# M/S. Vadilal Chemicals Ltd vs The State Of Andhra Pradesh & Ors on 2 August, 2005

## Equivalent citations: AIR 2005 SUPREME COURT 3073, 2005 (6) SCC 292, 2005 AIR SCW 3668, 2005 (6) SCALE 68, (2005) 6 JT 560 (SC), 2005 (5) SLT 698, 2005 (6) JT 560, (2005) 142 STC 76, (2005) 6 SCJ 127, (2005) 59 KANTLJ(TRIB) 354, (2005) 5 SUPREME 692, (2005) 6 SCALE 68

## Author: Ruma Pal

## Bench: Ruma Pal, Tarun Chatterjee

CASE NO.:
Appeal (civil) 1905 of 2004

PETITIONER:
M/s. Vadilal Chemicals Ltd.

RESPONDENT:
The State of Andhra Pradesh & Ors.

DATE OF JUDGMENT: 02/08/2005

BENCH:
Ruma Pal & Tarun Chatterjee

JUDGMENT:

J U D G M E N T RUMA PAL, J.

The issue in this appeal is whether the appellant is entitled to exemption from payment of sales tax under the Andhra Pradesh General Sales Tax Act 1957 as notified by G.O.M.S. No.117 dated 17th March,1993 (referred to in brief as the '1993 G.O.').

The 1993 G.O. was issued by the Government of Andhra Pradesh, Industries and Commerce Department to effectuate the liberalized State incentive scheme for setting up new industries as introduced by the Government in 1989. The package of incentives already granted by the State Government was reviewed whereafter the State Government decided to introduce certain modifications in order to accelerate industrial development in the State. The incentives were granted on the basis of Districts according to their grouping under areas I, II and III. We are concerned with District Medak, falling within area II.

Apart from an investment subsidy, rebate on electricity charges and a deferment/tax holiday on sales tax for specified periods on products manufactured in the new industrial units were granted in Clauses 5(c) and 5(b) respectively of the 1993 G.O. Medium and large scale industries were given

sales tax deferment, whereas tiny and small scale industries were given a sales tax (holiday) exemption. The appellant falls within the latter category. In terms of the 1993 G.O. units like the appellant's were given a 5 years sales tax holiday subject to a ceiling of hundred percent of fixed capital costs or Rs. 35 lakhs whichever was less during the entire holiday period. The procedure prescribed for availing of the benefits of 1993 G.O. envisaged the setting up of State Level and District Level Committees. The District Level Committees included within its members, the Deputy Commissioner of Commercial Taxes. Clauses 10 and 11 of the 1993 G.O. read as follows:-

> "10. The above Committee shall scrutinize and sanction the claims of the units of the concerned District involving eligible capital investment of Rs. 7.5 lakhs and below:
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> 11. The decisions of the State Level Committee shall be final in scrutinizing/ deciding the eligible investment and sanctioning the incentives condoning the delays in filing of applications for registration and claims for eligible industries."

Clause 16 records that the 1993 G.O. which was issued in the name of the Governor of the State was with the concurrence of the Finance and Planning (Financial Wing) Department. Annexure-I to the 1993 G.O. provides for a list of ineligible industries. We will have the occasion to refer to this in greater detail at a subsequent stage.

In 1994 the appellant set up a small scale industrial unit in Medak in the State of Andhra Pradesh and invested a sum of Rs. 93.99 lakhs for production of Liquor Ammonia and for refilling of Anhydrous Ammonia. On 6th June, 1994 the appellant commenced commercial production. Its application to the Industries Department for an eligibility certificate mentioned the nature of the activities carried on by the unit and also gave details of the investments made. The application was returned by the Industries Department on 18th May, 1995, because the Commissioner (Industries) was of the opinion that "refilling" activities were not eligible for incentives under the scheme. However, the matter was re-examined at the instance of the appellant. Since instructions had already been issued by the Department to the effect that refilling of LPG Gas was considered eligible for incentives, filling of anhydrous ammonia into cylinders was also held to be entitled to the grant of the same benefit.

Accordingly, on 7th of August, 1996 the appellant's unit was inspected by the Industries Department for verification of the appellant's application. A recommendation was made by the Industries Department for grant of the benefit, however limited to 50% of 15% investment subsidy and sales tax exemption of Rs.35 lakhs under the Scheme. A temporary eligibility certificate was then issued to the appellant on 22nd August, 1995 by the District Industries Centre. This was made conditional on the SSI unit not collecting Sales Tax from its consumers during the period of exemption. If it did, it would be liable to remit the sales tax collected to Government. Under cover of a letter from the Commissioner of Industries dated 10th August 1996, a final eligibility certificate was granted to the appellant certifying the eligibility of the appellant for sales tax exemption. It may be mentioned here that the final eligibility certificate was issued with the sanction accorded by the State Level Committee/District Level Committee. A copy of the covering letter was forwarded to the Commissioner of Commercial Taxes, the concerned Commercial Tax Officer and the Deputy

Commissioner Commercial Taxes, Hyderabad.

The Commissioner of Commercial Taxes in his turn wrote to the Deputy Commissioner Commercial Taxes Hyderabad, the respondent No.4 before us, (referred to in brief as DCCT) requesting him to permit Sales Tax exemption by the appellant in accordance with the 1993 G.O. saying that the eligibility certificate would be operative from 6th June, 1994 for a period of five years for an amount of Rs. 35 lakhs. The appellant was thereafter granted exemption from payment of sales tax on the products sold from its unit upto a limit of Rs. 35 lakhs for five years from 1994 to 1999.

Between the period from 30th September, 2002 to 3rd October, 2002 about four years after the period of exemption expired, 9 pre-revision show cause notices under Section 9(2) of the Central Sales Tax Act.1956 read with Section 20(2) of the Andhra Pradesh General Sales Tax Act,1957 were issued by the DCCT to the appellant. It was said in the notices that upon verification it was noticed that the Assessing Authority had allowed irregular sales tax exemption on the first sales of anhydrous liquefied ammonia amounting to Rs. 33,98,287.00 and adjusted the tax against the tax exemption granted under the Tax Holiday Incentive Scheme. The DCCT noticed that the commodity that was purchased and sold were one and the same and that there was no new commodity that had emerged and that the activity of manufacture as it was understood in common parlance had not taken place. According to the DCCT, "manufacture" envisaged a commercially distinct and different commodity or a finished product with a separate identity from its raw material. It was said that:-

> "The activity of bottling/packing of cases into a unit containers from bulk quantities was not recognized as manufacture even under Central Excise Act. It was also ascertained from the concerned Central Excise Authorities that the said units were not registered under Central Excise Act and not paying Central Excise Duty on the gases cleared in cylinders to the consumers. In view of the foregoing conclusions, the granting of deferment/exemption of sales tax to the said units is incorrect and the same is to be withdrawn."

The nine show cause notices are materially identical except that each related to different assessment years during the period of the sales tax holiday.

The appellant replied to the show cause notices in which the jurisdiction of the DCCT to issue the notices was questioned. It was clarified that the appellant was liable to duty under the Central Excise Tariff Act 1985 and that the appellant had been paying 16% Excise Duty on both Anhydrous Ammonia and Liquor Ammonia manufactured by it in accordance with the procedure prescribed under that Act. The details of the processes undertaken in producing the products were also given. It was also drawn to the attention of the DCCT that the authority to determine the eligibility under the G.O. Ms. was not the Commercial Taxes Department, but the Department of Industries & Commerce.

Subsequently, the appellant filed a writ petition in the Andhra Pradesh High Court for a declaration that the appellant was entitled to the benefits notified by the 1993 G.O. and that the pre-revision show cause notices issued by the DCCT for the years 1995-1996 up to the 1999-2000, were illegal,

void and unenforceable.

During the pendency of the writ proceedings on 21st January, 2003 the DCCT passed an order confirming the demand proposed to be raised in the show cause notices. The DCCT held that process of refilling anhydrous ammonia into cylinders did not amount to a manufacturing activity. He held that the State Government had issued a Memo dated 8.2.2000 declaring that LPG bottling units were not eligible for any Sales Tax incentive as no manufacturing activity was involved. Accordingly the DCCT issued demand notices for recovery of sales tax for the period between 1995-96 to 1999-2000. The High Court dismissed the writ petition on the basis of an earlier Division Bench pronouncement in SHV Energy South East Limited and Anr. Vs. State Investment Promotion Board, Hyderabad and Anr. Being aggrieved by the dismissal of the writ petition the appellant filed a special leave petition challenging the decision of the High Court before this Court under Article 136.

Mr. Dushyant Dave, learned senior counsel appearing on behalf of the appellant submitted that the decision relied upon by the High Court was distinguishable. Apart from reiterating the appellant's stand as taken in the reply to the impugned show cause notices it was also submitted that in this particular case the appellant had been granted the benefit under the 1993 G.O. after an exhaustive consideration of the appellants' case. It was stated that the appellant had made a full disclosure of the process of manufacture undertaken by the appellant. It was also submitted that the word "manufacture" as used in the 1993 G.O. must be understood in the context of the incentive scheme and the objects sought to be fulfilled thereby. The emphasis was on Industrial development and not on the manufacture. It was submitted that the words used in the 1993 G.O. must be given a liberal construction since it is part of a packet of incentives. As far as sales tax law was concerned, the State Act neither defined manufacture nor was it concerned with whether goods sold were manufactured or not. According to the learned counsel there was intrinsic evidence in the 1993 G.O. to show that the word "manufacture" was used in a wide sense and that this was apparent from Annexure I to the 1993 G.O. which contained a list of ineligible industries. These included widely disparate industries such as powder of chilly, turmeric, masala spices, kari, sambhar etc.; manure mixing industries and hotels except (a) Motels (b) hotels set up in State Government approved tourist centers of Districts. Finally and in the alternative it was contended that if the issue was decided against the appellant, having regard to the circumstances of the case, the respondent State should not be permitted to recover the amount as the appellant had not collected any sales tax from its consumers, not only because of the prohibition under the State Sales Tax Act, but also because of the conditions under which the eligibility certificates both temporary and final had been issued.

Mr. Rakesh Dwivedi, learned senior counsel appearing on behalf of the respondents has said that manufacture for the purpose of the sales tax does not include repackaging, rebottling etc. This has been so held in Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) vs. M/s. PIO Food Packers (1980) Suppl. SCC 174. Therefore, it was contended, if the commodity remains the same then irrespective of the process, it would not amount to manufacture. This was a patent error which was correctible under Section 20 of the State Sales Tax Act. Countering the appellants' submission for a liberal construction, it is argued that since an exemption was sought to be claimed, the language would have to be strictly construed. The list of ineligible industries in Annexure I to the 1993 G.O. did not, according to the respondents, give rise to any presumption that the process

carried on by the industries excluded, indicated what was manufacture for the purpose of the 1993 G.O. The list merely excluded certain industries altogether to avoid controversy. The learned counsel conceded that as far as the production of liquor ammonia was concerned, it could reasonably be said that it had undergone a process of manufacture but as far as the bottling of the anhydrous ammonia was concerned, the process could not amount to manufacture.

In our opinion, the appeal must be allowed. At the outset we may note that the earlier decision of the Division Bench relied upon by the High Court is clearly distinguishable. It dealt with a different Government order and the Court based its decision to a large extent on the fact that the eligibility certificate which had been granted to the assessee unit in that case was not only temporary but had also been cancelled. In the present case, the grant of the eligibility certificate was not the outcome of an unconsidered decision based on extraneous considerations. The matter was considered in depth and sanctioned by the District Level Committee of which, as we have already noted, the DCCT was a part. The appellant had made a full disclosure of the process undertaken in respect of which sales tax exemption was granted. No malafides has been alleged against the appellant nor is it the case of the respondents that the appellant had taken any unfair advantage of the 1993 G.O. Doubtless the 1993 G.O. which was issued by the Industries & Commerce Department had granted the sales tax holiday on products manufactured in industrial units set up by the State Government. But the interpretation of the word 'manufacture' as used in the 1993 G.O. by the DCCT was wholly incorrect. For one, the DCCT appears to have imported the definition of 'manufacture' from the law relating to excise. That was uncalled for having regard to the fact that the word had been used in a different context altogether. (See Ashirwad Ispat Udyog & Ors vs. State Level Committee & Ors.) Reliance by the respondents on M/s.PIO Food Packers (supra) is misplaced. In that case, sales tax was sought to be levied under the Kerala General Sales Tax Act, 1974 on the ground that the pineapples purchased by the assessee had been consumed in the manufacture of canned pineapple, pineapple jam and pineapple squash within the meaning of the phrase 'consumes such goods in the manufacture of the goods' used in Section 5A(1)(b) of the Act. It was in the context of that phrase that this Court said:-

> "Commonly manufacture is the end result of one more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity".

In the result it was held:

> " that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture. The case does not fall within Section 5- A(1)(a) of the Kerala General Sales Tax Act".

In this case the State Sales Tax Act contains no provision relating to 'manufacture'. The concept only finds place in the 1993 G.O. issued by the Department of Commerce and Industries. It appears from the context of the other provisions of the 1993 G.O. that the word 'manufacture' had been used to exclude dealers who merely purchased the goods and resold the same on retail price. What the State Government wanted was investment and industrial activity. It is in this background that the 1993 G.O. must be interpreted. [See: Commissioner of Sales Tax. Vs. Industrial Coal Enterprises (1992) 2 SCC 607). The Department of Commerce and Industries had by its letters dated 3rd June 1995 and 20th August 1996 clarified the issue. The exemption was granted in terms of the 1993 G.O. the thrust of which was to increase the industrial development in the State. The Commissioner, Commercial Tax had also in no uncertain terms accepted the interpretation put by the Industries Department on the 1993 G.O. and written to the DCCT to permit sales tax exemption to the appellant in accordance with the 1993 G.O. for a period of five years upto a limit of Rs.35 lakhs.

Besides the conclusion of the DCCT was based on an incorrect factual premise that the appellant had not paid excise duty on the bottled ammonia. The DCCT ignored the appellant's clear statement in its reply to the show cause notices that the bottled ammonia had been subjected to excise duty and that it had paid the levy as prescribed under the Central Excise Tariff Act, 1985.

Furthermore, under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. The procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of Industries & Commerce by issuing an Eligibility Certificate. There was no other method prescribed under the scheme for determining an industrial unit's eligibility for the benefits granted. The Department of Industries & Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same. More so when the Commissioner, Sales Tax had accepted the Eligibility Certificate issued to the appellant and had separately notified the appellants eligibility for exemption under the 1993 G.O. In these circumstances the DCCT certainly could not assume that the exemption was wrongly granted nor did he have the jurisdiction under Section 20 of the State Act to go behind the eligibility certificate and embark upon a fresh enquiry with regard to the appellant's eligibility for the grant of the benefits. The counter affidavit filed by the respondents-sales tax authorities is telling. It is said that the Sales Tax Department had decided to cancel the eligibility certificates for sales tax incentives. As we have said the eligibility certificates were issued by the Department of Industries and Commerce and could not be cancelled by the Sales Tax Authorities. [See in this connection: Apollo Tyres vs. CIT Kochi, (2002) 9 SCC 1.) There is another reason why the action of the DCCT cannot be upheld. The primary facts relating to the processes undertaken by the appellant at its unit were known to the Department of Industries and Commerce and the DCCT. The only question was what was the proper conclusion to be drawn from these. The Department of Industries and Commerce which was

responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the departments of the State Government involved in the process had been duly consulted. The State, which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice. It is true that on 17th March 2000, the Commissioner of Industries issued a circular cancelling Eligibility Certificates issued to Industrial Gases bottling units, Mineral Water and Sand Benefication units. But the Commissioner of Industries had also directed the cancellation of the Temporary/Final Eligibility Certificates issued to such industries with effect from 30th March 2000 and to inform the units to pay sales tax with effect from 31st March 2000 to the Commercial Taxes Department. The cancellation was, therefore, given prospective effect. If the DCCT wanted to rely on the circular, it had to give effect to it completely, and indisputably by 31st March, 2000 the period of sales tax exemption was over for the appellant.

Since we are with the appellant on the merits, it is unnecessary to consider the alternative argument relating to the recovery of the sales tax from the appellant. The appeal is for the reasons stated allowed and the decision of the High Court is set aside. The show cause notices and the impugned order of the DCCT is quashed. There will be no order as to costs.