

SUREME COURT OF INDIA

State of Haryana

Vs.

Anil Pesticides Ltd.

C.A.No.3685 of 2003

(D.K.Jain and P.Sathasivam JJ.)

06.05.2010

ORDER

1. This appeal, by special leave, is directed against the judgment and order dated 5th August 2002, passed by the High Court of Punjab & Haryana at Chandigarh in CWP No.18436 of 2001. By the impugned judgment, the High Court has dismissed the writ petition filed by the State of Haryana, the appellant herein, affirming the decision of the Commissioner and Secretary to the Government of Haryana, Industries Department, holding that 'Monocrotophos (Technical)' and 'Dichlorvos (Technical)', being manufactured by the respondent (hereinafter referred to as the "Dealer") are "chemicals" and not "pesticides" within the meaning of Entry 43 of the negative list as contained in Schedule III to the Haryana General Sales Tax Rules, 1975 (for short "the Rules").

2. The State of Haryana announced an industrial policy for the period 1st April 1988 to 31st March 1997, wherein incentive by way of sales tax exemption was to be given for the industries set up in backward areas of the State. During the year 1994-95, the Dealer set up an industrial unit at village Badgodam, District Panchkula, a backward area, for manufacturing, amongst others, 'Monocrotophos (Technical)' and 'Dichlorvos (Technical)'.

3. It claimed sales tax exemption in terms of the said industrial policy and applied for grant of an Eligibility Certificate under Rule 28A of the Rules.

4. On or about 3rd January 1996, a notice was given as regards the intention of the State to amend Rules in respect whereof a draft was circulated for information of persons likely to be affected thereby so as to enable them to file objections and suggestions thereto. Ultimately, amendments in terms of the said draft Rules were notified on 16th December 1996, by the Haryana General Sales Tax (Fifth Amendment) Rules, 1996 and certain more items were included in Schedule III. One of the items so included in the list was Item No.43--"Pesticides manufacturing and Formulations." The said notification had the following two Notes:- "Note1. The above list shall not be applicable to the industrial unit set up under the Rural

Industries Scheme except the units covered under any of the entries mentioned at serial Nos. 1,2,4 and 20.

5. Note 2. The Industrial units in which investment has been made upto 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefit related to the extent of investment made upto the 3rd of January, 1996. Only those assets will be included in the fixed capital investment which have been installed or erected at site and have been paid for.

6. The anticipated cost of the project will be taken on the basis of documents furnished to a financial institution or banks for drawing a loan and which have been accepted by the financial institution or bank concerned for sanction of loan".

7. The effect of Note 2, with which we are concerned, was that the industrial units which had made investment upto 25% of the anticipated cost of the project and which had been included in the negative list in Schedule III for the first time by virtue of the said notification would be entitled to the sales tax exemption related to the extent of investment made upto 3rd January 1996. On 28th May 1997, Note 2 was omitted deeming the same to have always been omitted.

8. The application filed by the Dealer was considered by a High Level Screening Committee, which was of the opinion that the said items were covered under the category of "pesticides" falling in Entry 43 of the negative list and, therefore, in view of notification dated 16th December 1996, issued in terms of Section 64 of the Haryana General Sales Tax Act, 1973 (for short "the Act"), the Dealer was not entitled to sales tax exemption. The application of the Dealer for grant of benefit of sales tax exemption was thus, rejected.

9. Feeling aggrieved by this decision, the Dealer preferred an appeal before the Commissioner and Secretary to the Government of Haryana, Industries Department, who, by his order dated 25th May, 2001 allowed the appeal and held that the items manufactured by the Dealer did not fall in the category of "Pesticides and formulations" as referred to in Entry 43 of the negative list and, therefore, the Dealer was entitled to claim sales tax exemption in respect of chemicals manufactured by them. He ordered that the Eligibility Certificate, as applied for by the Dealer, be issued. The said decision was challenged by the appellant by preferring writ petition in the High Court. As stated above, the High Court having dismissed the writ petition, the appellant is before us in this appeal.

10. It appears that notification dated 16th December 1996 was challenged by some of the industrial units whose products were included in the negative list for the first time by virtue of the said notification, before the Punjab & Haryana High Court. Having failed before the High Court, the Dealers filed appeals before this Court, inter-alia, contending that the notification deleting Note 2 to Schedule III with retrospective effect and thereby disentitling the Dealers to the benefit of exemption was illegal because Section 64(2A) of the Act had come into force in the year 2001. Accepting the said plea of the *Haryana & Ors.*¹ held that

afore-extracted Note 2 could not be given retrospective effect. It was observed thus:- (Para 44, SCC) "By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect."

11. Learned counsel for both the parties submit that they would be satisfied if without going into the question whether the afore-noted two items manufactured by the Dealer are "pesticides" or "chemicals", the appeal is disposed of in terms of the afore-extracted paragraph in the case of Mahabir Vegetable Oils (*supra*).

12. Accordingly, the appeal is partly allowed and the impugned order is modified to the extent that the case of the Dealer shall be considered afresh by the authorities concerned in terms of the said decision of this Court. The relief, to which the Dealer would be entitled to, shall be determined as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order. There will be no order as to costs.

¹(2006) 3 SCC 620