

AMD INDUSTRIES LIMITED (EARLIER KNOWN AS M/S. A
ASHOKA METAL DECOR PVT. LTD.)

v.

COMMISSIONER OF TRADE TAX, LUCKNOW & ANR

(Civil Appeal No. 108 of 2013) B

JANUARY 09, 2023

[M. R. SHAH AND KRISHNA MURARI, JJ.]

U.P Trade Tax Act – s.4-A(5) – Whether for the goods, manufactured by use of modern technologies can be said to be “diversification”, and manufacturing of the goods of a nature different from the goods manufactured earlier if entitles the appellant to claim the exemption from trade tax provided u/s.4-A(5) – Held: In case of “diversification” the goods manufactured by diversification shall be different from the goods manufactured before such diversification – In the present case, the earlier product being manufactured by the appellant was used for sealing glass bottles and subsequently the additional product produced with the use of modern technology is also being used for the same purpose namely, “sealing glass bottles” – Therefore, the same cannot be said to be manufacturing of goods different from being manufactured before such diversification – With the passage of time, due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, at the most, it can be said to be expansion and/or modernization, but it cannot be said to be “diversification” Words used in s.4-A are clear and unambiguous – Exemption provisions are to be read as they are and construed literally – Giving the literal meaning to s.4-A, it cannot be said that the appellant is entitled to the exemption as claimed – High Court committed no error in refusing to grant exemption to the appellant.

Dismissing the appeal, the Court

HELD: 1.1 On a fair reading of Section 4 - A(2)(c), Section 4-A(5)(b)(i) & (ii) and Section 4-A(5)(c), it is clear that in case of “diversification” the goods manufactured by diversification shall be different from the goods manufactured before such diversification [Section 4-A(2)(c)]. In the case of “expansion or modernization”, the exemption shall be available, if there is an additional production as a result of such modernization or

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- A expansion. The present case is concerned with the case of “diversification”. Therefore, the goods manufactured after diversification must be different goods from the goods manufactured before such diversification. In case of an exemption notification/exemption provision, the same is required to be construed literally and the person claiming the exemption must satisfy all the conditions of exemption provision. [Paras 8.1, 8.2][1043-D-F]
- B 1.2 In the present case, the appellant was manufacturing / producing “Spun Line Crown Cork” used for sealing the glass bottles. With the use of modern technologies, now the appellant
- C is manufacturing “Double Lip Dry Blend Crowns”, which is also used for sealing the glass bottles. The earlier product being manufactured by the appellant was used for sealing glass bottles and subsequently the additional product produced with the use of modern technology is also being used for the same purpose namely, “sealing glass bottles”. Therefore, the same cannot be
- D said to be manufacturing of goods different from being manufactured before such diversification. With the passage of time, due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, at the most, it can be said to be
- E expansion and/or modernization, but it cannot be said to be “diversification”, which is “manufacturing of goods different from the goods manufactured before such diversification”. In a case of “diversification”, the effect has to be that the quality and quantity of the product should have been improved and/or increased but if the ultimate use is the same, the product
- F manufactured on use of modern and/or advanced technology cannot be said to be manufacturing the different goods for claiming the exemption from payment of trade tax. The words used in Section 4-A are very clear and unambiguous. The Statute and more particularly, the exemption provisions are to be read as they are and to be construed literally and should be given a literal meaning. Giving the literal meaning to the exemption provision namely, Section 4-A, it cannot be said that the appellant is entitled to the exemption as claimed. Considering the aforesaid facts and circumstances of the case and as observed hereinabove, when the provisions of the Act unequivocally provides that the
- G “diversification” can be considered only in a case where “goods
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of different nature" are produced, and only then the exemption shall be available. The goods manufactured on "diversification" must be a "different", "distinct" and a "separate" good in nature. In the present case, the goods manufactured on use of advance and/or modern technology, cannot be said to be a different commercial activity at all. The High Court has not committed any error in refusing to grant exemption to the appellant. [Paras 8.3-8.5][1043-G-H; 1044-A-F]

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Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise Customs, Surat and Ors. AIR 1970 SC 755 : [1969] SCR 253; Parle Biscuits (P) Ltd. Vs. State of Bihar and Ors. (2005) 9 SCC 669 : [2004] 6 Suppl. SCR 954; Assistant Commissioner (CT) LTU and Anr. Vs. Amara Raja Batteries Limited (2009) 8 SCC 209 : [2009] 11 SCR 953; Commissioner of Sales Tax, Orissa and Anr. Vs. Jagannath Cotton Company and Anr. (1995) 5 SCC 527 : [1995] 2 Suppl. SCR 390 – referred to.

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Case Law Reference

[1969] SCR 253	referred to	Para 4.7
[2004] 6 Suppl. SCR 954	referred to	Para 4.7
[2009] 11 SCR 953	referred to	Para 4.7
[1995] 2 Suppl. SCR 390	referred to	Para 5.5

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.108 of 2013.

From the Judgment and Order dated 16/09/2008 of the High Court of U. P. at Lucknow in TTR No. 275/2004.

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Atul Yeshwant Chitale, Sr. Adv., Ms. Tanvi Kakar, Ms. Jayati Atul Chitale, Mrs. Suchitra Atul Chitale, Advs. for the Appellant.

Bhakti Vardhan Singh, Adv. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. I.A. No. 118667 of 2021 is allowed. The appellant is permitted to change its name in the cause title from M/s. Ashoka Metal Décor Pvt. Ltd. to AMD Industries Limited and the I.A. is accordingly disposed of.

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- A 2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Judicature at Allahabad in Trade Tax Revision No. 275 of 2004 by which the High Court has dismissed the said revision application preferred by the appellant herein and has confirmed the order passed by the learned Trade Tax Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "Tribunal") and the Assessing Officer holding that for the goods manufactured, the appellant is not entitled to the exemption under Section 4-A (5) of the U.P. Trade Tax Act (hereinafter referred to as "Act"), the manufacturer – original revisionist has preferred the present appeal.
3. The facts leading to the present appeal in nutshell are as under:-
- C 3.1 The appellant herein established the unit for manufacture of "Spun Line Crown Cork" in the year 1986, used as one of the packing materials of the 'glass bottles'. The appellant submitted an application on 24.05.2000 for granting eligibility certificate under Section 4-A of the Act before the Divisional Level Committee for manufacture of "double Lip Dry Blend Crown" under the program of diversification.
- D 3.2 On the basis of the joint spot inquiry consisting of two members committee, the appellant was granted the eligibility certificate under 'modernisation' instead of eligibility certificate under 'diversification' scheme.
- 3.3 At this stage, it is required to be noted that if the goods manufactured would have been considered as a new product under the diversification scheme, the appellant was entitled to the exemption under Section 4-A(5) of the Act. The appellant was denied the exemption under Section 4-A(5) of the Act. The appellant preferred an appeal under Section 10 of the Act against the order dated 10.12.2003 passed under Section 4-A of the Act before the Trade Tax Tribunal contending inter alia that the process of manufacture and the machineries used for both the products (existing and the new) are different.
- G 3.4 It was also the case on behalf of the appellant that the existing (old) product cannot be manufactured on the new installed machine and vice-a-versa, the new product cannot be manufactured on the old machines. It was also the case on behalf of the appellant that one of the major raw materials for both the products are not the same and that ultimate use of both the products are different.
- H 3.5 It was submitted that under the term "modernization" only those units fall, which by the modern technical produce the same goods and the scheme of "modernization" do not apply on the units which produce different goods.

3.6 The appeal preferred by the appellant came to be dismissed. The second appeal before the Tribunal also came to be dismissed. It was specifically held that the nature of goods being produced under the modern technology is not different than the goods produced by the unit earlier, as both the produced material are used in packing the bottles of cold drinks and therefore, as the goods manufactured are not different but the same and used for the same purpose, the appeals came to be dismissed. Against the order passed by the Tribunal, the revision application before the High Court has been dismissed by the impugned judgment and order, and, hence the present appeal.

4. Shri Atul Yeshwant Chitale, learned Senior Advocate appearing on behalf of the appellant has submitted that the issue involved in the present appeal is with respect to the interpretation of Explanation 5 to Section 4-A(5) of the Act, which grants exemption from payment of trade tax to units, which had undertaken 'diversification' in their units on or after 31.03.1995.

4.1 It is submitted that the appellant is a manufacturer of crown corks used for sealing glass bottles. Initially, it was producing "Spun Line Crown Corks". However, subsequently, it diversified the manufacturing activity to manufacture "Double Lip Dry Blend Crowns" for which it imported new plant and machinery and invested a fixed capital cost of Rs. 4.5 crores.

4.2 It is submitted that the new product being manufactured by the appellant is an eco-friendly product using PVC granules as raw materials. The new product is different from the "Spun Line Crown Corks" manufactured earlier.

4.3 It is submitted that the new product is an entirely different product from what was manufactured earlier and the use of the product was also different. It is submitted that the new product was an entirely different product in commercial parlance. It is submitted that the mere fact that both the products are commonly known as "Corks" would have no relevance. It is submitted that similarly the fact that both the products are used for sealing glass bottles would also not be a relevant criterion. The test which was to be applied is whether the goods were different from those manufactured earlier. It is submitted that the appellant was entitled to claim exemption from trade tax since it has undertaken diversification and the goods i.e., "Double Lip Dry Blend Crowns" now being manufactured are of a nature different from those manufactured earlier by the appellant being a different commercial commodity.

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- A 4.4 It is submitted that the Trade Tax Tribunal as well as the High Court have misconstrued the Explanation 5 to Section 4-A(5) of the Act and the notification dated 31.03.1995 on the basis of which the appellant had sought eligibility certificate on the ground of diversification.
- B 4.5 It is submitted that in order to be entitled to claim exemption from trade tax on the ground of diversification, the goods had to be of a nature different from those manufactured earlier. Ultimate use of the goods is irrelevant for the consideration for exemption from trade tax. Different goods can be used for same thing. However, this does not mean that the nature of the goods is the same. It is submitted that even mere fact that both the goods are commonly known as "Corks" is also not a relevant factor for determining if the goods are different goods.
- C 4.6 The learned senior counsel appearing on behalf of the appellant has drawn our attention to the difference in earlier product and the subsequent product. In support of his submission that the new product is altogether a different product than that of the earlier product, he has also drawn our attention to the difference in process of manufacturing of both the products.
- D 4.7 It is submitted that both, the Trade Tax Tribunal and the High Court have erroneously introduced a new criterion that the use of both products is the same. It is submitted that the criteria of use of goods is neither provided in the section nor in the notification. Section 4-A(5) and the notification only requires the nature of goods to be different. It is submitted that as per the settled position of law, an exemption notification is required to be given a literal meaning. Reliance is placed on the decisions of this Court in the case of **Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise Customs, Surat and Ors., AIR 1970 SC 755; Parle Biscuits (P) Ltd. Vs. State of Bihar and Ors., (2005) 9 SCC 669 and Assistant Commissioner (CT) LTU and Anr. Vs. Amara Raja Batteries Limited, (2009) 8 SCC 209.**
- E 4.8 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeal.
- F G 5. Present appeal is vehemently opposed by Shri Bhakti Vardhan Singh, learned counsel appearing on behalf of the respondents.
- G 5.1 It is submitted that in the present case, the appellant established a unit for manufacture of the "Spun Line Crown Corks" used as one of the packing materials of the glass bottles, to be sold to the glass bottlers.
- H 5.2 It is submitted that after 'modernisation', the appellant manufactured

“Corks” also used as one of the packing materials of the glass bottles. A

5.2 It is submitted that under Section 4-A(5) of the Act and the notification, exemption from trade tax shall be available to a unit, which has undertaken “expansion, diversification or modernization” and manufactures the different goods from those manufactured earlier by such undertaking. It is submitted that therefore, the issue involved in the present appeal is as to whether the investment of the appellant can be said to be in the unit, having undergone “diversification” or is in a unit having undergone “modernization” and whether the goods manufactured by the appellant’s unit has undergone “diversification” or “modernization”? B

5.3 It is submitted that therefore under Section 4-A(5) of the Act, the requirement for availing the benefits under the head of “diversification” therefore is that the “goods of different nature is required to be produced”. It is submitted that the exemption notification issued under Section 4-A also uses the terminology and resultantly the test for diversification is the “production of a goods which is different in nature than that was produced earlier”. C

5.4 It is submitted that clause (5) of Section 4-A also makes the legal position clear. It is submitted that the opening sentence of clause (5) seeks to refer “expansion, diversification and modernization” and then clarifying in one separate sub-clause the exercise of “expansion or modernization” means the “increase in production” and thereafter in another separate sub-clause clarifies “diversification” to mean that the production of goods of a different kind, distinct and different in nature, a new article as understood in commercial circle. E

5.5 It is submitted that the test is how a good is understood in the commercial parlance or commercial circle. It is submitted that the goods manufactured by the appellant prior to the investment exercise was subject to levy under the class of goods namely “Corks”. After the investment exercise, the manufacturing of the “Double Lip Dry Blend Crowns” is merely the enhanced quality and quantity of goods namely “Corks” earlier produced before the investment exercise. It is submitted that therefore, the investment was an exercise of “modernization and expansion” only and the different goods were not manufactured, not entitled to the exemption under Section 4-A(5) of the Act and the notification issued under Section 4-A. In support of his above submissions, learned counsel appearing on behalf of the respondents has placed reliance upon the decision of this Court in the case of **Commissioner of Sales Tax, Orissa and Anr. Vs. Jagannath Cotton Company and Anr.**, (1995) 5 SCC 527 (para 5). F

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- A 5.6 It is further submitted that mere change in technology now the goods being manufactured by the unit of the appellant cannot be considered “different in nature” than the goods being manufactured earlier by the unit because of the fact that the goods are being utilized for packing the bottles. It is submitted that as per the settled position of law, the exemption notifications are to be strictly construed.
- B 5.7 Making above submissions and relying upon the findings recorded by the High Court that the goods manufactured now by the appellant cannot be said to be different than that of the goods manufactured earlier and the goods manufactured earlier and the new are used as “Corks”, it is prayed to dismiss the present appeal.
- C 6. Heard the learned counsel for the respective parties at length.
7. The short question which is posed for consideration of this court is:-
- “Whether for the goods, manufactured by use of modern technologies can be said to be “diversification”, and manufacturing of the goods of a nature different from the goods manufactured earlier entitle the appellant to claim the exemption from trade tax as provided under Section 4-A (5) of the U.P. Trade Tax Act?
- D 8. While considering the aforesaid issue, relevant provisions of Section 4-A are required to be referred to, more particularly, Section 4-A(2)(c), Section 4-A(5)(b)(i) & (ii) and Section 4-A(5)(c), which reads as under:-
- “Section 4-A - Exemption from trade tax in certain cases**
- (1)
- (2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or reduction in the rate of tax, shall be admissible—
- (a)
- (b)
- (bb)
- (c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification or modernisation on or after April 1, 1990, **and which in the case of diversification, are different from the goods manufactured before such diversification**, and in the case of expansion or modernisation are additional production as a result of such expansion or modernisation; and

(3) A

(4)

(5) “Unit which has undertaken expansion, diversification or modernisation” means an industrial undertaking—

(a)

(b) whose first date of production of goods,— B

(i) of a nature different from those manufactured earlier by such undertaking, in case of units undertaking diversification, and

(ii) manufactured in excess of base production in such undertaking, in case of units undertaking expansion or modernisation, falls at any time after March 31, 1990; C

(c) the production capacity whereof except as provided in the proviso to sub-section (1) has increased by atleast twenty-five percent as a result of expansion or modernisation, **or wherein goods of a nature different from those manufactured earlier are manufactured after diversification;** D

8.1 Thus, on a fair reading of the aforesaid provisions, it is clear that in case of “diversification” the goods manufactured by diversification shall be different from the goods manufactured before such diversification [Section 4-A(2)(c)]. E

8.2 In the case of “expansion or modernization”, the exemption shall be available, if there is an additional production as a result of such modernization or expansion. In the present case, we are concerned with the case of “diversification”. Therefore, the goods manufactured after diversification must be different goods from the goods manufactured before such diversification. As per the settled position of law, in case of an exemption notification/exemption provision, the same is required to be construed literally and the person claiming the exemption must satisfy all the conditions of exemption provision. F

8.3 In the present case, the appellant was manufacturing / producing “Spun Line Crown Cork” used for sealing the glass bottles. With the use of modern technologies, now the appellant is manufacturing “Double Lip Dry Blend Crowns”, which is also used for sealing the glass bottles. The earlier product being manufactured by the appellant was used for sealing glass bottles and subsequently the additional product produced with the use of modern technology is also being used for the same purpose namely, “sealing glass bottles”. Therefore, the same cannot be said to G

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- A be manufacturing of goods different from being manufactured before such diversification. With the passage of time, due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, at the most, it can be said to be expansion and/or modernization, but it cannot be said to be "diversification", which is "manufacturing of goods different
- B from the goods manufactured before such diversification". In a case of "diversification", the effect has to be that the quality and quantity of the product should have been improved and/or increased but if the ultimate use is the same, the product manufactured on use of modern and/or advanced technology cannot be said to be manufacturing the different
- C goods for claiming the exemption from payment of trade tax. The words used in Section 4-A are very clear and unambiguous. As per the settled proposition of law and as observed hereinabove, the Statute and more particularly, the exemption provisions are to be read as they are and to be construed literally and should be given a literal meaning. Giving the literal meaning to the exemption provision namely, Section 4-A, it cannot
- D be said that the appellant is entitled to the exemption as claimed.

8.4 Considering the aforesaid facts and circumstances of the case and as observed hereinabove, when the provisions of the Act unequivocally provides that the "diversification" can be considered only in a case where "goods of different nature" are produced, and only then the exemption shall be available. The goods manufactured on "diversification" must be a "different", "distinct" and a "separate" good in nature. In the present case, the goods manufactured on use of advance and/or modern technology, cannot be said to be a different commercial activity at all. The High Court has not committed any error in refusing to grant exemption to the appellant. We are in complete agreement with the view taken by F the High Court.

9. In view of the above and for the reasons stated above, present appeal fails and the same deserves to be dismissed and is accordingly dismissed. No costs.

Divya Pandey
(Assisted by : Abhishek Pratap Singh and Rakhi, LCRAs)

Appeal dismissed.