

**SUPREME COURT OF INDIA**

Commissioner of Trade Tax, U.P

Vs.

Malviya Chemical

C.A.No.5252 of 2007

(Arijit Pasayat and L.S.Panta JJ.)

15.11.2007

**JUDGMENT:**

**Dr. ARIJIT PASAYAT, J.**

1. Leave granted.

2. Challenge in this appeal is to the order passed by a learned Single Judge of the Allahabad High Court disposing of two revision petitions, i.e. Trade Tax Revision No.723 of 1996 and Trade Tax Revision No.724 of 1996 preferred by the respondent (hereinafter referred to as 'the Assessee) under Section 11 of the Uttar Pradesh Trade Tax Act, 1948 (in short 'the Act'). The revision petitions related to the assessment year 1992-93 in respect of assessments framed under the Act and the Central Sales Tax, 1956 (in short 'the Central Act'). By the impugned order, the High Court held that the turnover of the base production in accordance with Clause (6) of the Notification No.1093 dated 27.07.1991 (hereinafter referred to as 'the Notification') has to be taken up for the whole of the assessment year.

3. Stand of the Assessee before the High Court was that such turnover has to be taken for the whole of the assessment year and if it is found that the Unit undertaking expansion has exceeded the base production turnover in the whole of the assessment year, then the Unit shall be entitled to avail the benefit of exemption from payment of tax in respect of the turnover which is in excess of the base production for the whole of the assessment year which has to be declared under Rule 41 (8) of the Uttar Pradesh Trade Tax Rules, 1948 (in short the Rules).

4. Stand of the revenue, on the other hand, was that such interpretation goes against the very object of Section 4-A of the Act.

5. Brief facts giving rise to the present revisions are that the assessee is a Private Limited Company

incorporated under the Companies Act, 1956 having its registered office at B-67, South Extension, Part-II, New Delhi, and factory at Plot No.34- A/2, Site No.4, Sahibabad in the district Ghaziabad. Applicant was engaged in the business of manufacture of bulk drugs. It was granted eligibility certificate under Section 4A of the Act under Notification No. ST-II-1093/XI-7(42)-86-UP Act-XV/48- Order 91, dated 27.07.1991 in respect of the expansion undertaken by the assessee to manufacture paracetamole, which is bulk drug. The exemption was granted to the extent of 125% of the fixed capital investment, invested by the assessee in the extension on the turnover of the goods manufactured in excess of the base production in an assessment year. The base production was fixed at 172.8 MT. thus, the assessee was entitled for the benefit of exemption under Section 4-A of the Act in assessment year on the production exceeding the base production of 172.8 MT. During the assessment year 1992-93 total sales made by the assessee from 01.04.1992 to 31.03.1993 was 382.125 MT. both within the State of the UP as well as outside the State of UP including the central sales. Thus, according to the assessee, it was entitled for the benefit of exemption under Section 4-A of the Act on the turnover of the production of 209.325 MT. It claimed that during the assessment year in dispute, returns had been filed disclosing the total sales made by it and had claimed exemption from payment of tax both under the Act and Central Act only to the extent of sales made by it to the extent of 140.75 MT. during the whole year. Assistant Commissioner, Trade Tax Ghaziabad, vide his assessment order dated 01.03.1995 accepted the books of account and the disclosed turnover but restricted the claim of exemption to the extent of 70.325 MT instead of 140.75 MT. Aggrieved by the order of the assessing authority, assessee filed appeals before Deputy Commissioner (Appeals), who vide order dated 31.07.1995 dismissed both the appeals. Deputy Commissioner (Appeals) held that the exemption cannot be claimed from payment of tax upto the period till the base production turnover has not been achieved. He was of the view that exemption was available only after the date on which base production is achieved, i.e. if the base production is achieved in third month then the applicant would be entitled for exemption from the fourth month. Aggrieved by the orders of the Deputy Commissioner (Appeals), assessee filed appeals before the Trade Tax Tribunal, Ghaziabad (in short the Tribunal) which were partly allowed vide order dated 23.07,1996. Tribunal held that base production has been achieved on 23.09.1992 and, therefore, whatever the sale was made by the applicant upto 23.09.1992 shall not be entitled for exemption and the applicant was entitled for exemption only after 23.09.1992 on the production in excess of the base production. Against Tribunals order, assessee moved the High Court in revision.

6. The High Court found substance in the plea of the assessee and as noted above, set aside the order of Tribunal.

7. In support of the appeal learned counsel for the appellant submitted that the interpretation given by the High Court goes against the very object of the Notification and Section 4-A of the Act. Learned counsel for the respondent-Assessee, on the other hand, supported the judgment of the High Court.

8. To adjudicate the issue involved in the appeal, it is necessary to refer to Section 4A, Section 7(1-A) of the Act, Notification No.ST-II-1093/XI-7(42)-86-U.P. Act-XV/48-Order- 91, dated 27.7.1991 and Rule 41. They read as follows: Section 4A. Exemption from Trade Tax in certain cases.

(1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or any District or part of District in particular, it may on application or otherwise, in any particular case or generally by notification, declare that the

turnover of sales in respect of such, goods by the manufacturer thereof shall, during such period not exceeding twelve years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may be date of the notification or a date prior or subsequent to the date of such notification, and where no date is so specified from the date of first sale by such manufacturer if such sale takes place within six months from the date of starting production and in any other case from the date following the expiration of six months from the date of starting production, and subject to such conditions as may be specified be exempt from trade tax on sale of goods whether wholly or partly or be liable to tax at such reduced rate as it may fit:

Provided that no exemption shall be granted where the facility of concession or exemption has been availed under Section 4- AAA.

(2) It shall be lawful for the State Government to specify in the notification under sub-Section (1) that the exemption from, or reduction in the rate of tax, shall be admissible - (a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

(b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October, 1982; or (bb) in respect of those finished goods which are manufactured in a unit which has undertaken backward integration; or (c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification or modernization on or after April 1st, 1990, and which, in case of diversification are different from the goods manufactured before such diversification, and in the case of expansion or modernization are additional production as a result of such expansion or modernization; and

(d) only if the manufacturer furnishes to the assessing authority and Eligibility Certificate granted by such officer, in accordance with such procedure, as may be specified;

(e) with effect from a date prior to the date of the notification.

(5) "Unit which has undertaken expansion diversification or modernization" means an industrial undertaking

(a) of a dealer who is not a defaulter in payment of any dues under this Act or the Central Sales Tax Act, 1956 or under any loan, scheme, administered by the Pradeshiya Industrial and Investment Corporation of Uttar Pradesh regarding trade tax sale or purchase of goods; (b) whose first date of production of goods

(i) of a nature different from those manufactured earlier by such undertaking in case of units undertaking diversification, and

(ii) manufactured in excess of base production in such undertaking in case of units undertaking expansion or modernization, falls at any time after March 31st, 1990 (c) the production capacity whereof has increased by at least twenty five percent as a result of expansion or modernization, or wherein goods of a nature different from those manufactured earlier are manufactured after diversification;

(d) wherein an additional fixed capital investment of at least twenty five percent of such original

fixed capital investment (without providing for depreciation) is made.

Notification No. ST-II-1093/X1-7(42)-86-U.P. Act- XV/48Order-91, dated 27.2.1991:

Whereas the State Government is of the opinion that for promoting the development of certain industries in the state, it is necessary to grant exemption from or reduction in rate of tax to new units and also to units which have undertaken expansion, diversification or modernization: Now, therefore, in exercise of the powers under Section 4A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), hereinafter referred to as the "Act" the Governor is pleased to declare that : -

1(A) In respect of any goods manufactured in a new unit, other than the units of the type mentioned in Annexure II established in the areas mentioned in Column 2 of Annexure I, the date of starting production' whereof falls on or after first day of April, 1990 but not later than 31st day of March, 1995, no tax shall be payable, or, as the case may be, the tax shall be payable at the reduced rates, as specified in Column 4 of Annexure I, by the manufacture thereof on the turnover of sales of such goods, for the period specified in Column 3 of the said Annexure 1, or till the maximum amount of tax relief by such exemption from or reduction in the rate of tax as specified in Column 5 of annexure 1 is achieved, whichever is earlier. The period specified in Column 3 of the said Annexure shall be reckoned from the date of the first sale,, or the date following the expiration of six months from the date of starting production, which ever is earlier. (B) (1) in respect of any goods manufactured in a unit other than the units of the type mentioned in Annexure II, which has undertaken expansion, diversification or modernization' or of after April 1, 1990 but no later than March 31st, 1995, in the areas mentioned in Column 2 of annexure 1, no tax shall be payable or, as the case may be, the tax shall be payable at the reduced rates specified in Column 4 of Annexure 1, by the manufacturer thereof for the period in Column 3 of the said Annexure 1, or till the maximum amount of tax relief by such exemption from or reduction in rate of tax as specified in Column 5 of annexure 1 is achieved, which ever is earlier, on the turnover of sales;

(a) of the quantity of goods manufactured in excess of the base production in the case of units undertaking expansion or modernization; and

(b) of goods manufactured by the unit which are of a nature different from those manufactured earlier by such unit in the case of units undertaking diversification. (2) the period of such facility shall be reckoned from the first date of production.

(i) of goods of a nature different from those manufactured earlier by such unit in case of diversification; and

(ii) of goods manufactured in excess of the base production in the case of units undertaking expansion or modernization.

2. The facility of exemption from or reduction in the rate of tax shall be subject to the following conditions in addition to the conditions referred to in Section 4A of the Act.

(i) that the new unit is licensed or in respect whereof a letter or intent has been issued, or which is registered, permanently or otherwise, by the appropriate authority in accordance with any law for the time being in force relating to licensing or registration of such units;

(ii) that the new unit is established on land or building or both owned or taken on lease for a period

of not less than fifteen years by such unit or allotted to such unit by the State or the Central Government or any Government Company or any Corporation owned or controlled by the Central or the State Government;

(iii) that the exemption from tax or, as the case may be, reduction in the rate of tax shall be admissible only in respect of such goods manufactured by the unit and such by-products and waste products as are mentioned in the eligibility certificate issued to such unit under Section 4A of the Act;

(iv) that the said unit furnishes to the assessing authority concerned and eligibility certificate granted in this behalf by the General Manager, District Industries Centre, Area Development Officer (Industry) of the concerned industrial Development Authority,

Additional or Joint Director of Industries of the range or Additional or Joint Director of Industries of the concerned Industrial Development Authority, as the case may be.

3. Fixed capital investment' may, unless otherwise established, be determined in the case of an industrial undertaking financed by a term loan advanced by a public financial institution or a Schedule Bank according to the certificate to that effect issued by such institution or the Bank and in any other case, according to -

(a) the value of the land certified by the Collector in accordance with the procedure laid down for determination of the value of land for the purpose of payment of stamp duty under the Indian Stamp Act, 1899.

(b) The value of building certified by an evaluator approved by the Income Tax Department for the purpose.

(c) The value of plant, machinery, equipment, apparatus and components certified by a Chartered Accountant.

4. In determining the fixed capital investment as defined in clause (4) of the Explanation in case of new units' or additional fixed capital investment' referred to in sub clause (d) of clause (5) of the Explanation in case of units which have undertaken expansion, diversification or modernization' the investment in only such land, building, plant, machinery, equipment, apparatus and component or, as the case may be, such additional land, building, plant, machinery, equipment, apparatus and component shall be taken into account as were acquired on or before the relevant date of commencement of the period of facility notified under sub-section (1) of Section 4A of the Act.

5. Base production of unit undertaking expansion or modernization shall be deemed to be -

(a) maximum production achieved during any one of the preceding five consecutive assessment years, or

(b) 80 per cent of the installed annual production capacity, whichever is higher.

6.(a) Turnover of sale of goods in any assessment year to the extent of the quantity covered by production of that year and the stock of base production of previous years shall be deemed to be the

turnover of base production. (b) Only the turnover of goods in any assessment year in excess of the quantity referred to in clause (a) shall be entitled to the facility of exemption from or reduction in the rate of tax. ANNEXURE I

## ANNEXURE II

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### RULE 41- Submission of returns and assessment of tax

(1) Every dealer liable to tax, the aggregate of whose turnover, of purchases and sales in any assessment year exceeds rupees five lakhs, shall before the expiry of the next succeeding month, submit to the Trade Tax Officer a monthly return of his turnover in Form IV, giving Annexure I and II thereof, detailed information, according to Code numbers notified by the State Government from time to time, in respect of each category of goods in which he carries on business:

Provided that the return for the month of February shall be submitted to the Trade Tax Officer on or before the twentieth day of March:

Provided further that the dealer may, instead of submitting a return as aforesaid, estimate his turnover for the years on the basis of the turnover admitted by him in his return, or disclosed in his account books, whichever is greater, for the immediately preceding year, calculate the amount of tax payable thereon and deposit a sum equal to one twelfth thereof during each of the first two months of every quarter, and deposit the balance of tax due on the turnover admitted by him in his return for the relevant quarter, which shall be prepared and submitted in the manner laid down in this rule.

(8) Upon the expiry of the assessment year, the Assessing Authority shall, after such enquiry, as he may deem necessary, determine the turnover of sales or of purchases, or both, as the case may be, of the dealer in respect of the assessment year and shall assess the tax payable thereon;

Provided that in the case of a dealer to whom sub-section (1) of Section 18 applies or owner or incharge of the vehicle to whom sub-section (1) of Section 28-B applies, the assessing authority may make an assessment order and assess the tax payable thereon before the expiry of the assessment year:

Provided further that, before determining the turnover of the dealer to the best of his judgment, the assessing authority shall cause a notice to be served on the dealer, stating the reasons, for non-acceptance of the turnover of sales or purchases or both, as disclosed in the returns, if any, submitted by him and shall give him a reasonable opportunity of furnishing his reply thereto.

### Section 7.-Determination of turnover and assessment of tax.

(1-A) Before submitting the return under sub- Section (1) or alongwith such return, the dealer shall deposit, in such manner as may be prescribed, the amount of due on the turn- over shown in such return.

9. A similar issue came up for consideration in Commissioner of Trade Tax, U.P. Vs. Modipan Fibres Co. (2006 (6) SCC 577). In that case, this Court was considering an appeal filed by the

present appellant where challenge lay to the decision rendered by the High Court in Modipan Fibres Co. Vs. C.T.T. (2000 UPTC 319).

10. The said case was relied upon by the High Court in support of its conclusions which are challenged in the present appeal. In the said case, this Court inter-alia observed as follows:

"Purpose of granting exemption under the Notification dated 27.7.1999 was to promote the development of certain industries in the State. By the said Notification exemption from payment of tax or reduction in rate of tax was granted to new units as also to the units which had undertaken expansion, diversification or modernization. The units of dealers in all the revisions are units, which had undertaken expansion/modernization. The units of the dealers (respondents) are covered by Clause (1- B) (a) of the Notification. Exemption granted is on the turnover of sales of quantity of goods manufactured in excess of base production. Under clause 6(a) of the said Notification, turnover of sale of goods in any assessment year to the extent of quantity covered by the base production of that year and balance stock of base production of previous years, shall be deemed to be turnover of the base production. Under clause 6(b) of the Notification, the facility of exemption can be availed on the turnover of goods in any assessment year" in excess of the quantity referred to in sub-clause (a) of clause 6. A conjoint reading of Clause (1- B) (a), clause 6(a) and 6 (b) makes it clear that the dealer is entitled to claim exemption in respect of the turnover of sale of goods of an assessment year in excess of the base production. "Assessment Year" has been defined in Section 3 (j) to mean the twelve months ending on March 31. If that be the case then the extent of entitlement to exemption will depend on the sale of goods in the assessment year minus the base production determined under the Act. Simply because dealer has to file returns from month to month and deposit the admitted tax at the time of filing of the return does not mean that question of exemption on the turnover of the production in excess of the base production can be considered only after the base production is achieved. Returns filed every month and the tax paid would be subject to adjustment at the time of the finalization of the assessment. Intention of the legislature is clear and unambiguous. Exemption is to be given on the turnover of sale of goods in an assessment year in excess of the base production. We do not find any substance in the submission advanced on behalf of the appellants.

11. In view of what has been stated in Modipans case (supra) while dismissing the appeal, the inevitable result is that the present appeal is without merit and deserves dismissal which we direct. No costs.