Mangalore Chemicals & Fertilisers ... vs Deputy Commissioner Of Commercial ... on 2 August, 1991

Equivalent citations: 1992 AIR 152, 1991 SCR (3) 336, AIR 1992 SUPREME COURT 152, 1991 AIR SCW 2851, 1992 (1) SCC(SUPP) 21, 1992 (1) UPTC 123, (1992) 3 JT 482 (SC), 1991 KERLJ(TAX) 743, 1992 SCC (SUPP) 1 21, (1991) 3 SCR 336 (SC), (1991) 55 ELT 437, (1993) 49 ECR 23

Author: S.C. Agrawal

Bench: S.C. Agrawal

PETITIONER:
MANGALORE CHEMICALS & FERTILISERS LIMITED

Vs.

RESPONDENT:
DEPUTY COMMISSIONER OF COMMERCIAL TAXES AND ORS.

DATE OF JUDGMENT02/08/1991

BENCH:
VENKATACHALLIAH, M.N. (J)
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VENKATACHALLIAH, M.N. (J)
AGRAWAL, S.C. (J)

CITATION:
1992 AIR 152 1991 SCR (3) 336
1992 SCC Supl. (1) 21 JT 1992 (3) 482
1991 SCALE (2)662

ACT:
Karnataka Sales Tax Act, 1957--Section 8A--Notifications dated 30.6. 1969 and 11.8.1975 issued under granting reliefs and incentives-Filing of monthly returns adjusting refund of sales tax in anticipation of permission of Revenue--Initiation of proceedings u/s. 13 and demand notices for sales-tax payment, when assessee's application for permission to adjust sales tax not disposed of by the Revenue--Illegal.

Interpretation of Statutes--Taxing Statute--Provisions whether substantive or procedural character Ascertainment--Need of--When interpretative process arises, indicated.

HEADNOTE:

On 30th June, 1969, State Government issued a notification under Section 8A of the Karnataka Sales Tax Act, 1957, providing a package of reliefs and incentives including one concerning relief from payment of sales tax.

A further notification dated 11th August, 1975 was issued, envisaging certain modified procedures for effectuating the reliefs contemplated by the exemption notification of 30th June, 1969.

For the assessment year 1976-77, the appellant made an application to the Respondent No. 1 on 10th November, 1976 for adjustment of the refunds against sales-tax due and permission was granted with retrospective effect from 1st May, 1976 validating the adjustments, which the appellant had made during the interregnum.

For the three subsequent years, viz., 1977-78, 1978-79 and 197980, similar applications, which were made on 29th March 1977, 20th March 1978 and 8th March 1979 respectively, remained undisposed of.

In anticipation of the permission, appellant adjusted the refund against tax payable for these years and filed its monthly returns setting out adjustments so effected.

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There was no dispute that the appellant was entitled to the benefit of the notification dated 30th June, 1969 and that the refunds were eligible to be adjusted against sales-tax payable for respective years.

The respondent no. 1 in his letter dated 27.3.1979 informed the appellant that the orders on appellant's application for permission would be passed only on receipt of the clarification from the Government on the matters.

On 9th January, 1980, the appellant was issued three demand notices by the Commercial Tax Officer demanding payment of the sales-tax, stating that as prior permission to adjust sales-tax had not been considered by the respondent no. 1, he was obliged to proceed to recover the taxes. Steps for recovery of the penalties were also initiated.

The appellant moved the High Court for issue of writ of mandamus to quash the demand notices and the proceedings initiated for recovery of penalty under section 13 of the Act.

The High Court dismissed the writ petition, against which the present appeal was filed.

The appellant urged that indisputably the permission for the three years had been sought well before the commencement of the respective years but had been withheld for reasons, which were demonstrably extraneous; that the basic eligibility was conditioned by the notification of 30th June, 1969, which required a certificate from the Department of Industries and Commerce; that the requirement of the annual permission for adjustment envisaged by the notification of 11th August; 1975 was merely procedural, as clause 3 of the notification stipulated; and that if the conditions were

satisfied, it was deemed that permission was given.

The respondents contended that it was not as if the right to the refund was denied or defeated by the inaction of the Deputy Commissioner but only one mode of the refund by adjustment--became unavailable; that the benefit envisaged by the notification of 11th August, 1975 was in the nature of a concession and that the appellant in order to avail itself of its benefit had to show strict compliance with conditions subject to which it was available; that where exemptions were concerned, the conditions thereof ought to be strictly construed and strict compliance with them exacted before a person could lay claim to the
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benefit of the exemptions; and that if, in the meanwhile, the period itself expired, no relief was possible as quite obviously, the requirements of 'prior permission' became impossible of compliance.

Allowing the appeal, this Court,

HELD: 1. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior-permission clearly envisages a procedure to give effect to the exemption. [347E-F]

2. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission, if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied the conditions. Yet the permission was withheld--not for any valid and substantial reason, but owing to certain extraneous things concerning some interdepartmental issues. Appellant had nothing to do with those issues. [347F-H]

3. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission, because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permission of this nature was a technical requirement and could be issued making it operative from the time it was applied for. [349C-D]

4. A distinction between the provisions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. [347E-G]

5. 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 plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. [348F-G]

Assistant Commissioner of Commercial Taxes (Asstt.),

Dharwar & Ors. v. Dharmendra Trading Co. & Ors., [1988] 3 SCC 570; Wells v. Minister of Housing and Local Government, [1967] 1 WLR 1000 at 1007
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and Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors., [1991] JT (1) 151 at 155, referred to.

Kedarnath Jute Manufacturing Co. v. Commercial Tax Officer, Calcutta & Ors., [1965] 3 SCR 626 at 630 and Collector of Central Excise, Bombay and Anr. v. Messrs Parle Exports (P) Ltd., [1989] 1 SCC 345, distinguished.

Francis Bennion: "Statutory Interpretation", 1984 edition at page 683, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3235 of 1991.

From the Judgment and Order dated 14.8.1990 of the Karnataka High Court in Writ Petition No. 3436 of 1980. Harish Salve, K.P. Kumar, Ravinder Narain, P.K. Ram and Ms. Amrita Mitra for the Appellant.

R.N. Narasimhamurthy, K.H. Nobin Singh and M. Veerappa for the Respondents.

The following Order of the Court was delivered:

> By this petition, Messrs Mangalore Chemicals & Fertilis- ers Limited, a registered dealer under the Karnataka Sales Tax Act, 1957, ("Act") seeks special leave to appeal to this court from the judgment and order dated 14th August, 1990 of the High Court of Karnataka in W.P. No. 3436 of 1980.
>
> We have heard Shri Harish Salve, learned counsel for the petitioner and Shri R.N. Narasimhamurthy, learned Senior Counsel for the respondent-Revenue. Special leave granted.

2. On 30th June, 1969, State Government issued a noti- fication in exercise of powers referable to sec. 8A of the Act providing certain incentives to enterpreneurs starting new industries in the State, pursuant to State's policy for "rapid industrialisation". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which this appeal is concerned.

The clause in the said notification of 1969 relevant for the present purpose reads:

> "(1). Sales tax: A cash refund will-be allowed on all sales-tax paid by a new industry on raw materials purchased by it for the first five (5) years from the date of the industry goes into production, eligibility to the conces-

sions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce."

This was followed by a further notification dated 11th August, 1975 envisaging certain modified procedures for effectuating the reliefs contemplated by the earlier exemp- tion notification of 30th June, 1969. The relevant portions of the Preamble and the body of the notification say:

> Preamble: ". .... The Commissioner of Commercial Taxes has suggested that New Indus- tries covered by the above scheme might be permitted to adjust the refunds to which they would be eligible against the sales tax pay- able by them.
>
> Order In partial modification of the Gov- ernment order cited (2) above, Government are pleased to prescribe the following procedure for claiming refund of sales tax by new indus- tries.
>
> 2. The new industries intending to take advantage of the system of adjustment shall apply to the Deputy Commissioner of Commercial Taxes (Administration) of the Division concerned through the assessing authority. The application must contain the following particulars.
>
> i) Name and address of the new industry;
>
> ii) Date of commencement of the industry;
>
> iii) Reference number of the certificate issued by the Director of Industries & Com- merce, Bangalore;
>
> iv) Year for which the permission to withhold tax amount is related;
>
> v) The description of finished products in which the materials are used.

3. The Deputy Commissioner of Com-

mercial Taxes (Administration) of the con- cerned Division, after scrutinising the appli- cation filed by the new industry and after satisfying himself that the industry is cov- ered by the scheme sanctioned in G.O. No. 0I 58 FMI 69 dated 30.6.1969 will permit the industry to withhold the amount of tax payable on raw materials purchased and used in the manufacture of goods.

4. Omitted as unnecessary

5. The new industry may apply for permission at any time during the year subject to its renewal every subsequent year. Until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. At the end of the assessment year, particulars should be formulated in the annual return of the total amount adjusted

during the entire year. Along with the return, details prescribed in Government Order No. FD 428 CSL 70 dated 1.2. 1971 should be furnished.

6) * *

7) * Omitted as unnecessary."

*

8) * *

3. Appellant, it is not in dispute, had the necessary eligibility under the original exemption notification of 1969. The controversy is confined only to the question of the manner of effectuating the refund of sales tax that appellant, admittedly, was entitled to.

Some particulars as to the application made by the appellant for grant of permission might, perhaps, be neces- sary here. For the assessment year 1976-77, the appellant made such an application to Deputy Commissioner of Sales-tax (Administration) on 10th November, 1976 for adjustment of the refunds against sales-tax due. This permission was granted with retrospective effect from 1st May, 1976, vali- dating the adjustments which the appellant had made during the interregnum.

However, for the three subsequent years viz., 1977-78, 1978-79 and 1979-80, similar applications which were made on 29th March, 1977, 20th March, 1978 and 8th March, 1979, respec- tively, remained undisposed of. In the meanwhile, in antici- pation of the permission appellant adjusted the refund against tax payable for these years and filed its montly returns setting out adjustments so effected.

4. There is, as set-out earlier, no dispute that the appellant was entitled to the benefit of the notification dated 30th June, 1969. There is also no dispute that the refunds were eligible to be adjusted against sales-tax payable for respective years. The only controversy is wheth- er the appellant, not having actually secured the "prior permission" would be entitled to adjustment having regard to the words of the notification of 11th August, 1975, that "until permission of renewal is granted by the Deputy Com- missioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention virtually means this: "No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of clause 5. Since we did not give you the permission you cannot be permitted to adjust." Is this the effect of the law? The sales tax already paid by the appellant on the raw materials procured by it is the subject matter of the re- funds. The sales-tax against which the refund is sought to be adjusted is the sales-tax payable by appellant on the sales of goods manufactured by it. If the contention of the Revenue is correct, the position is that while the appellant is entitled to the refund it cannot, however, adjust the same against current dues of the particular year but should pay the tax working out its refunds separately. The situa- tion may well have been such but the snag comes here. If the adjustments made by the appellant in its monthly statements are disallowed, the sales-tax payable would be deemed to be in default and would attract

a penalty ranging from 1-1/2% to 21/2% per month from the date it fell due. That penalty, in the facts of this case, would be very much more than the amounts of refund.

5. What emerges from the undisputed facts is that appel- lant was entitled to the benefit of these adjustments in the respective years. It had done and carried out all that was necessary for it to do and carry out in that behalf. The grant of permission remained pending on account of certain outstanding inter-departmental issues as to which of the departments--the Department of Sales-tax or the Department of Industries--should. absorb the financial impact of these concessions.

Correspondence indicates that on account of these questions, internal to administration, the request for permission to adjust was not processed. On 27th March 1979, the Deputy Commissioner of Commercial Taxes wrote to the appellant to say that the orders on appellant's application for permis- sion would be passed only on receipt of the clarification from the Government on these matters.

6. While the matter stood thus, on 9th January, 1980, the Commercial Tax Officer of the concerned jurisdiction issued three demand notices demanding payment of the sales- tax. He said prior permission to adjust "had not been con- sidered by the Deputy Commissioner of Managlore Division, Mangalore, and, therefore, the Commercial Tax Officer was obliged to proceed to recover the taxes." Steps for recovery of the penalities were also initiated. Thereafter, in Febru- ary, 1980, the appellant moved the High Court for issue of writ of mandamus to quash the demand notices and the pro- ceedings initiated for recovery of penalty under sec. 13 of the Act.

7. The contention in the High Court were somewhat di.fferent from those urged before us. Before the High Court the Revenue asserted that the very conditions of eligibility for entitlement to these concessions stood modified under a subsequent notification of 12th January, 1977 and that appellant did not satisfy the altered conditions of eligi- bility. The question, therefore, was whether enterpreneurs who had commenced their ventures prior to 12th January, 1977, could be held to be governed by the terms of the later notification of 12th January 1977. This question, in princi- ple, had been settled by a decision of this Court in Assist- ant Commissioner of Commercial Taxes (Asst.), Dharwar & Ors. v. Dharmendra Trading Co. & Ors., [1988] 3 SCC 570. The question that arose there pertained to another condition stipulated in the same notification of 12th January, 1977. This Court held that industries established prior to that date were not governed by those altered conditions. Though in the present case the altered condition set-up against appellant was a different one, on the principle decided in Dharmendra Trading Company's case the altered condition would not be attracted. But the High Court took a different view of the matter. It held, in our opinion quite erroneous- ly, that the principle of the earlier decision of this Court was not applicable because it was rendered in the context of another condition in the 1977 notification. What fell for decision was not whether a particular condition was or was not applicable; but the very basic question whether a subse- quent notification could undo the eligibility for the con- cession stipulated and conferred under the 1969 notifica- tion.

Shri Narasimhamurthy with his usual fairness said that he found it difficult to support the approach of the High Court to the question. The main point on which the case turned is thus settled in favour

of the appellant.

8. But a subsidiary question arose whether the grant of permission for adjustment could at all be made after the period to which such adjustment related had itself expired. On this, the High Court said:

> " ..... But under Ext. B, the 1975 noti- fication, a clear procedure was provided in order to claim the benefit of refund on the sales-tax paid on raw materials purchased by the industrialists. The industrialists claim- ing the benefit had to secure the prior per- mission of the assessing authority to withhold the tax subject to the Government's permis- sion. In other words, prior permission was a condition precedent. In the instant case, Mr. Kumar was not able to satisfy us, permission had indeed been granted. On the other hand, he fairly conceded that though an application was made, no permission was actually granted to withhold the payment. Therefore, in view of the 1975 notification prescribing the proce- dure for claiming the benefit under 1969 notification as at Ex. A, there has been no compliance and as such, the petitioner will not be entitled to withhold the tax. With the result, the demand at Annexure R.S and T would be justifiable and legal."

(Emphasis supplied) This is the only ground on which the appellant's right to adjustment is contested by the Revenue.

9. Shri Harish Salve urged that indisputably the permis- sion for the three years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Learned counsel emphasised that the basic eligibility was condi- tioned by the notification of 30th June, 1969, which re- quired a certificate from the Department of Industries and Commerce. Both the eligibility and the fact that there was such certification from the Department of Industries were not disputed. Indeed, the requirement of the annual permis- sion for adjustment envisaged by the notification of 11th August, 1975 was, says counsel, merely procedural as clause 3 of the notification stipulated that if the conditions were satisfied--there was no dispute they were--the Deputy Com- missioner "will permit" the adjustment. Counsel says that if, in these circumstances, the Deputy Commissioner withheld the permis- sion law treats that as done which ought to have been done.

10. Shri Narasimha Murthy, however, sought to contend that the requirement of the prior permission was held--and rightly--by the High Court to be a 'condition precedent' and that non-satisfaction of that condition precedent, whatever be the reason for the non-satisfaction, automatically en- tailed the logical consequences. Learned counsel further submitted that it was not as if the right to the refund was denied or defeated by the inaction of the Deputy Commission- er but only one mode of the refund--by adjustment--became unavailable. Learned counsel urged that the benefit envis- aged by the notification of 11th August, 1975 was in the nature of a concession and that the appellant in order to avail itself of its benefit had to show strict compliance with condition subject to which it was available. Learned counsel placed reliance on Kedarnath Jute Munufacturing Co. v. Commercial Tax Officer, Calcutta & Ors., [1965] 3 SCR 626 and Collector of Central Excise,

Bombay and Anr. v. Messrs Parle Exports (P) Ltd., [1989] 1 SCC 345 to support his contention that where exemptions were concerned, the condi- tions thereof ought to be strictly construed and strict compliance with them exacted before a person could can lay claim to the benefit of the exemptions.

Learned counsel submitted that the point was not whether there was any justification for delaying the permission; but, more importantly, whether appellant at the relevant point of time had, such prior permission or not and that if, in the meanwhile, the period itself expired, no relief was possible as, quite obviously, the requirements of 'prior permission' became impossible of compliance.

Shri Narasimha Murthy relied on the following observa- tions of this court in Kedarnath Jute Manufacturing Co. 's case to support this contention:

> " ..... But the said exemption is made subject to a proviso. Under that proviso, in the case of such sales a declaration form duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority has to be furnished in the prescribed manner by the dealer who sells the goods .....
>
> " ..... The provision pre-
>
> scribing the exemption shall, therefore, be strictly construed..... ....To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but if not fur- nished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express inten- tion of the Legislature ..... "

11. We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly techni- cal. In Kedarnath's case, the question for consideration was whether the requirement of the declaration under the proviso to Sec. 5(2)(a)(ii) of the Bengal Finance (Sales-tax) Act, 1941, could be established by evidence aliunde. The court said that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimha Murthy would say the position in the present case was no different. He says that the notification of 1 1th August, 1975 was statutory in character and the condition as to 'prior-permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says counsel, be equated with the requirement of production of the declaration form in Kedarnath's case and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of this argument. The consequence which Shri Narasimha Murthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is

statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considera- tions of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespec- tive of the purposes they were intended to serve. In Kedarnath's case itself this Court pointed out that the string-

ency of the provisions and the mandatory character imparted to them were matters of important policy. The Court ob- served:

> " ..... The object of s. 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will wellnigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative effi- ciency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commision of fraud and introduce adminis- trative inconveniences, both of which the provisions of the said clause seek to avoid."

(Emphasis Supplied) (See: (1965) 3 SCR 626 at 630) Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notifi- cation. The subsequent notification which contain condition of prior-permission clearly envisages a procedure to give effect to the exemption. A distinction between the provi- sions of statute which are of substantive character and were built-in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distin-guished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld--not for any valid and substan- tial reason but owing to certain extraneous things concern- ing some inter-departmental issues. Appellant had nothing to do with those issues. Appel-|ant is now told "we are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denning: "Now I know that a public authority can not be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality" (See Wells v. Minister of Housing and Local Government, [1967] 1 WLR 1000 at 1007).

Francis Bennion in his "Statutory Interpretation", 1984 edition, says at page 683:

> "Unnecessary technicality: Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the

> fulfilment of the purposes of the legislation."

12. Shri Narasimhamurthy again relied on certain obser- vations in Collector of Central Excise, Bombay-1 & Anr. v. M/s. Parle Exports (P) Ltd., [1989] 1 SCC 345 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 M/s. Parle Exports (P) Ltd. relied upon by Sri Narasimhamurthy, it was observed:

> "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, howev- er, 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 plain words of the statute. If 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 provi- sion as to exemption is the one stated by this Court in Union of India & Ors. v. M/s. Wood Papers Ltd. & Ors., [1991]JT(1) 151at 155.

> " ..... 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 jails 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 or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction .... "

(Emphasis supplied)

13. It appears to us that the view taken of the matter by the High Court does not acknowledge the essential dis- tinction between what was a matter of form and w/hat was one of substance. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permis- sion of this nature was a technical requirement and could be issued making it operative from the time it was applied for.

14. We, therefore, allow the appeal, set aside the judgment of the High Court under appeal and direct the Deputy Commissioner of Sales Tax (Admn.) to grant the per- mission for the said three years operative from the dates of the application. The permission shall entitle the appellant to the adjustment of the refunds against the taxes due for the respective years. We issue these directions in view of the admitted position that, apart from the technical objec- tion that periods to which the

applications related had since expired, there was no other, impediment for the grant of permission. It also follows that the demand notices which proceed on the premise that adjustment of refunds against taxes due was unavailable can not also stand. They are quashed.

There will be no order as to costs.

V.P.R. Appeal allowed.