

Shivganga Papar Converters Pvt. Ltd. & Another

v.

The Union Territories of Daman & Diu & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE S.A.
BABDE

Civil Appeal No. 6783 Of 2004 | 06-02-2014

1. This appeal is directed against the judgment and order passed by the High Court of Judicature of Bombay in Writ Petition No. 7298 of 2002, dated 11.12.2003. By the impugned judgment and order, the High Court has dismissed the Writ Petition filed by the appellant(s) wherein the appellant(s) had challenged the Notification Nos. DMN/CST/2001-02/01 and DMN/CST/2001-02/02, both dated 17.01.2001.

2. The Brief facts of the case are: One M/s. Sharda Packaging Industries was having its establishment at Bhimpore, Daman and was registered as a dealer under the provisions of Goa, Daman and Diu Sales Tax Act, 1964 (for short, "the Local Act") and the Central Sales Tax Act, 1956 (for short, "the Central Act") vide registration No.60/1/2791 dated 17.09.1999 and had provisional registration certificate issued by the General Manager, District industries, Central Daman. The certificate was basically for the manufacture of articles such as corrugated board and boxes, kraft paper rolls, glue, starch stitching wire, waste paper, ink, plastic twine and other paper products. M/s. Sharda industries vide letter dated 18.03.2000 had informed the respondents that they had not yet commenced production as they have decided not to carry out manufacturing activity and therefore requested the respondent(s) to register them as trading and manufacturing dealer. Thereafter, M/s.Sharda Industries by an application dated 20.02.2001 had made a request for inclusion of items like computer stationery, computer consumables, note books, exercise books, registers, files plain or printed, printed forms/paper, telex/fax rolls, paper bags plain/printed, envelopes, stickers and labels, office stationery, offset printing/screen printing, BOPP tape, self adhesive tape etc. The registration certificate was amended with effect from 20.02.2001. Consequent to amendment of the registration certificate regarding the product to be manufactured, M/s.Sharda industries by their letter dated

24.02.2001, informed the respondents about commencement of manufacture of the products as per the amended registration.

3. The goods manufactured and sold by M/s.Sharda Industries were exempted from payment of sales tax, since the said goods would fall under entry 68 of Second Schedule to the Local Act. On 08.03.2001, a sale deed was executed in favour of M/s. Shiv Ganga Paper Convertors Pvt. Ltd. - appellant No. 1, wherein, the Sharda Industries conveyed and transferred their entire running business along with their immovable properties in favour of appellant No.1. Consequently, the appellant(s) requested for registration and made an application for registration as dealer under Section 11 of the Local Act, which was granted to them under the Local Act as well as the Central Act bearing No. DA/6497 and DA(CST)/5950 respectively with effect from 08.03.2001.

4. The Administration of the Union Territory of Daman and Diu in exercise of the powers conferred under sub-Section (2) of Section 10 of the Local Act and Section 8(5) of the Central Act issued Notification for the purpose of Local Act as well as for the purpose of the Central Act. The said notification read as under:

"U.T. Administration Of Daman And Diu

Administrator's Secretary Moti Daman - 396220

No. Dmn/st/4-1/99/1 Dtd: Dec 31, 1999

NOTIFICATION

In exercise of the powers conferred by sub-section (2) of Section 10 of the Goa, Daman and Diu Sales Tax Act, 1964 (Act 4 of 1964) as applicable to the Union Territory of Daman and Diu, the Administrator of Union Territory of Daman and Diu is hereby pleased to omit Entry No. 68 and Entry No. 85 of the Second Schedule appended to the said Act.

This Notifications shall come into force from the date of publication the Official Gazette.

By order and in the name of the

Administrator of Daman & Diu

Sd/-

Assistant Secretary (Finance)

The first Notification No.DMN/ST/4-1/99/1, dated 31.12.1999 omitted Entry No. 68 and Entry No. 85 of the Second Schedule to the Local Act from the date of publication of the Notification. Thereafter, the Administration of the Union Territory of Daman and Diu on the same date, i.e. on 31.12.1999 issued another Notification. The relevant portion of the said notification reads as under:

U.T. ADMINISTRATION OF DAMAN AND DIU

ADMINISTRATOR'S SECRETARY MOTI DAMAN - 396220

No. DMN/ST/4-1/99/2 Dtd: Dec. 31,1999

NOTIFICATION"

5. In exercise of the powers conferred by the sub-section (1) of Section 10A of the Goa, Daman and Diu Sales Tax Act, 1964 (Act 4 of 1964) as applicable to the Union Territory of Daman and Diu, the Administrator of Union Territory of Daman and Diu having considered it necessary so to do in the public interest,

hereby exempts from payment of sales Tax leveled under the said Act on sale of goods manufactured, processed or assembled in the Union Territory of Daman and Diu by an Small Scale Industry/Medium Scale Industry/Large Scale Industry, registered as such by a competent authority, except those of high polluting nature as declared by the Central Government and mentioned in the Annexure appended hereto, for a period of 15 years/10 years/5 years respectively, from the date of first sale, or from the date of first consignment/branch transfer as the case may be, of the goods manufactured, processed or assembled, effected by such Small Scale Industry or Medium Scale Industry or Large Scale Industry on or after its date of registration under the Goa, Daman and Diu Sales Tax Act, 1964.

Provided that -

i. such Small scale Industry shall also obtain provisional registration from the district Industries Centre, Directorate of Industries, UT Administration of Daman and Diu on or before 31st December, 1999.

ii.

iii. Such Small Scale or Medium Scale or Large Scale Industry shall possess the required land or constructed premises for the industrial Unit either on leasehold basis or on Freehold basis on or before 31st December, 1999.

iv. Such Small Scale or Medium Scale or Large Scale Industry shall obtain provisional registration under Section 13 of the Goa, Daman and Diu Sales Tax Act, 1964 on or before 29th February, 2000.

v. Such Small Scale or Medium Scale or Large Scale Industry shall apply to Financial institutions or Banks for Loan for setting up of such Industrial Unit if such industrial unit is funded by or to be funded by loans on or before 29th February 2000.

vi. Such Small scale or Medium Scale or Large Scale Industry shall either purchase Plant and machinery or place confirmed purchase order for Plant and

Machinery mentioned in the Project report submitted while obtaining provisional registration under Section 13 of the Act on or before 31st March, 2000.

vii. Such Small Scale or Medium Scale or Large Scale industry shall commence commercial production on or before 31st December, 2002.

viii. In the case of a small Scale or Large Scale industry which has been established by transferring the ownership, shifting or dismantling, of a small scale or Medium scale or Large scale industry, the first sale for the purpose of this Notification shall be deemed to be the sale effected by the erstwhile Small Scale or Medium Scale or Large Scale Industry since the first commencement of the manufacture, processing or assembling by it notwithstanding the transfer of ownership, shifting or dismantling of such Small scale or Medium Scale or large Scale industry.

ix. In the case of a Small Scale or Medium Scale or large Scale industry enjoying the benefit of 15 years/10 years/5 years exemption under Entry No. 68 or Entry 85 of the second Schedule appended to the said Act as it stood immediately prior to the date of coming into force of the Notification No.DMN/ST-4-1/99/1 dated 31st December, 1999 it shall continue to enjoy the exemption for the balance of the un-expired period of 15 years/10 years/5 years respectively under this Notification.

x. The Small Scale/Medium scale/Large Scale Industry produces a certificate from the Directorate of Industries, U.T. Administration of Daman & Diu that the said industry is not of high polluting nature.

By order and in the name of the Administrator of Daman & Diu.

6. In the second notification No.DMN/ST/4-1/99/2 the State Government exempted from payment of sales tax levied under the Local Act on the sale of goods manufactured, processed or assembled in the Union Territory of Daman and Diu by small scale industry, medium scale industry and large scale industry,

registered as such, by a competent authority, except those industries of highly polluted industries as declared by the Central Government. The period of exemption was for 15 years/10 years/5 years depending upon the type of the industry, namely, small scale industry, medium and a large scale from the date of either the first sale or from the date of the first consignment or branch transfer as the case may be. The Notification also says that the exemption is of the goods manufactured, processed or assembled by a small scale industry or a medium scale industry or a large scale industry on or after its registration under the Local Act. Proviso appended to the Notification talks of the procedure that requires to be followed by a small scale industry to fall within the parameters of the Notification. It says that the small scale industry shall obtain a provisional registration from the District Industries Centre, Director of Industries, Union Territory, Administration of Daman and Diu on or before 31.12.1999. Since we are concerned with the small scale industry, we are not referring to the other conditions which are prescribed for medium scale or large scale industries.

7. The Notification further prescribes that the small scale industry shall obtain a provisional registration as prescribed under Section 13 of the Local Act on or before 29.02.2000.

8. Condition No. (vii) of the Notification provides that the small scale industry shall commence its production or before 31.12.2002. Clause (viii) of the Notification speaks of a small scale or a large scale industry, which has been established by the transfer of the ownership, shifting or dismantling of a small scale unit or a medium scale or a large scale industry the first sale for the purpose of the Notification shall be deemed to be the sale effected by the erstwhile small scale or medium scale or large scale industry.

9. Clause (ix) of the Notification is relevant for the purpose of this case. Therefore, it is extracted as under:

"In the case of a small scale or Medium scale or large Scale industry enjoying the benefit of 15 years/10 years/5 years exemption under Entry No. 68 or Entry 85 of the second Schedule appended to the said Act as it stood immediately prior to the date of coming into force of the Notification No. DMN/ST-4-1/99/1 dated 31st December, 1999 it shall continue to enjoy the exemption for the balance of the un-expired period of 15 years/10 years/5 years respectively under this Notification".

10. The other clause requires to be noticed by us is Clause (xi) of the Notification which authorizes the Union Territory Administration to issue directives for the proper understanding of the Notification, dated 31.12.1999.

11. Subsequently, the State Government in exercise of its powers under Section 10A of the Local Act and Clause (xi) of the Notification, dated 31.12.1999 had issued notification dated 17.10.2001 in the form of guidelines to understand the effect of the Notification, dated 31.12.1999. Clause (i) of the said Notification speaks of change in Constitution/ownership of industry, Clause (ii) speaks of change in class of goods or product line. The said notification is as under:

U.T. ADMINISTRATION OF DAMAN AND DIU

ADMINISTRATOR'S SECRETARIAT MOTI DAMAN - 396 220

NO.DMN/CST/2001-02/01 Dtd. Oct 17, 2001

NOTIFICATION

In exercise of the powers conferred by Section 10A of the Daman and Diu Sales Tax Act, 1964 (Act 4 of 1964) (hereinafter called the said Act), and clause (xi) of Notification No.DMN/ST/4/1/99/2 dated 31.12.1999, the Administrator of Union Territory of Daman & Diu having considered necessary so to do in the public interest hereby proclaims the following guidelines in respect of industries/dealers availing sales tax exemption.

1. Change in Constitution/ownership of industry:

Any Small Scale Industry which has obtained/applied for provisional registrations from DIC, Directorate of Industries, UT Administration of Daman & Diu on or before 31.12.1999 but did not obtain permanent registration on or

before 31.12.1999 shall not effect change in constitution, ownership and share holding pattern upto 31.12.2002 or till the industry obtains registration under Section 11 of the act, failing which the industry shall not be eligible for exemption under Section 10A of the act.

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2. Change in classes of Goods or product line:

Any industry registered under the Act availing sales Tax exemption shall not effect changes in class of goods being manufactured as stated in Certificate of Registration (Form No. S.T. IV or S.T. V issued under Rule 5 of the Daman & Diu Sales Tax Rules, 1964) after April 30, 2000. In case an industry effects any changes in classes of goods being manufactured for sale, then sale of such additional goods or classes of goods shall not be eligible for exemption and shall be taxed at applicable rates under the Act.

By order and in the name of the

Administrator of Daman & Diu.

Sd/-

Deputy Secretary (Finance)

12. It is pertinent to mention here that the said Sharda Industries was set up prior to 31.12.1999 and was availing tax benefit under Sections 4 and 10 of the Local Act read with Entry 68 of the Second Schedule which refers to exemption from sales tax of "any goods manufactured by any small scale industry".

13. The only question that arises in this appeal is whether the Notification, dated 17th October, 2001 issued by the State Government in exercise of its powers under Section 10A of the Goa Local Act and Clause (xi) of Notification No.DMN/ST/4-1/99/2 dated 31.12.1999 should be treated as independent Notification or Notification explaining the Notification earlier issued, dated 31.12.1999 and thus operative from the date of the original Notification.

14. It is relevant to notice at this stage that the said Entry 68 was inserted into the Local Act by Notification dated 01.07.1983.

15. Since the appellant(s) industry was not eligible for claiming exemption on computer stationery, note books/exercise books or computer consumables etc. other than corrugated boxes, Sales Tax Officer had issued a show cause notice, dated 17.05.2002 inter alia informing the appellant(s) that it can claim exemption only on corrugated boxes and not on any other items for the simple reason that its predecessor industry, namely M/s.Sharda Packaging Industries had exemption from payment of sales tax under Entry 68 of the Second Schedule to the Local Act only on the corrugated boxes. Further Sales Tax Officer informed the assessee that in view of Notification dated 17.10.2001 any industry which manufactures goods other than what was exempted earlier is liable to pay tax. The Sales Tax Officer had also informed the assessee that since the assessee is manufacturing a commodity other than the corrugated boxes, it is liable for payment of sales tax both under the Local Act as well as the Central Act. After receipt of the aforesaid show cause notice, we are informed that the appellant(s) had filed its reply. Be that as it may.

16. Appellant(s) being of the view that the Notification issued by the State Government in exercise of its powers under Section 10A of the Local Act, dated 17.10.2001 takes away its vested right had approached the Writ Court in Writ Petition No. 7298 of 2002. We have already noticed that the Writ Court being of the view that the Notification issued by the State Government is

explanatory/clarificatory Notification had rejected the Writ Petition and thereby had confirmed the show cause notice issued by the Sales Tax Officer. That is how the assessee is before us in this appeal.

17. Shri Ritesh Aggarwal, learned counsel for the appellant(s) would submit that Notification dated 17.10.2001 takes away certain vested rights of the appellant(s) and also certain promises made by the State Government on which the appellant(s) had acted upon. The Second issue that is canvassed before us is that the Notification dated 17.10.2001 cannot impose fresh conditions with retrospective effect.

18. Per contra, Shri P.P. Malhotra, learned Additional Solicitor General appearing for the respondents ably justified the impugned judgment passed by the High Court, explaining the Scheme of the Local Act and also the purport of the Notification issued by the State Government dated 31.12.1999 and 17.10.2001. He would submit that the notification dated 17th October, 2001 clarifying the earlier notification had further clarified on two heads. Firstly, there will not be any change in the constitution, ownership and the shareholding pattern upto 31.12.2002 and secondly, there will not be any change in the class of goods manufactured by the small scale industry after 30.04.2000. Those industries that effect any changes in classes of goods manufactured for sale, sale of such additional goods or classes of goods shall not be eligible for exemption. He would further submit that the exemption is confined to 'such industry' and 'such goods' which had obtained the registration certificate and were enjoying the benefit of exemption in relation to those goods under Entry 68 prior to the issuance of the first notification of December 31.12.1999 and it is only those industries that were empowered by Clause IX of the second notification, dated 31. 12.1999 to continue with such exemption for the unexpired balanced period of the total period for which such industry was entitled to enjoy the benefit under the Entry 68.

19. He would further submit that Entry 68 had a wide ambit to include any goods manufactured by any small scale industry and therefore the State Government by its notification, dated 31.12.1999 omitted Entry Nos. 68 and 85 of the second schedule to the local Act. The State had thereafter issued a notification on the same day extending the benefit of exemption under Entry 68 for the unexpired period. Therefore, to clarify the said notification, a subsequent

notification was issued that the intention of the State Government was certainly to protect investors and to have growth in the State, but it was never the intention of the Government to give a blanket protection to all industries and all classes of goods. The exemption was only in relation to the products which were manufactured by the industries and which were availing exemption prior to 31.12.1999 provided that there is been no change in the class of goods even after 30.04.2000. Therefore, he would submit that the appellant(s) only had provisional registration and exemption for corrugated boxes under Entry 68 of the local Act prior to 31.12.1999 and therefore by virtue of Clause IX of the notification cannot claim exemption under Entry 68 for computer stationery and other related products and therefore the subsequent notification is merely clarificatory to the earlier notification of the Government and the appellant(s) is liable to the payment of sales tax retrospectively.

20. In order to resolve the controversy raised and canvassed by the learned counsel we need to look into certain provisions of the Local Act. Section 4 of the Act is the charging provision. Proviso appended to the said Section is in the nature of the exemption provided in sub-Section (1) of Section 4 of the Local Act. It says that a dealer dealing exclusively in one or more classes of goods specified in the Second Schedule shall not be liable to pay any tax under the Local Act.

21. Section 10 speaks of tax free goods, Section 10A of the Act authorizes the State Government to grant exemption under certain circumstances to a class of dealers or any specified class of sale is exempt from payment of the whole or part of any tax payable under the Act. Section 11 of the Local Act speaks of the registration of the dealers which are liable to pay tax under Section 4 or Section 6 or sub-Section (6) of Section 24 of the Local Act. Section 12 speaks of voluntary registration; Section 13 of the Act speaks of provisional registration.

22. Any person who is desirous of establishing an industry, a business in Goa for the purpose of manufacturing or producing of goods of value exceeding ₹30,000/- per year may, notwithstanding that he may not be required to register himself under Section 11 of the Local Act apply to the prescribed authority in a prescribed manner for grant of provisional registration under the Local Act. Sub-Section (2) of Section 13 of the Local Act provides the manner and the method to deal with the application filed by a person under sub-Section (1) of

Section 13 of the Local Act. Section 24 of the Local Act is a special provision regarding liabilities in certain cases of the dealers.

23. Having seen the Scheme of the Local Act, let us notice Entry 68 of the Second Schedule to the local Act. The said Entry speaks of exemption from payment of sales tax under the local Act on any goods manufactured by a small scale industry set up on or before the first day of October, 1991 for a period 15 years or upto the reaching of the tax liability amounts equal to the capital cost of the industry invested in land, building and machinery only, whichever is later.

24. By Notification dated 31.12.1999, the State Government in exercise of its powers under sub-Section (2) of Section 10 of the Local Act has omitted Entry 68 of the Second Schedule of the Local Act from the date of publication of the Notification in the official gazette. On the same date, i.e. on 31.12.1999, the State Government had published yet another Notification granting exemption to certain classes of dealers manufacturing certain goods which earlier enjoyed exemption prior to the issuance of the notification. The subsequent notification was only to further clarify that the exemption was available only in relation to the products which were manufactured by the industries and for which exemption was availed prior to 31.12.1999. By virtue of the first notification, Entry 68 stood deleted from the second schedule of the local Act. However, the second notification issued by the Government on the same day restored the exemption already availed under Entry 68 of the second schedule of the Act. The said notification under Clause XI also empowered the Government to issue directives from time to time to clarify the scope of the second notification of December, 1999. It is in the exercise of its powers, that the Government issued a third notification, which brought out the terms more explicitly to fall within the terms 'clarificatory' or 'explanatory' notification. This Court while considering the scope of an 'explanation' observed that, generally speaking, an explanation is intended to explain the meaning of certain phrases and expressions contained in a statutory provision. Depending on its language, an explanation might supply or take away something from the contents of a provision. The express prospective operation and effectuation of an explanation might, perhaps, be factor necessarily detracting from any evincement of the intent on the part of the Legislature that the explanation was intended more as a legislative- exposition or clarification of the existing law than as a change in the law as it then obtained. An explanation should only explain or clarify. If it excepts, excludes or restricts, it is not an explanation, but a proviso, and should

be considered as operative only from the date of its coming into effect. Therefore, had the notification issued by the Government, instead of removing the ambiguity in the earlier notification, introduced fresh conditions bringing substantial changes in the Notification then the notification would not have been explanatory or clarificatory.

25. The next question to be considered is then whether the notification is to be given retrospective effect or prospective. The above proposition of law can be addressed by referring to the decision of this court in *W.P.I.L. Ltd., Ghaziabad v. Commissioner of Central Excise*, 2005 (3) SCC 73, wherein the Government with a view to reducing special exemption notifications and consolidating various exemption notifications, in 1994, rescinded the earlier notification with effect from 01.03.2004 and re- issued a consolidated notification incorporating earlier notification vide notification No. 46/94 dated 1st March, 1994. In the said notification, power driven pumps, were shown as an exempted item. Due to inadvertence, however, parts of power driven pumps used in manufacture of pumps within the factory which were all along exempted from 1978 were omitted. The Government, therefore amended the Notification No. 46/94 dated 01.03.1994 by issuing another Notification No. 95/95 on 25.04.1994 correcting the mistake and clarifying the position that parts of power driven pumps which were used in the manufacture of power driven pumps would also be exempted. The Court, therefore, concluded that the Notification No. 95/94 dated 25.04.1994 was merely clarificatory in nature and an obvious error or omission which remained while issuing notification, dated 01.03.1994 was rectified by the subsequent notification and hence it was retrospective in operation. Therefore, it was not a new notification granting exemption for the first time in respect of parts of a power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

26. This Court has further held in the case of *Collector of Excise, Shillong v. Wood Craft Products Ltd.*; a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit.

27. In the instant case, the Sharda Industries had commenced production on 24.02.2001 and the registration with regard to class of goods were amended

with effect from 20.02.2001. Therefore, the Sharda Industries were not in production of goods prior to 31.12.1999 or even 30.03.2000 and therefore Sharda Industries manufactured different class of goods only from 24.02.2001, pursuant to the amended registration. In such event, under the notification of the Government dated 17.10.2001, Sharda Industries and the appellant(s) as successor, both were not entitled to claim any benefit under Entry 68 read with Clause XI of the second notification. Therefore the latter notification is only clarificatory, to clear the meaning of an earlier notification which are already implicit. A clarificatory amendment of this nature will have retrospective operation, and, therefore, if the principle notification was existing the amending notification also will be a part of the existing notification.

28. The meaning to be given to an 'explanation' must depend upon its terms, and no "theory of its purpose can be entertained unless it is to be inferred from the language used." An explanation may be added to include something within or to exclude something from the ambit of the main notification or the connotation of some word occurring in it. An explanation, normally, should be so read as to harmonize with and clear up any ambiguity in the main notification and should not be so construed as to widen the ambit of the notification. The explanation is therefore added to retrospectively clarify a doubtful point in law and to serve as a proviso to the main section or ex-abundant cautela to allay groundless apprehensions.

29. Therefore, after observing the original notification and the clarificatory notification, dated 17th October, 2001, it is manifest that the intention of the Government was not only to extend the benefit of exemption under Entry 68, Clause XI of the second notification to those dealers who had obtained the certificate of registration and had been enjoying exemption on a class of goods prior to 31.12.1999 but also those who have not effected any change in the product manufactured by them after 30.04.2000.

30. The appellant(s)-herein, did not manufacture prior to the issuance of the first notification and further obtained the registration for a different class of goods which included computer stationeries and other related products after 30.04.2000 and therefore such industry would not be entitled to claim the benefit under the Entry 68 by taking shelter of Clause IX of the second

notification of December. The second notification, therefore, being clarificatory would apply retrospectively to the appellant(s).

31. In view of the above, we affirm the judgment and order passed by the High Court and dismiss the appeal filed by the appellant(s). No order as to cost.