State Level Committee & Anr vs M/S Morgardshammar India Ltd on 10 November, 1995

Equivalent citations: 1996 AIR 524, 1996 SCC (1) 108, AIR 1996 SUPREME COURT 524, 1996 (1) SCC 108, 1995 AIR SCW 4427, 1996 ALL. L. J. 137, 1996 (29) VKN 255, 1996 ( ) UPTC 213, 1996 ( ) STI 19, 1995 (8) JT 53, (1995) 8 JT 53.2 (SC), (1996) 29 STA 103, (1996) 101 STC 1

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.B Majmudar

PETITIONER:
STATE LEVEL COMMITTEE & ANR.

Vs.

RESPONDENT:
M/S MORGARDSHAMMAR INDIA LTD.

DATE OF JUDGMENT10/11/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 524 1996 SCC (1) 108
JT 1995 (8) 53 1995 SCALE (6)306

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P.JEEVAN REDDY,J.

Leave granted.

The only question arising in this appeal, preferred against the judgment of the Allahabad High Court, is whether the respondent-unit qualifies as a "new unit" within the meaning of Explanation (i) to sub-section (2) of Section 4-A of the U.P. Sales Tax Act. The ground upon which the Divisional Level Committee declined to recognise it as a new unit is that a part of the machinery acquired by it for setting up its factory was purchased from M/s. Modi Steels who has purchased the said machinery earlier for their own use. A review application filed by the respondent was rejected by the State Level Committee. The writ petition filed by the respondent has, however, been allowed by the High Court holding that in case M/s. Modi Steels has not put the said machinery to any use as contended by the respondent, the respondent-unit cannot be denied the eligibility certificate under Section 4-A. the Bench purported to follow an earlier decision of the High Court in Amit Plastic Industry, Ghaziabad v. Divisional Level Committee, Meerut (1994 UPTC 121). The High Court has set aside the orders impugned in the writ petition and remitted the matter to the State Level Committee with a direction to re-examine the material on record and to record a categorical finding as to whether or not the machinery purchased by the petitioner form M/s.Modi Steels was actually used in any other factory or workshop in India. If it is found that the said machinery was not actually used in any factory or workshop before its installation in the respondent-unit, the High Court opined, the respondent-unit would be entitled to be treated as a new unit for the purpose of Section 4-A. The respondent-unit has applied for issuance of an eligibility certificate under Section 4-A of the Act on the ground that it has set up a new unit for manufacturing rolling mill guide system equipment. It had acquired machinery worth about Rs.25 lakhs, out of which machinery worth Rs.4,59,575/- was acquired from M/s.Modi Steels under Bill No.244 dated April 27, 1984. Admittedly, the said machinery was acquired by M/s.Modi Steels for setting up an unit of its own but it is stated that it abandoned that idea later and sold the machinery to the respondent. The question is whether the respondent-unit cannot claim to be a "new unit" within the meaning of Explanation (i) to sub-section (2) of Section 4-A on account of the fact that part of the machinery acquired by it was acquired for use in any other factory or workshop in India.

Section 4-A Provides for exemption from sales tax of goods manufactured by a new unit during the first five-year period, subject to the terms and conditions specified therein. Explanation (i), with which alone we are concerned herein, reads as follows:

> "Explanation.- For the purposes of this section,-
>
> (i) `new unit' means a factory or workshop whether set up by a dealer already having an industrial unit manufacturing the same goods at any other place in the State or an industrial unit, adjacent to, the site of an existing factory or workshop; but does not include:
>
> (a) any factory or workshop using machinery, accessories or components already used or acquired for use in any other factory or workshop in India,
>
> (b) nay factory or workshop established on, or adjacent to the site of an existing factory or workshop manufacturing the same goods, or

(c) any addition to or extension of an existing factory or workshop,"

An analysis of the definition yields the following features:

(a) if a dealer is already having an industrial unit manufacturing particular goods and if he sets up another industrial unit manufacturing the same goods at any other place in the State, it would be a new unit. In other words if a dealer establishes a new factory or workshop on or adjacent to his existing factory or workshop is meant for manufacturing the very same goods as are manufactured in the existing factory or workshop, the newly established factory or workshop would not be a "new unit" within the meaning of the Explanation.

(b) If, however, the new industrial unit is meant for manufacturing goods different from the goods manufacturing in the existing factory or workshop, the new industrial unit (factory or workshop) ca be located on the same premises or adjacent to the premises of the existing factory or workshop; to would be a "new unit" for the purposes of Explanation.

(c) If, however, any such new factory or workshop uses machinery, accessories or components "already used or acquired for use in any other factory or workshop in India", it does not and cannot qualify as a "new unit".

(d) Any factory or workshop established on or adjacent to the site of an existing factory or workshop manufacturing same goods as are being manufactured in the existing factory or workshop cannot be called "new unit" for the purposes of the Explanation.

(e) Any addition to or extension of an existing factory or workshop cannot and does not qualify as a new unit.

The definition of 'new unit" in Explanation (i) thus comprises of two clauses (mentioned as (a) and (b) above) to which three exceptions (mentioned as (c), (d) and (e) above) are appended.

The ground upon which the respondent-unit has been denied the eligibility certificate under Section 4-A by the appropriate authorities is that part of the machinery used in setting up the respondent-unit was "acquired for use in any other factory or workshop in India' and, therefor, the respondent-unit does not qualify as a "new unit". According to the authorities, it is enough that the machinery or part of the machinery installed in the new factory or workshop is "acquired for use in any other factory or workshop in India". It is immaterial, they say, whether such machinery was actually used or not in any other factory or workshop in India. Clauses (a) does not contemplate an enquiry of the nature ordered by the High Court, they say. On the other hand, the contention of the respondent-unit, which has ben upheld by the High Court is that unless the machinery acquired for use in any other factory or workshop in India is actually used in that other factory or workshop in India, the disqualification provided by clauses (a) in the Explanation is not attracted.

Section 4-A is an elaborate one. it contains several features and provides for several situations, with all of which we are not concerned herein. It is enough for the present purpose to note that a new unit staring production on or after first day of October, 1982 is entitled to exemption from sales tam provided the unit satisfies the requirements and conditions prescribed by the section. Inter alia, it must furnish to the assessing authority an eligibility certificate granted by the prescribed officer/authority in accordance with the procedure specified. Explanation (i) to sub-section (2) defines the expression "new unit", which definition has already been set out by us hereinabove. One of the grounds upon which a new factory or workshop is disqualified from being called a "new unit" is if such factory or workshop uses "machinery, accessories or components already used or acquired for use in any other factory or workshop in India." It is relevant to notice that the clause uses both the expressions "already used' and "acquired for use" in any other factory or workshop in India. Surely both the expressions cannot mean one and the same thing. It is a disqualification if the new factory or workshop uses machinery/accessories/components already used in any other factory or workshop in India. It is a disqualification if the new factory or workshop uses machinery/accessories/components which were acquired for use in any other factory or workshop in India. When the clause uses both the said expressions simultaneously, it would not be reasonable or proper to construe the word "acquired for use" as meaning the same thing as "already used". Such a construction would make the words "acquired for use"

> superfluous and a surplusage. No such interpretation ought to be adopted by a Court. The words "acquired for use" must be understood in their plain and ordinary meaning. It is enough that the machinery/accessories/components which are used in the factory or workshop (claiming the benefit of Section 4-A) are acquired for use in any other factory or a workshop in India. It is not necessary to go further and enquire whether that machinery/accessories/components were actually used in any other factory or workshop in India.
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> In this case, admittedly, a part of the machinery installed in the respondent's unit was acquired by M/s. Modi Steels for use in the factory or workshop proposed to be set up by them. According to the certificate issued by M/s.Modi Steels, their project did not materialise because it was found to be not viable. For that reason, they say, the machinery purchased by them for the said purposed was lying in packed and un-used condition and was sold to the respondent. Thus, on their own showing, the respondents case is directly hit by clause (a) in the Explanation and is not entitled to the exemption provided by Section 4-A. It is submitted by Sri S.K.Dhaon, learned counsel for the respondent, that aforesaid interpretation would not be a reasonable one and would not be consistent with the object underlaying Section 4-A. It is submitted that Section 4-A is devised to encourage new industries. Disqualifying an unit from the benefit of the section on the mere ground that part of the machinery installed in the unit was acquired by another person for setting up a unit, which in fact he never did, would not be consistent with the object underlying the section, says Sri Dhaon. We are unable to see any unreasonableness in the interpretation placed by us. All the words used in the clause have to be give their due meaning. None of them can be treated as a surplusage. It is not also possible to ignore the words expressly

employed in the said clause or to explain them away on notions of one's own reasonableness. Indeed, there appears to be good reason behind the use of both the said expression in the clauses. the Legislature, it is obvious, wanted to avoid an enquiry into the factual issue of actual user where the machinery (which expressions means machinery, accessories or components) is acquired for use in any other factory or workshop in India. Once it is shown that such machinery was acquired for use in any other factory or workshop in India, the Legislature presumes user - a case of conclusive presumption. the idea was to shut out enquires of the type now ordered by the High Court. One person may say that though the machinery was acquired by him, he never installed it or used it; another may say that he only installed the machinery but did not use or operate it; a third person may say that the machinery was used only for trial run but not on a regular basis, ad so on and so forth. The authorities in charge of issuing eligibility cetificates would thus be caught in endless factual disputes. The idea was to lessen the room for factual controversies. It must be remembered that no unit has a right to claim exemption from tax as a master of tight. His right is only insofar as it is provided by Section 4-A. While providing for exemption, the Legislature has hedged it with certain conditions. It is not open to the Court to ignore those conditions and extend the exemption. We must repeat that when the clause used" both the expressions "already used" and "acquired for use", they cannot be construed as meaning one and the same thing by a process of interpretation.

It is suggested by the learned counsel for the respondent that Section 4-A must be literally construed to further the object underlying it. In case of any ambiguity, it is submitted, the construction favouring the assessee should be adopted. We cannot agree. Section 4-A provides for exemption from tax. It is repeatedly held by this Court that a provision providing for an exemption or an exception as the case may be, has to be construed strictly. In Mangalore Chemicals and Fertilizers Limited v. Diputy Commissioner of Commercial Taxes, (1992 Supp. (i) S.C.C.21) which case dealt with an exemption notification, M.N.Venkatachaliah,J. stated the principle in the following words:

"Shri Narasimhamurty again relied on certain observations in CCE v. Parle Exports (P) Ltd., [(1989) 1SCC 345: 1989 SCC (Tax) 84] in support of strict construction of a provision concerning exemptions. there is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of parle Exports (P) Ltd. relied upon by Shri Narasimhamurty, it was observed: (SCC p.357, para 17) `while interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.' The choice between a strict and a liberal construction arises only in case of doubt in

> regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd.[(1990) 4 SCC 256 : 1990 SCC (Tax) 422]: (SCC p.260 para 4) `Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity`y or doubt about application then full play should be give to it and it calls for a wider and liberal construction....."

Following the said decision and after referring to certain English decisions expressing divergent opinions, a three-Judge Bench of this Court, of which one of us (B.P.Jeevan Reddy, J.) was a member, held in Novopan India Ltd., Hyderabad v. Collector of Central Exercise and Customs, Hyderabad (1994 Suppl. (3) S.C.C.606) thus:

> "16. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore Chemical - and in union of India v. Wood Paper referred to therein _ represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assesseeassuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemical and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave [(1969) 2 SCR 253: AIR 1970 SC 755] that such a notification has to be interpreted in the light of the words employed by it and not on nay other basis. This was so held in the context of the principle that in a taxing statue, 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 therms of the exemption."

The learned counsel for the respondent, however, relied upon the decision in Collector of Central Excise. Bombay v. M/s.Parle Exports (P) Ltd. (1989 (1) S.C.R. 345) rendered by a Bench of this Court comprising Sabyasachi Mukharji and S.Ranganathan,JJ. The observations in paras 17 and 18 are particularly relied upon by the learned counsel:

"17. How then should the courts proceed? The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the Provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under R.8 of the Central Excise Rules and should be read along with the Act.

The notification must be read as whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and therefore, the exemption under the notification is, as if it were contained in the Act itself. See in this connection the observations of this Court in Orient Weaving Mills (P) Ltd. v. Union of India, [1962 Supp (3) SCR 481 : (AIR 1963 SC 98)]. See also Kailash Nath v. State of U.P. (AIR 1957 SC 790). The principle is well settled that when two views of a notification are possible, it should be construed in favour of the subject as notification is part of a fiscal enactment. But in this connection, it is well to remember the observations of the Judicial Committee in Coroline M. Armytage v. Frederic Wilkinson, [(1878) 3 AC at p. 370] that it is only, however, in the event of there being a real difficultly in ascertaining the meaning of a particular enactment that the question of strictness or of liberality of construction arises. The Judicial Committee reiterated in the said decision at pate 369 of the report that in a taxing Act Provisions establishing an exception to the general rule of taxation are to be construed strictly against those who invoke its benefit. While interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.

18. In Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh, [(1982) 1 SCR 139]: (AIR 1981 SC 1649) this Court emphasised that the notification should not only be confined to its grammatical or ordinary parlance but it should also be constroced in the light of the context. This court reiterated that the expression should be construed in a manner in which similar expressions have been employed by those who framed relevant notification. The court emphasised the need to derive the intent from a contextual scheme."

We agree with the above statement of law except insofar as it states that where two view of the exemption notification are possible, it should be construed in favour of the subject since it is contrary to the decisions afore- mentioned including the three-Judge Bench decision in Novopan India Limited. It may be noted that this decision was referred to in Mangalore Chemical and Fertilizers and yet a slightly different principle enunciated. So far as decision in Hindustan Alumunium Corporation (referred to in Parle Export), rendered by a Bench comprising Tulzapurkar and R.S.Pathak,JJ., is concerned, it only holds that the expression "mental" occourring in a notification issued under U.P.Sales tax Act should be understood in its primary sense, i.e., in the

form in which it is marketable as primary commodity. The learned Judges held that the subsequent forms evolved from the primary from constituted distinct commodities marketable as such and must be regarded as new commercial commodities and not included within the four corners of the notification. This decision cannot therefor be understood as supporting the proposition enunciated in Parle Export with which we have disagreed. Be that as it may, the occasion for appaying the said proposition arises only where there is "real difficulty, in ascertaining the meaning of a particular enactment"

> (statement in Parle Exports). In the case before us, there is neither any ambiguity in the language nor does the clause in question present a real difficulty in ascertaining its meaning.
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> Sri Dhaon, learned counsel for the respondent, then contended that the words "acquired for use in any other factory or workshop in India" must be read and understood as "acquired for use in any other existing factory or workshop in India". The learned counsel says that it should be so read to give effect to the idea underlying the said clause. We are unable to agree. The very definition contained in Explanation (i) uses both the expression "factory or workshop" and "existing factory or workshop" at more than one place which fact would be evident from a bare perusal of the said definition. Wherever the Legislature wanted to refer to an existing factory or workshop, it is not possible to read the words "acquired for use in any other factory or workshop in India" to mean "acquired for use in any other existing factory or workshop in India". We see no reason to add any words to those employed in the clause. It cannot also be said that such addition of word(s)_ is necessary to avoid an absurdity.
>
> Lastly, Sri Dhaon submitted that the respondent unit has substantially complied with the requirement of the said clause in the definition inasmuch as the value of the machinery acquired from M/s.Modi Steels is only about Rs.4.5 lakhs as against the value of the entire machinery at Rs.25 lakhs. In our opinion, there is no room for such a contention in view of the specific language of clause (a). The clause uses all the three words - machinery, accessories or components. The use of the word "or" indicates that use of either of them, which are already used or acquired for use in any other factory or workshop in India, would disqualify the factory or workshop from being called a "new unit" within the meaning of Section 4-A. The clause does not say or indicate in any manner that only where the entire machinery installed in the unit (claiming to the new unit) has already been used or was acquired for use in any other factory or workshop in India, that the disqualification contained therein gets attracted. In the face of the clear language of the clause, it is not possible to entertain the submission of substantial compliance urged Sri Dhaon.
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> For the above reasons, the appeal is allowed and the judgment of the High Court is set aside. The writ petition filed by the respondent in the High Court is dismissed. No costs.