

SUPREME COURT OF INDIA

Pondicherry State Cooperative Consumer Federation Ltd

Vs.

Union Territory of Pondicherry

C.A.No.8315 of 2001

(Ashok Bhan and V.S. Sirpurkar JJ.)

13.11.2007

JUDGMENT:

V.S. SIRPUKAR, J

1. The Judgment of the High Court denying the exemption from payment of Sales Tax is under challenge in this appeal at the instance of the Appellant Pondicherry State Cooperative Consumer Federation Ltd. (for short "the Assessee"). Such exemption was granted by the Sales Tax Appellate Tribunal at Pondicherry by allowing an appeal filed by the Assessee. Prior to that the Assessee was assessed by the Assessing Authority and on an appeal by the Assessee the taxable liability was brought down to Rs.14,26,729.86 by the Appellate Commissioner. An appeal was, thereafter, filed before the Tribunal which allowed the appeal holding that the Assessee was covered by the G.O.Ms.No.15/74 dated 25.6.1974 and was as such exempted from paying the Sales Tax.

2. The Assessee is a Small Scale Industry certified as such by Director of Industries, Government of Pondicherry by G.O. No.35/IND/88-89/A-5/A- 9 dated 19.5.1989. The said certificate specifically provided that the Unit of the Assessee was exempted from payment of Sales Tax for five years vide G.O.Ms.No.15/74/FIN (CT) dated 25.6.1974. It is obvious that thereafter this tax holiday was extended from time to time. The Assessee is also registered as a Small Industrial Unit and is certified as such by the Director of Industries by his order dated 9.3.1989. The Assessee purchases Palmolive Oil in bulk and packs the oil in small packages for the purpose of selling in retail and this packing of Palmolive Oil is done in the small industrial unit of the Assessee.

3. The Government of Pondicherry has issued a G.O. which we have referred to earlier dated 25.6.1974 and vide that G.O., in exercise of powers conferred by Sub-Section (3) of Section 19 of the Pondicherry General Sales Tax Act, 1967 a general exemption is provided from payment of Sales Tax on the turnover of the sales of goods "manufactured" by (i) Small Scale Industries which went into production on or after 6th November; and (ii) All industries other than small scale industries which went into production on or after 1st April, 1971, as certified by the Director of Industries, Pondicherry. There is no difficulty and it is an accepted position that the appellant-assessee is covered by this G.O.

4. The Department, however, took the view that purchase of Palmolive Oil and then re-packing the

same could not amount to manufacture of goods and as such the said G.O. could not be made applicable to the Assessee's case. It is in that view that the Assessment Orders were passed. The Tribunal took the view that though in the strict legal sense the Assessee's activities could not be viewed as "manufacturing" yet since the Director of Industries had exempted the Assessee from payment of Sales Tax it had to be accepted as a valid legal document founded on the authority of the Finance Department in terms of G.O.Ms.No.15/74 dated 25.6.1974. In that view the Tribunal allowed the appeal filed by the Assessee. However, the High Court took the view that for being covered under G.O.Ms.No.15/74 dated 25.6.1974 it had to be proved by the Assessee that it "manufactured" the goods since the said G.O. was applicable to the industries manufacturing goods and the turnover relating to such manufactured goods. The High Court further took the view that it could not be said that there was any manufacturing process involved in the Assessee's Small Scale Industry and, therefore, held that no exemption would be available to the Assessee. It is this judgment of the High Court which is assailed before us.

5. Learned Senior Counsel Shri Venkatraman appearing for the Appellant-Assessee submitted that this question was no more res integra and was covered by the Judgment of this Court reported in *Vadilal Chemicals Ltd. vs. State of U.P. & Ors.* [(2006) 6 SCC 292]. It was pointed out that in that case an identical question fell for consideration under the similar circumstances. There also, the question was: as to whether the small scale industry which was engaged in bottling of anhydrous ammonia could be said to be entitled to the exemption from payment of Sales Tax on the ground that it was manufacturing such goods since there was a general exemption offered by the Andhra Pradesh Government by G.O.Ms.No.117 dated 17.3.1993 to the small scale industry. There also it was found on inspection that the Assessee Industry was allowed irregular tax exemption on the first sales of anhydrous liquefied ammonia as it was found that the commodity that was purchased and sold was one of the same and there was no new commodity that had emerged and that the Assessee had only done bottling of ammonia. The show cause notices were issued to the Assessee in that case suggesting therein that the activity of bottling/packing of gases into unit containers from bulk quantities was not recognized as "manufacture" even under the Central Excise Act. In that view the question which fell for consideration before this Court was as to whether under the circumstances the Assessee could claim the exemption. This Court firstly held that the exemption certificate was granted by the authorities after due consideration. It was then noted that though the exemption was available on the products "manufactured" in industrial units, the interpretation put forth by the authorities on the word "manufacture" was incorrect. This Court took the view that the authorities had based the interpretation of word "manufacture" on the law relating to Excise and that it was erroneous to do so. It was observed that in the State Sales Tax Act there was no provision relating to "manufacture" and the concept was to be found only in the 1993 G.O. which had provided the exemption. The Court further took the view that the exemption was granted with a view to give a fillip to the industry in the State and also for the industrial units of the State. The Court, therefore, took the view that a liberal interpretation of the term "manufacture" should have been adopted by the State authorities, more particularly, when the State authorities had granted the certificate of eligibility after due consideration of the facts.

6. In our view the law laid down in this decision is applicable to the present case on all fours. Here also the authorities had firstly certified the Assessee's industry to be Small Scale Industry and had then proceeded to grant exemption to it from payment of Sales Tax on the goods manufactured. The said certificate was not found to have been erroneously issued and was very much in vogue when the show cause notices came to be served on the assessee. The G.O. providing exemption clearly suggested that such exemption was given in the public interest. Therefore, it is obvious that the

decision in Vadilal Chemical's case would be equally applicable as even in that case what the industry did was to bottle the ammonia gas purchased in bulk. In the present case it is Palmolive Oil which is purchased in bulk and is re-packed so as to facilitate its sale in the retail market.

7. Shri T.L.V. Iyer, Senior Advocate appearing on behalf of the Union Territory of Pondicherry, however, tried to suggest that the exemption from payment of tax granted on 19.5.1989 was granted by the Director of Industries and it was clear from that exemption that it was only on the basis of the G.O.Ms.No.15/74 dated 25.6.1974. Our attention was invited to the last lines of the aforementioned G.O. dated 19.5.1989. The last portion is as under:

"The unit is exempted from payment of sales tax for five years vide G.O.Ms.No.15/74/FIN(CT) dated 25.6.1974."

On this the learned Senior Counsel argued that therefore, it had to be proved that the goods were manufactured by the Assessee and in the present case since the Palmolive Oil did not change its character on its being re-packed by the Assessee, it could not be said that the assessee had manufactured any goods. Learned counsel also urges that in the absence of any definition of "manufactured goods" in the Sales Tax Act, we would have to fall back upon either the dictionary meaning of the term or to borrow it from the Central Excise Act. We are afraid, the contention cannot be accepted in the wake of clear law laid down by this Court in Vadilal Chemical's case. We have already shown as to how the decision in that case is applicable to the present situation. In that view we are of the clear opinion that since in the present case the exemption was granted to all small scale industrial units registered with the Director of Industries and since the Assessee was recognized and certified as a small industrial unit, engaged in the activity of re-packing of edible oil and further since the exemption was granted with the open eyes to this particular industry, the State cannot be allowed to run around and take a stance that the appellant- assessee was not entitled to the exemption on the ground that it did not manufacture any goods. We are in respectful agreement with the view taken in Vadilal Chemical's case which is more particularly reflected in paras 19 and 20 of that decision where this Court observed as under: "In this case the State Sales Tax Act contains no provision relating to "manufacture". The concept only finds place in the 1993 GO issued by the Department of Commerce and Industries. It appears from the context of the other provisions of 1993 G.O. that the word "manufacture" had been used to exclude dealers who merely purchased the goods and resold the same on retail price. What the State Government wanted was investment and industrial activity. It is in this background that the 1993 GO must be interpreted (See CST v. Industrial Coal Enterprises).. The exemption was granted in terms of 1993 GO, the thrust of which was to increase industrial development in the State."

8. We respectfully agree with the aforesaid observations and would chose to take the same view by accepting the contention of the appellant that a liberal view of G.O. Ms.No.15/74 dated 25.6.1974 would have to be taken. We accordingly allow the appeal, set aside the order passed by the High Court and restore that of the Tribunal but without any order as to costs.