SUPREME COURT OF INDIA

Assistant Commr.(Ct) Ltu

Vs.

Amara Raja Batteries Ltd.

C.A.No……..of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

27.07.2009

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. Interpretation of GOMs No. 108 dated 20.05.1996 falls for our consideration in this batch of appeals which are being disposed of by this common judgment.

3. Respondents are owners of various industries. Indisputably, the Government of Andhra Pradesh in order to encourage industrialization in the entire State had been evolving various schemes in terms whereof incentives were to be provided to the entrepreneurs not only for the establishment of new units but also expansion thereof. Such incentives were being granted in various forms such as subsidy, deferment/ tax holiday, rebate in electricity charges, interest subsidy, etc.

For the aforementioned purpose, government orders were being issued from time to time since 1989. By reason of GOMs No. 498 dated 16.10.1989, the government provided investment subsidy at various rates depending upon the backwardness of different districts of the State apart from granting deferment/ tax holiday on sales tax.

4. The said GOMs No. 498 dated 16.10.1989 was followed by the GOMs No. 117 dated 17.03.1993

which was operative from 3.10.1992 to 31.03.1997.

5. Another GOMs No. 386 dated 26.09.1994 was issued by way of amendment to GOMs No. 117 dated 17.03.1993 on representations made by various entrepreneurs in terms whereof benefits were sought to be conferred on expansion/modernization. In the said GOMs various terms were defined including the term base turnover which is to the following effect: Base Turnover : the best production achieved during three years preceding the year of expansion or the maximum capacity expected to be achieved by the Industry as per the appraisal made by the Financial Institution before funding the project, whichever is higher.

6. Thereafter, GOMs No. 75 dated 14.03.1996 was issued by way of a clarification; the relevant portion whereof reads as under: After careful examination of the matter, Government hereby clarify that tax deferral would be only on the amount of tax payable on additional local sales over and above the previous level of local sales before expansion. In case the local sales after expansion is less than or equal to the previous level, the actual tax liability.

7. The Government of Andhra Pradesh came up with a new industrial policy called `Target 2000' by way of GOMs No. 108 dated 20.05.1996. In this GOMs issued for enforcing the said policy, all other GOMs were mentioned except GOMs No. 75 dated 14.03.1996. Apart from the grant of subsidy upto 20% of the fixed capital not exceeding Rs. 20,00,000/-, tax holiday was declared for a period of seven years and deferment of tax for a period of fourteen years, apart from other benefits specified therein.

8. We may notice some provisions of GOMs No. 108 dated 20.05.1996 which are as under:

4. After careful review and examination of the package of incentives and all the other connected factors, in modification of all the earlier orders, Government have decided to introduce a New Industrial Policy called TARGET-2000 in order to accelerate Industrial Development of the State and issued it

*** *** *** 7.00 Expansion projects:-

Existing industrial units, in eligible areas, setting up expansion project in products other than those listed in Annexure, involving enhancement of fixed capital investment by at least 25% as well as enhancement of capacity by 25% for the products of the same product-line, will be eligible for sales tax deferral or sales tax exemption for the enhanced turnover above the base turnover as defined for a period of 14 years or 7 years respectively, subject to a ceiling of 135% of additional fixed capital investment made, from the date of commencement of commercial production by the expansion project. Base turnover for this purpose shall be the best production achieved during three years preceding the year of expansion or the maximum capacity expected to be achieved by the industry as per the appraisal made by the financial institution before funding the project, whichever is earlier. The same limits and conditions as specified in para 6.03 and 6.05 above will apply.

*** *** *** 16.00 The decisions of the State Level Committee shall be final in scrutinizing and deciding the eligible investment and sanctioning the incentives for eligible industries. *** *** *** 18.00 These orders shall take effect from 15.11.1995 and will be in force up to 31.03.2000.

9. Indisputably, in terms of the said GOMs No. 108 dated 20.05.1996, the respondents herein

applied for and was granted eligibility certificate on their project for expansion of their factory as a result whereof the benefit of deferment on sales tax to the extent of 13.5% of the capital investment made by them was conferred. It is also not in dispute that the respondents thereafter claimed the benefit of deferment on sales tax payable by them on their production in their expanded units which were, however, either rejected or restricted to a lesser amount while passing the orders of assessment by the assessing officers under the Andhra Pradesh General Sales Tax Act.

10. Some matters were taken to the Sales Tax Appellate Tribunal. By reason of a judgment and order dated 27.09.2003, the Tribunal held: For the all the above reason, we hold that for availing the benefit of deferment of tax under the Eligibility Certificate granted to the appellant by the industries department, the appellant has to satisfy not only the achievement of base production as per G.O. Ms. No.108 but has to achieve the previous level of local sales under APGST Act. In this case, there is no dispute that the appellant achieved base production by the cut off date 11.2.98 and also the level of previous local sales of the base year under APGST Act in as much as previous level as stated by the Dy. Commissioner is Rs.8,79,98,708/- whereas according to Dy. Commissioner himself the APGST Act paid the appellant upto out off date during the assessment year 1997-98 is Rs.9,02,10,115/- which is more than the tax paid under APGDT Act during he base year and therefore the appellant is entitled to avail deferment from 12.2.98 onwards which is rightly granted by the assessing authority and the Dy. Commissioner erred in holding that the appellant should also achieve the previous level of sales under CST Act for the purpose of availing

deferment benefit and therefore we come to the conclusion that the revision made by the Dy. Commissioner is not justified in the facts and circumstances and the same is not valid and legal and therefore not sustainable and liable to be set aside by allowing the TA.

11. Several writ applications were filed thereagainst. Some of the writ applications were filed questioning the orders of assessment, without availing the remedies available to the assessee under the Andhra Pradesh General Sales Tax Act.

12. By reason of the impugned judgment, the High Court opined that the definition of the term base turnover referred only to the quantum of production and not the turnover thereof and hence the Tribunal's judgment to that effect was held to be erroneous.

13. Mr. I. Venkatanarayanan, learned senior counsel appearing on behalf of the State, would urge:

(i) The High Court committed a serious error insofar as it failed to take into consideration that GOMs No. 108 was to be read with other GOMs preceding thereto.

(ii) The High Court should not have entertained petitions directly against the orders of assessment as the question as to whether the entrepreneurs had fulfilled the conditions laid down in the said GOMs or not were required to be considered by the respective assessing authorities.

14. Mr. T.L.V. Iyer, Mr. S. Ganesh, learned senior counsel, Mr. K.V. Vishwanathan and Mrs. Shally Bhasin Maheshwari, learned counsel appearing on behalf of the respondents, on the other hand, urged: (i) The exemption notification having been valid for a period of five years, the conditions laid down therefor must be read literally keeping in view the terminologies used in paragraph 7 only. The principle of interpretation adopted by the High Court should be accepted as the GOMs refers to the quantity and/ or capacity and not the turnover.

(ii) GOMs No. 108 should be read literally and not along with other GOMs as the former was issued in modification of the earlier ones as even in some cases the State had issued the eligibility certificates in quantitative terms which would clearly go to show that even the authorities of the State had read the GOMs in that way. A different stand taken by them in that regard at a later stage has rightly been rejected by the High Court. (iii) The word modification would amount to an express repeal and/ or must be held to be issued in departure from the earlier GOMs. By reason of the GOMs No. 108 as exemption from payment of tax had been granted on the condition that the respondents would not collect the same from the consumers and the said condition having been complied with, even in equity, this Court should not interfere with the impugned order in exercise of its jurisdiction under Article 136 of the Constitution of India.

15. GOMs No. 108 dated 20.05.1996 referred to the earlier GOMs, which are 18 in number, except GOMs No. 75, only for the purpose of tracing the history thereof. Indisputably, the said Government Orders had been issued by the Government having regard to the liberalized state incentive schemes for setting up of new industries and/or expansion thereof.

16. A new industrial policy statement was issued in the year 1992. Pursuant to or in furtherance of the said industrial policy statement, various government orders were issued from 31.03.1993 to 21.11.1995.

17. It is in the aforementioned backdrop of events, the Government adopted a new industrial policy called `Target 2000'. The said policy was adopted in order to accelerate industrial development in the State.

18. The scheme for grant of the said incentive and/ or deferment or exemption from payment of sales tax was granted not only to the new industries but also to those entrepreneurs who had got expansion projects prepared.

19. Indisputably, the respondents had expanded their projects pursuant to or in furtherance of the said policy decision. The period for which the said policy was to remain operative was between 15.11.1995 and 31.03.2000. It was, therefore, valid for a fixed period.

As the period in question has a direct nexus with the scheme, in our opinion, it would not be correct to contend as has been done by Mr. Venkatanarayanan that the said policy decision should be read with earlier policy decisions. Reference to the earlier policy decision has nothing to do with the new scheme introduced by the Government. They have been referred to only for the purpose of tracing the history and to lay emphasis on the fact that the Government of Andhra Pradesh had from time to time issued appropriate notifications with a view to implement its liberalized State Incentive Schemes as also the industrial policy statement issued in the year 1992. Each of the Schemes, as noticed hereinbefore, operated in different fields. Had the intention of the Government of Andhra Pradesh been to continue with the old schemes, only the period therefor could have been extended from time to time. It was not necessary for it to issue notification introducing the new scheme. The said notification indisputably was issued in modification of all the earlier orders. What is meant by modification has been noticed by the High Court in its judgment in the following terms:

...The word `modification' means - `an alteration that does not change the general purpose and effect of that which is modified (as per West's Legal Thesaurus/Dictionary); and, `a change and alteration

or amendment, which introduces new element into the details or cancel some of them but leave the general purpose and effect of the subject matter intact' (as per the Judicial Dictionary - by L.P. Singh P.K. Majmudar...

20. The State advisedly used the word `modification'. When the said GOMs No. 108 was issued, some of the earlier notifications might be in force. There cannot, however, be any doubt whatsoever that the said GOMs is totally an independent one and a complete code by itself and in that view of the matter, it is not necessary at all to refer to the earlier GOMs for the purpose of either its construction or implementation.

21. Paragraph 7 of the said GOMs refers to projects for expansion. Setting up of such expansion projects in products other than those listed in the Annexure attached thereto refers to enhancement of capacity by 25% thereof for which purpose only the base turnover was to be the best `production achieved' during three years preceding the years of expansion or the `maximum capacity expected to be achieved' by the industry. The notification used the words `production achieved' and `maximum capacity expected to be achieved'. It did not use the word `turnover'. It did not provide that the amount of sales tax paid in the earlier years will have any relevance for the purpose of enforcement of the scheme. The said GOMs does not refer to maintenance of local sales. The term `base turnover' would, therefore, in our opinion refers to the turnover of the quantity in goods and not its monetary value.

22. `Base turnover' was defined differently from that of the earlier definitions given in various earlier orders which clearly discloses the intention on the part of the government. If what was provided in the earlier government orders were to be followed, nothing prevented the State to adopt the same. We have noticed hereinbefore that even on earlier occasions the State had been issuing clarificatory notifications as has been done in the case of GOMs No. 75. It has rightly been pointed out that even in GOMs No. 386, the State level Committee was given liberty to adopt in the place of production the turnover in value but such liberty had not been granted to the State Level Committee or to any other authority under the GOMs in question.

23. An exemption notification should be given a literary meaning. Recourse to other principles or canons of interpretation of statute should be resorted to only in the event the same give rise to anomaly or absurdity. The exemption notification must be construed having regard to the purpose and object it seeks to achieve. The Government sought for increase in industrial development in the State. Such a benevolent act on the part of the State, unless there exists any statutory interdict, should be given full effect. [See Vadilal Chemicals Ltd. v. State of A.P. and Others (2005) 6 SCC 292]

24. We may notice that this Court in Innamuri Gopalan and Others v. State of Andhra Pradesh and Anr. [(1964) 2 SCR 888] held: ...We do not feel persuaded to accept this argument. No doubt, statutes have to be construed as a whole so as to avoid any inconsistency or repugnancy among its several provisions, but if there is nothing to modify, nothing to alter, or nothing to qualify the language of a statute, the words and sentences have to be construed in their ordinary and natural meaning [vide 36 Hals (3rd Edn.) s. 585]...

The said dicta was followed by this Court in Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others [AIR 1970 SC 755], in the following terms: ...It is well established that in a taxing statute there is no room for any intendment but regard must be had

to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority... The same in turn has been followed in Parle Biscuits (P) Ltd. v. State of Bihar and Others [(2005) 9 SCC 669], stating: 19. It is well established that in a taxing statute there is no room for any intendment and regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here. In this connection we may refer to the observations of Lord Watson in Salomon v. Salomon Co.5 (AC at p. 38): (All ER p. 41 C-D) `Intention of the legislature' is a common, but very slippery phrase, which, popularly understood, may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature probably would have meant, although there has been an omission to enact it. In a court of law or equity, what the legislature intended to be done or not to be done can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication.

25. The exemption notification furthermore as is well known should be construed liberally once it is found that the entrepreneur fulfills all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled to the benefit thereof, the same should not be denied. [See Commissioner of Sales Tax v. Industrial Coal Enterprises [(1999) 2 SCC 607]

26. In Commissioner, Trade Tax, U.P. v. DSM Group of Industries [(2005) 1 SCC 657], this Court opined that when an application for exemption is filed for an expansion or diversification, Explanation 5 appended to Section 4-A(6) specifying the word `unit' must receive a liberal construction to include not only a new unit but also a unit which is sought to be expanded, modernized or diversified, stating :

25...As seen above, the term unit has the meaning as defined in Section 4-A. As we have already seen, Section 4-A 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. In M/s. G.P. Ceramics Pvt. Ltd. v. Commissioner, Trade Tax, UP. [(2009) 2 SCC 90], this Court held:

29. It is now a well established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the same, the exemption notification should be construed liberally. [See also A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala and Others (2007) 2 SCC 725]. In State of Orissa v. Tata Sponge Iron Ltd. [(2007) 8 SCC 189], this Court held:

21. It is furthermore a well-settled principle of law that an exemption notification must be liberally construed.

27. We may furthermore notice that construction of the words `base production' came up for consideration before this Court in Commissioner of Trade Tax, U.P. v. Modipan Fibres Co. [(2006) 6 SCC 577] wherein it was opined:

8. 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 modernisation. The units of dealers in all the revisions are units, which had undertaken expansion/modernisation. The units of the dealers (the 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), clauses (6)(a) and (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 (sicnotification). Simply because the 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 the 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 finalisation 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.

28. Although the word `modification' may not be held to be expressly repealing the earlier notifications, indisputably, the State intended to depart from the conditions laid down in the earlier GOMs. If the condition of local sale, thus, had not been incorporated in the GOMs, we are of the opinion that no case has been made out for incorporating the same by reference or otherwise.

29. Furthermore, even in equity, the State cannot be permitted to alter its stand as pursuant to or in furtherance of the representation made by it the entrepreneurs had not collected tax from its consumers to which they were otherwise entitled to.

30. Mr. Venkatanarayanan also is not correct in contending that in a situation of this nature, the High Court should not have entertained the writ applications directly from the orders of assessment.

31. As the Tribunal had already expressed its views in the matter, it has rightly been contended that appeal to the appellate authority as also the Tribunal would have been an idle formality.

32. Civil Appeals arising out of SLP (C) Nos. 18795, 19104, 21482 of 2006, 489, 12440 and 12151 of 2007 are dismissed and other appeals being Civil Appeals arising out of SLP (C) Nos. 14640 and 17903 of 2007 filed by Suryachandra Paper Mills Limited are allowed with costs. Counsel's fee assessed at Rs.50,000/- in each case.