

CASE NO.:
Appeal (civil) 1760-1761 of 2001

PETITIONER:
Commissioner of Trade Tax, U.P

RESPONDENT:
M/s. Modipan Fibres Company

DATE OF JUDGMENT: 02/08/2006

BENCH:
ASHOK BHAN & MARKANDEY KATJU

JUDGMENT:
J U D G M E N T
With
CIVIL APPEAL NO. 1762-1765 OF 2001

BHAN, J.

This order shall dispose of Civil Appeal Nos. 1760-1761 of 2001 and 1762-1765 of 2001 as the point involved in all these appeals is common. The High Court had also disposed of the revision petitions by a common order. These appeals are directed against a common order passed by the High Court of judicature at Allahabad in Trade Tax Revision No.1071-1072 of 1997 whereby the High Court allowed the revision filed by the respondent- assessee (hereinafter referred to as "the respondent") and set aside the order of the Trade Tax Tribunal \026 Bench-2, Ghaziabad (for short "the Tribunal"). Before advertng to the facts, it is necessary to mention a few preliminary facts on the statutory provision of the U.P. Trade Tax Act, 1948 (for short "the Act") and the Notification No. 1093 dated 27.7.1991 issued under Section 4-A of the Act.

Section 4-A interalia empowers the State Government to exempt from tax on the sale or purchase of such goods by such person or class of persons, as the State Government may by notification in the gazette exempt. In pursuance to the powers vested in it under Section 4-A, the State Government issued Notification No. S. T.-2-1093/XI-7(42)-68 U.P. Act XV-48-Order-90 dated 27.7.1991. Under the notification the State Government for the purpose of promoting the development of certain industries in the State granted exemptions from or reduction in rate of tax to new units and also to units which have undertaken expansion, diversification or modernization. To appreciate the submissions advanced by the counsel for the parties it would be appropriate to reproduce the relevant provisions of the Notification dated 27.7.1991, which are as under:

"Whereas the State Government is of the opinion that for promoting the development of certain industries in the State it is necessary to grant exemption

from or reduction in rate of tax to new units and also to units which have undertaken expansion, diversification or modernization;

Now, therefore, in exercise of the powers under Section 4-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No.XV of 1948), hereinafter referred to as the Act the Governor is pleased to declare that \026

(1-A)

.....
.....

(I-B) In respect of any goods manufactured in a unit other than the units of the type mentioned in Annexure II, which 'has undertaken expansion, diversification or modernization' on or after April 1, 1990 but not later than March 31, 1995, in the areas mentioned in column 2 of Annexure I, no tax shall be payable or, as the case may be, the tax shall be payable at the reduced rates specified in column 4 of Annexure I, by the manufacturer thereof for the period specified in column 3 of the said Annexure I, or till the maximum amount of tax relief by such exemption from or reduction in rate of tax as specified in column 5 of Annexure I is achieved, whichever is earlier, on the turnover of sales\027

(a) of the quantity of goods manufactured in excess of the base production in the case of units undertaking expansion or modernization; and

(b) of goods manufactured by the unit which are of a nature different from those manufactured earlier by such unit in the case of units undertaking diversification.

(2) The period of such facility shall be reckoned from the first date of production \026

(i) of goods of a nature different from those manufactured earlier by such unit in case of diversification; and

(ii) of the goods manufactured in excess of the base production in the case of units undertaking expansion or modernization.

5. Base production of a unit undertaking expansion or modernization shall be deemed to be-

(a) maximum production achieved during any of the preceding five consecutive assessment year, or

(b) 80 per cent, of the installed annual production capacity; whichever is higher.

6. (a) Turnover of sale of goods in any assessment year to the extent of the quantity covered by base production of that year and the stock of base production of previous years shall be deemed to be the turnover of base production.

(b) Only the turnover of goods in any assessment year in excess of the quantity referred to in clause (a) shall be entitled to the exemption from or reduction in the rate of tax."

FACTS

Facts are taken from Civil Appeal Nos. 1760-1761 of 2001.

Respondent, M/s. Modipan Fibres Company, deals in production and sale of Nylon and Polyester yarn. It was granted an eligibility certificate under Section 4-A of the Act in terms of Notification No.1093 dated 27.7.1991. For the assessment year under consideration, the respondent disclosed total production at 12,222,827 metric tones. It disclosed sales of 313.206 metric tones in the State of U.P. and 1008.55 metric tones as interstate sales. 10,461.189 metric tones of goods were shown as stock transfer. The assessee thus claimed that total sale of the goods was 11782.945 metric tones. The base production according to the eligibility certificate granted to the dealer was 9460 metric tones. It claimed exemption from payment of tax on turnover (for the entire year) of sale of goods weighing 2,322.945 metric tones i.e. after reducing the base production from the total sale of goods in a year. The Assessing Authority, however, granted exemption to the extent of turnover on the sale of 1,321.756 metric tones of goods. The claim of the respondent was restricted on the ground that the base production was achieved on 4.1.1993 and the exemption from payment of tax can be granted on the sale of goods after the base production is achieved.

\ Aggrieved against the order passed by the Assessing Authority, respondent filed two appeals, i.e., one under the State Sales Tax Act and the other under the Central Sales Tax Act before the Deputy Commissioner (Appeals), which were accepted by the order dated 4.2.1997. The order passed by the Assessing Authority was set aside and the respondent was granted exemption on the goods as claimed by it. Feeling aggrieved by the order passed by the Deputy Commissioner (Appeals), the Commissioner of Trade Tax, U.P. (for short "the appellant") filed two appeals being Appeal Nos.

70/97 and 71/97, before the Tribunal, which by its order dated 24.9.1997 accepted the appeals, set aside the order passed by the First Appellate Authority and restored the order passed by the Assessing Officer. Aggrieved by the order passed by the Tribunal, the respondent filed revision petition in the High Court which have been accepted by the impugned order. The High Court has set aside the order passed by the Tribunal as well as the Assessing Authority and restored that of the First Appellate Authority.

Although before the High Court number of points were raised but the only submission advanced before us is: as to whether the assessee is entitled to avail of the exemption on the basis of the turnover of sale of goods in an assessment year minus the base production or on the sale of goods after achieving the base production.

Dr. Padia, learned senior counsel appearing for the appellants contends that the base production has to be achieved first, and it is only thereafter the question of exemption on the turnover of sale of goods in excess of base production can be considered. To support his submission Dr. Padia has referred to the provisions of Section 7 (1) read with Rule 41(1) and submitted that the dealer is required to file monthly return on the basis of actual turnover and not on hypothetical basis. The dealer is also required to deposit the admitted tax at the time of filing of monthly return. That in case the contention of the assessee is accepted then the provisions of Section 7(1) read with Rule 41 (1) and the notification under consideration cannot be interpreted harmoniously. As against this, Shri Ganguli, learned senior counsel appearing for the respondents contends that the facility of exemption can be availed on the turnover of sale of goods in an assessment year in excess of the quantity referred to in sub-clause (a) of Clause 6 of the Notification. According to him, exemption is to be granted after taking into consideration the turnover of sale of goods of the entire assessment year.

Purpose of granting exemption under the dated 27.7.1999 was to promote the development of certain industries in the State. By the said notification exemption from payment of tax or reduction in rate of tax was granted to new units as also to the units which had undertaken expansion, diversification or modernization. The units of dealers in all the revisions are units, which had undertaken expansion/modernization. The units of the dealers (respondents) are covered by Clause (1-B) (a) of the Notification. Exemption granted is on the turnover of sales of quantity of goods manufactured in excess of base production. Under clause 6(a) of the said Notification, turnover of sale of goods in any assessment year to the extent of quantity covered by the base production of that year and balance stock of base production of previous years, shall be deemed to be turnover of the base production. Under clause 6(b)

of the Notification, the facility of exemption can be availed on the turnover of goods in "any assessment year" in excess of the quantity referred to in sub-clause (a) of clause 6. A conjoint reading of Clause (1-B) (a), clause 6(a) & (b) makes it clear that the dealer is entitled to claim exemption in respect of the turnover of sale of goods of an assessment year in excess of the base production. "Assessment Year" has been defined in Section 3 (j) to mean the twelve months ending on March 31. If that be the case then the extent of entitlement to exemption will depend on the sale of goods in the assessment year minus the base production determined under the Act. Simply because dealer has to file returns from month to month and deposit the admitted tax at the time of filing of the return does not mean that question of exemption on the turnover of the production in excess of the base production can be considered only after the base production is achieved. Returns filed every month and the tax paid would be subject to adjustment at the time of the finalization of the assessment. Intention of the legislature is clear and unambiguous. Exemption is to be given on the turnover of sale of goods in an assessment year in excess of the base production. We do not find any substance in the submission advanced on behalf of the appellants.

For the reasons stated above, we do not find any merit in these appeals and dismiss the same, leaving the parties to bear their own costs.