

# Shri Shubhlaxmi Mills Ltd vs Union Of India & Anr on 2 September, 1960

**Equivalent citations: AIR 1967 SUPREME COURT 750**

**Bench: S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah**

CASE NO. :

Appeal (civil) 269 of 1955

PETITIONER:

SHRI SHUBHLAXMI MILLS LTD.

RESPONDENT:

UNION OF INDIA & ANR.

DATE OF JUDGMENT: 02/09/1960

BENCH:

S.K. DAS & M. HIDAYATULLAH & K.C. DAS GUPTA & J.C. SHAH & N. RAJAGOPALA  
AYYANGAR

JUDGMENT:

JUDGMENT AIR 1967 SC 750 DAS GUPTA, J. : This appeal by special leave is against the order of the High Court of Bombay dismissing summarily the appellant's petition under Art. 226 of the Constitution of India. The appellant is a company incorporated and registered under the Indian Companies Act and has its registered office at Station Road, Cambay, in the state of Bombay. It appears that on May in 1943, the Nawab Saheb of Cambay representing the State of Cambay sold for and on behalf of the State the property known "Cambay State Mills" to a private limited company- "Shree Vijaylaxmi Cotton Mills Ltd." In the Indenture of Conveyance the vendor covenanted for himself and his successor that the vendor shall not during the period of five years from the date of the conveyance and during such further period hereafter as the Cambay Durbar may, from time to time, determine, levy, impose, claim, recover from the purchaser-company and its successors and assigns any income-tax, super tax, excess-profits tax or any other tax, impost or duty on the income, profits or gains of the said Mills or business thereof in the hands of the purchaser-company, its successors and assigns.

2. On an application made by the Vijaylaxmi Cotton Mills Ltd., for extension of the exemption for a further period of 15 years after expiry of the original period of 5 years the Nawab granted an extension of 11 years after the expiry of the original period of 5 years. In December 1949 the Vijaylaxmi Cotton Mills transferred its interest in the entire property of the mills to he appellant herein, Shubhlaxmi Mills Ltd. More than a year before this, on March 19, 1948, the Nawab of Cambay had signed an agreement of merger of the Cambay State in the Bombay Province. Under this agreement the merger became effective on and from June 10, 1948. On December 31, 1949, the Government of the Dominion of India enacted a law called "Taxation Laws Extension to Merged

States Act". The consequence of this was that the Income-tax Act became applicable to merged States including what had formerly been the State of Cambay as from August 1, 1949. On the same date the Government also promulgated an order called the "Merged States Taxation concession Order, 1949". Cl. 15 of which provides that if any industrial factory situate in a Merged State had been granted exemption from income-tax, super tax or any tax by the Ruler of the State before August 1, 1949, it shall submit an application to the Commissioner of Income-tax which the Commissioner was directed to forward to the Central Government and the Central Government, having regard to all the circumstances, might grant such reliefs as it might think appropriate. The appellant company made an application on May 7, 1949, to the Commissioner of Income-tax, Bombay, claiming exemption from income-tax, super tax, excess profits tax and business profits tax on the basis of the Covenant made by to Cambay State in favour of its vendor Vijaylaxmi Cotton Mills. This application was, however rejected by the Government of India and this decision was communicated to the appellant company by the Commissioner of Income-tax by his letter, dated October 25, 1951. Thereafter the appellant company was assessed to income-tax for the years 1951-52. 1952-53. On June

11. 1954 the appellant applied to the High Court of Bombay for relief under Art. 226 of the Constitution against these assessment orders its contention being that it is entitled to an exemption from income-tax from the Government of India on the basis of the exemption which the Nawab of Cambay had agreed to give to its vendor the Vijaylaxmi Cotton Mills Ltd. As already indicated, this application was summarily rejected by the Bombay High Court.

3. The requisition which the High Court had to consider and which is also raised before us is whether the fact that Vijaylaxmi Cotton Mills was entitled to exemption from income-tax from the Cambay State by virtue of the Covenant entered into by the Nawab of Cambay, entitles the present appellant to exemption from income-tax from the Government of India. The fact that the Vijaylaxmi Cotton Mills is no longer in the picture and the appellant company has purchased the property does not affect the question. The real question is whether after the accession of the Cambay State to the Dominion of India, somebody having a contractual right which could be enforced against the Cambay State was entitled to enforce it against the Government of India in the Indian Courts. There is an exhaustive review of the authorities pertinent on this question in this Court's decision in *Dalmia Dadri Cement Co., Ltd. v. Commr. of Income-tax*, 1959 SCR 729: (AIR 1958 SC 816). It is unnecessary to discuss these authorities again. We may only refer to the succinct statement of the Law by Lord Dunedin in *Vajesingji Joravarsinghji v. Secy. of State for India*, 51 Ind App 357 at p. 360: (AIR 1924 PC 216 at p. 217) :

"When a territory is acquired by a sovereign state for the first time that is an Act of state. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognized ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal Courts established by the new sovereign only such rights as that sovereign has, through his officers, recognised. Such rights as he had-under the rule of predecessors avail him nothing. Nay, more even if in a treaty of cession it is stipulated that certain inhabitants should

enjoy certain rights, that does not give a title to those inhabitants to enforce these stipulations in the municipal Courts. The right to enforce remains only with the high contracting parties"

On a consideration of the authorities the law was stated thus in the Dadri Cement case, 1959 SCR 729: (AIR 1958 SC 816), by Venkatarama Aiyar. J. on behalf of the Court :

"The result of the authorities then is that when a treaty is entered into by sovereigns of independent states "hereunder sovereignty in territories passes from one to the other; clauses therein providing for the recognition by the new sovereign of the existing rights of the residents of those territories must be regarded as invested with the character of an act of state and no claim based thereon could be enforced in a Court of law."

4. The appellant company was, therefore, not entitled to have any relief from the Courts in India on the basis of the covenants in spite of the fact that the merger agreement included-by a communication from the Government of India to the Nawab, dated September 10, 1948-a clause in these terms:-

"No order passed or action taken by you before the date of making over the administration to the Dominion Government will be questioned unless the order was passed or action taken after the 1st April 1948, and is considered by the Government of India to be palpably unjust or unreasonable. The decision of the Government of India in this respect will be final."

5. Before us a point was sought to be taken on behalf of the appellant that the Dominion of India did in fact recognize the right of the Vijaylaxmi Cotton Mills to exemption from income-tax and so the right can be enforced. It is to be noticed that in the application before the High Court no such case of recognition was set up. Paragraph 6 of the Petition to which the learned counsel drew our ' attention says "The petitioners say that ever since the grant of the said exemption from 1943 onwards the said Shree Vijaylaxmi Cotton Mills enjoyed the said exemption and the said cambay State carried out its obligations". It is urged that by these words the appellant wanted to say that the Government of India also gave the Vijaylaxmi Cotton Mills an exemption from taxation on the basis of the covenant. The words used in Para. 6 are, however, not capable of this interpretation. We think it proper to add that even assuming that a claim for recognition of the right to exemption on the basis of the' covenant had been made, the appellant has placed no material before the Court in support of such a claim. All that the learned counsel could say in support of this claim of recognition was that for the period from August 1, 1949, when the Dominion Government became entitled to levy income-tax on the Vijaylaxmi Cotton Mills upto December 16, 1949, when the Vijaylaxmi Cotton Mills transferred its interest, to the appellant company the Dominion of India or thereafter the Union of India has in fact made no assessment. The omission to assess tax for a short period like this could, however, not possibly be considered as amounting to the recognition of a right to exemption. It is worth remembering in this connection that in S. 15 of the Taxation Concession Order, made on December 31, 1949, it was made clear that the Government of India would allow or disallow any exemptions

granted by an acceding State, only as it thought fit. It is true that recognition need not be in any particular form. It was pointed by this Court in *Virendra Singh v. State of Uttar Pradesh*, (1955) 1 SCR 415: (AIR 1954 SCR 447), that recognition of such rights as they exist at the date of cession "can be given either by legislation or by proclamation and it can even be inferred from the mode of dealing".... This is of little assistance to the appellant, which relies wholly on the fact of non-assessment of the Vijaylaxmi Cotton Mills for the period from August 1, 1949 to December 16, 1949, and not on anything else. It is apparently in view of this state of things that no case of recognition by the Dominion of India or the Union of India of the right to exemption was made in the petition before the High Court. In our opinion the High Court rightly dismissed the petition.

6. The appeal is accordingly dismissed