned would not be correct. It would also have to be considered whether or not the building was owned by the appellant.

8. The appellant claims that they own the building. On behalf of the respondent it is stated that this question has not been looked into and therefore at this stage it is not possible to state whether or not the building was owned by the appellant. Further the other points on which exemption had been denied will also require looking into.

9. The Committee has not stated anything on the aspect of building being owned by the appellant. The Committee had also not given to the appellant an opportunity of being heard. The Tribunal and the High Court have not looked into the other aspects raised by the Committee and not considered whether building was owned by the appellant. We, therefore, feel that the correct course would be to remit the matter back to the Committee for consideration on merits. We accordingly do so. Amongst other things the Committee will also consider whether or not the building is owned by the appellant. The Committee will grant to the appellant an opportunity of being heard.

10. With these directions, the appeal stands disposed of. There will be no order as to costs.