SUPREME COURT OF INDIA

Eveready Industries India Ltd.

Vs.

State of Karnataka

C.A.No.4231 of 2006

(A.K.Sikri and R.F.Nariman,JJ.)

13.04.2016

JUDGMENT

A.K.Sikri,J.

1. The appellant herein (earlier known as BPL Soft Energy Systems Limited) has challenged the legality and validity of the order dated 12.01.2005 rendered by the High Court of Karnataka whereby three petitions of the appellant, after clubbing together, were heard and decided against it, by the said common order. Those petitions were preferred under Section 15A of the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as the 'KST Act') against the order which was passed by the Karnataka Appellate Tribunal, Bangalore. The necessity of filing three petitions arose because of the reason that three Assessment Years i.e. 1997-1998, 1998-1999 and 1999-2000 are involved, though the question raised in all these petitions was identical which pertains to the levy of entry tax under the KST Act. All the authorities below including the Karnataka Appellate Tribunal took the view that the appellant is liable to pay the tax under the provisions of KST Act and is not entitled to exemption from payment of entry tax on raw material under Notification/Government Order No.CI.92.SPI.1997 dated 25.06.1997. The High Court has, vide the impugned judgment, affirmed the said view of the authorities below.

2. Some of the seminal facts which require a mention to determine the lis, are recapitulated below:

> "2.1 The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is also a dealer registered under the provisions of the KST Act. The appellant is engaged in the manufacture of Dry Manganese Dioxide Batteries (DMD batteries). It has its manufacturing Unit at Somanahalli, Maddur Taluk, which falls under Zone-II of the notification dated 23.06.1997 issued by the State Government. Before establishing its manufacturing Unit at Somanahalli, Maddur Taluk, the appellant-company had approached the State Government for grant of incentive and exemption under the provisions of the KST

Act and also under the provisions of the Karnataka Sales Tax Act, 1957. Pursuant to the request so made, the State Government had issued a Notification/Government Order in No. CI.92.SPI.1997 dated 25.06.1997 inter alia granting exemption from payment of entry tax on raw materials and component parts for a period of six years from the date of commencement of commercial production. In the Notification/Government Order, it was made clear that the appellant-company should make an investment of a sum of Rs.111 crores, to claim benefit under the notification dated 25.06.1997. After obtaining the said exemption from the State Government, the appellant-company established its manufacturing Unit at Somanahalli, Maddur Taluk. But for various reasons, the appellant-company could not make investment of a sum of Rs. 111 crores, as envisaged under the notification dated 25.06.1997. Therefore, the appellant-company was ineligible to claim the "Tax Holiday" under the aforesaid notification.

2.2 For the Assessment Year 1997-1998, initially, the Assessing Authority had passed an order under the provisions of the Entry Tax Act, granting exemption from payment of entry tax on raw materials, components and machinery parts brought into thelocal area (Somanahalli) for use in the manufacture of DMD batteries. Subsequently, the Assessing Authority had initiated reassessment proceedings and had passed the order and in that, has levied entry tax on the causing of entry of raw materials and components into the local area, on the ground that the appellant- company could not have availed tax exemption, since it did not fulfill the primary condition stipulated in the notification dated 25.06.1997 mand it was also held by the Assessing Authority that since Government Order/Notification dated 25.06.1997 had been specifically issued granting entry tax exemption to the appellant- company subject to fulfilling certain conditions, the appellant- company is ineligible to seek exemption under general notification No. FD.11.CET.93(3) dated 31.03.1993. The Assessing Authority while framing the reassessment order under Section 6 of the Act, had also levied penalty under Section 6(2) of the KST Act.

2.3 Aggrieved by the aforesaid order passed by the Assessing Authority, the assessee had preferred the first appeal before the Deputy Commissioner of Commercial Taxes (Appeals) in KTEG.AP.25/02-03. The First Appellate Authority by his order dated 18.03.2003 had partly allowed the appeal filed by the assessee.

2.4 For the Assessment Years 1998-1999 and 1999-2000, the Assessing Authority had also passed reassessment orders under Section 6(1) of the KST Act and also had levied penalty under Section 6(2) of the KST Act. Aggrieved by the said order, the assessee had filed first appeals before the First Appellate Authority in Appeal Nos.KTEG.AP.24/02-03 (1998-1999) and 25/02-03 (1999-2000), who by his order dated 20.01.2003 had rejected the appeals so filed.

2.5 The assessee aggrieved by the orders passed by the Assessing Authority under Sections 6(1) and 6(2) of the KST Act had also under Section 5(5) of the KST Act for the Assessment Years 1997-1998 and 1999-2000 had filed appeals before the

Karnataka Appellate Tribunal and they were registered as STA Nos. 571/2001, 709, 329 and 330/2003. The Tribunal by its common order dated 23.01.2004 had allowed STA No. 571/2001 and had partly allowed STA No. 709/2003 and had rejected STA Nos. 329 and 330/2003 for the Assessment Years 1997-1998, 1998-1999 and 2000-2001. In its order, the Tribunal has concluded that the assessee is not entitled to benefit of the Notification No.FD.11.CET.93(III) dated 31.03.1993; insertion of clause (g) to the explanation to KST Notification No. FD.239.CSL.90(I) dated 31.03.1993; no penalty can be imposed under Section 5(5) of the KST Act on the assessee company for the relevant Assessment Years."

3. Not satisfied with the aforesaid outcome, the appellant filed revision petitions under Section 15A of the KST Act before the High Court which has dismissed all the three petitions. Though, various arguments have been discussed by the High Court in the impugned judgment, a perusal of the judgment of the High Court would reflect that these arguments were advanced by the appellant to contend that it was not liable to pay entry tax under the Entry Tax Act and was entitled to exemption in terms of general Notification dated 31.03.1993. The High Court has rejected the plea by holding that due to amendment of notification dated 19.06.1991 by notification dated 31.03.1993, the appellant was excluded from getting the benefit of general Notification. In this behalf, it has concluded that subsequent insertion of clause (g) to Explanation III of notification dated 19.06.1991 was applicable to the general exemption issued under Section 11-A of Entry Tax Act. While so holding, the High Court has made a distinction between legislation by reference and legislation by incorporation and has held that in case of legislation by reference of subsequent amendments to the legislation referred to will become applicable whereas in case of legislation by incorporation, subsequent amendments to the legislation referred to do not apply. As per the High Court, in the present case, there was legislation by reference and not by incorporation and, therefore, the newly inserted clause (g) to Notification dated 19.06.1991 would be applicable while implementing general exemption notification dated 31.03.1993. The aforesaid principle stated by the High Court in the impugned judgment was severely criticised and attacked by the learned counsel for the appellant on the ground that in the present case there was legislation by incorporation and not by reference. However, we feel that it may not even be necessary to go into this aspect, having regard to the discussion that follows hereinafter.

4. As pointed out above, the order dated 25.06.1997 was passed granting exemption to the appellant from payment of entry tax on raw materials and component parts for a period of six years from the date of commencement of commercial products. However, it was subject to the condition that the appellant should make an investment in the sum of Rs.111 crores in order to enable itself to claim the benefit of the aforesaid notification. It is an admitted fact that due to certain reasons, the appellant could not fulfill this condition as it did not invest Rs.111 crores in the project, as envisaged in the notification dated 25.06.1997. Therefore, insofar as exemption notification dated 25.06.1997 which was issued specifically in the case of the appellant, the appellant cannot be held entitled to the benefit thereof as it failed to fulfill the conditions.

5. The appellant, however, still claims the exemption by virtue of general Notification dated 31.03.1993 issued under the Entry Tax Act. This notification was issued under Section 11A of the Entry Tax Act. Vide this notification, the Government of Karnataka exempted the tax payable under the Entry Tax Act on the entry of raw materials, component parts and inputs and machinery and its parts into a local area for use in the manufacture of an immediate or finished product by the new industrial units. This notification contains a 'Table' which enlists type of industries and location of industries which are entitled to exemption as well as the period of exemption. It is not in dispute that the appellant industry stands covered by one such category of industry the description whereof is given in the notification. It is also located at a place which is stipulated in the said notification. However, the exemption was available to the new Industrial Units. The question arises as to whether the appellant falls within the ambit of "new industrial unit" as defined therein. Explanation in the notification defines "a new industrial unit" which reads as under:

> "Explanation - (1) For the purpose of this notification "a new industrial unit" shall have the same meaning assigned to it in Notification No.FD 239 CSL 90(1), dated 19th June, 1991 issued under Section 8-A of the Karnataka Sales Tax Act, 1957.
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> (2) The provisions of this notification shall not apply to a unit to which the provisions of Notification No.FD 239 CSL 90(I), dated 19th June 1991 issued under section 8-A of the Karnataka Sales Tax Act, 1957 shall not apply.
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> (3) The procedure specified in Notification No. FD 239 cSl 90(I) dated 19th June 1991 issued under Section 8-A of the Karnataka Sales Tax Act, 1957 for claiming exemption under that notification shall mutatis mutandis apply to a industrial unit claiming exemption under notification."

6. Reading of the aforesaid definition clearly suggests that "a new industrial unit" is given the same meaning which is assigned in the notification dated 19.06.1991. For this purpose, one needs to look into the meaning that is given to "a new industrial unit" in the notification dated 21.06.1991. A scan through the said notification leads us to the definition given to a "new industrial unit". We reproduce this Explanation in its entirety:

> "Explanation I. - (a) For the purpose of this Notification;
>
> (i) A "Tiny Industrial Unit" or "Small Scale Industrial Unit" or "Medium Scale Industrial Unit" or "Large Scale Industrial Unit" means a unit which is registered as such with the Director of Industries and Commerce or the Ministry of Industries, Government of India.
>
> (ii) A Khadi and Village Industrial Unit as defined under the Karnataka Khadi & Village Industries Act, 1956 from time to time. [See Note 3]

(b) "A New Industrial Unit" means any of the units described in Clause (a) above, which are certified to be eligible for exemption under this Notification, by the authorities mentioned in Clauses (a) and (b) of Para (1) under "Procedure" below."

7. In order to qualify to be "A New Industrial Unit", the following conditions need to be fulfilled:

"(i) It has to be either a Tiny Industrial Unit or Small Scale Industrial Unit or Medium Scale Industrial Unit or Large Scale Industrial Unit of the type of industries mentioned in Table contained in notification dated 21.06.1991 or else it has to be a Khadi or Village Industrial Units as defined under the Karnataka Khadi & Village Industries Act, 1956. (We are not concerned with this later category in the present case.)

(ii) Such a Unit has to be registered with the Director of Industries and Commerce or the Ministry of Industries, Government of India.

(iii) Such a Unit has to be certified to be eligible for exemption under the said notification by the authorities mentioned therein."

8. What is significant for our purposes is that such a Unit has to be certified to be eligible for exemption under the notification dated 21.06.1991. That is an essential requirement for a Unit to fall within the definition of "A New Industrial Unit" under the notification dated 31.03.1993 as it is assigned the same meaning as contained in the notification dated 21.06.1991. Notification dated 31.03.1993 further makes it clear that this notification is not to apply to a Unit to which notification dated 19.06.1991 does not apply. So much so, the procedure prescribed in the notification dated 19.06.1991 for claiming exemption is also made applicable to the Industrial Units seeking exemption under the notification dated 31.03.1993. In the instant case, it was admitted by the appellant itself that the Department of Industries and Commerce issued eligibility certificate in terms of industrial policy G.O. No. CI 30 SPC 96 dated 15.03.1996 and notification dated 15.11.1996 issued under Section 19-C of the KST Act. Such eligibility certificate would not be of any consequence in as much as, in order to get the benefit of the notification dated 31.03.1993, the appellant was required to get certification under the notification dated 19.06.1991. Obviously, therefore, the appellant does not fulfill the requirement of the notification dated 31.03.1993 as well.

9. It is trite that exemption notifications require strict interpretation. In order to get benefit of any exemption notification, assessee has to satisfy that it fulfills all the conditions contained in the notification This is so held by this Court in *Rajasthan Spinning and Weaving Mills, Bhilwara, Rajasthan v. Collector of Central Excise, Jaipur*[1], Rajasthan\ wherein this principle was stated in the following manner:

"16. Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since, it is a case of exemption from duty, there is no question of any liberal construction to extent the term and the

> scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification."

10. In *Novopan India Ltd. v. CCE and Customs*[2], this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in *Hansraj Gordhandas v. CCE and Customs*[3] held that (Novopan India Ltd. Case, SCC p. 614, para 16):

> "16...such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."

11. It is a different matter that once the conditions contained in the exemption notification are satisfied and the assessee gets covered by the exemption notification, for the purpose of giving benefit notification has to be construed liberally. However, in the present case, the appellant has not been able to cross the threshold and to find entry under notification dated 31.03.1993 for the reasons mentioned above. Therefore, we have no option but to hold that the appellant was not entitled to exemption from entry tax.

12. We, therefore, agree with the conclusions contained in the impugned order and dismiss the instant appeal finding no merit therein. There shall be no order as to costs.

Judgment Referred.

[1](1995) 4 SCC 0473
[2](1994) Supp.3 SCC 0606
[3]AIR 1970 SC 0755