

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 679-714 OF 2009
(Arising out of S.L.P.(C) Nos.5410-5445/2008)

State of Gujarat & Anr.

...Appellant(s)

Versus

AMI Pigments Pvt. Ltd. & Ors. Etc.

...Respondent(s)

ORDER

Leave granted.

These Civil Appeals are filed by the State of Gujarat against the judgment and order of the Gujarat High Court, dated 23rd-25th & 30th April, 2007 and 28th June, 2007 in Special Civil Application Nos.9169, 9170 to 9190, 11809, 11810, 12032, 12195, 12197, 13498, 13554, 12104, 12103, 18729, 12033, 12034, 12106 of 2006 and 8158 of 2007.

Introduction

Respondent-assessees have received the benefit of exemption during the period 2001-2005. They got that benefit under the Circular dated 19th February, 2001, which Circular was sought to be superseded by the impugned Circular dated 2nd September, 2005. The 2005 Circular was challenged before the Gujarat High Court in number of writ petitions filed by respondent-assessees.

The controversy before us is whether the Commissioner on the administrative side under the Gujarat Sales Tax Act, 1969 had the

authority/competence to issue the 2001 Circular? The matter was argued before us at length. In the course of the arguments, we were taken through the judgments of this Court in the case of *Coastal Chemicals Ltd. Vs. Commercial Tax Officer, A.P. & Ors.*, reported in 1999 (8) SCC 465, on one hand and, on the other hand, numerous judgments of the Gujarat High Court following the judgment of this Court in *J.K.Cotton Spinning & Weaving Mills Co. Ltd. Vs. Sales Tax Officer*, reported in AIR 1965 SC 1350, and *Collector of Central Excise Vs. Ballarpur Industries Ltd.*, reported in 77 STC 282 (SC). It appears that the Gujarat High Court has followed the decision in *J.K. Cotton and Ballarpur* (supra) in numerous cases, including the case of *Saurashtra Calcine Bauxite & Allied Industries Vs. State of Gujarat* (91 STC 435). There is a dichotomy in the controversy canvassed by the parties before us. On one hand, the State of Gujarat's argument is basically confined to the question that the Commissioner had no authority to issue the 2001 Circular and, consequently, by the impugned 2005 Circular the earlier Circular came to be superseded. As against that, what was argued on behalf of the assesseees was that the Gujarat Sales Tax Act, 1969 was not similar to the A.P. General Sales Tax Act, 1957. According to the assesseees, the scheme of the two Acts was quite different and distinct. According to the assesseees, the principle laid down in the judgment of this Court in the cases of *J.K.Cotton* and *Ballarpur Industries* (supra) followed by the Gujarat High Court in the case of *Saurashtra Calcine* (supra) is one line of decisions, which, according to the assesseees, is based on the interpretation of Gujarat Law whereas the judgment of this Court in *Coastal Chemicals* (supra) was confined to the interpretation of the A.P. Law. On the other hand, it is the case of the State of Gujarat that the impugned 2005

Circular came to be issued because the controversy in hand stood decided by the test laid down by this Court in the case of *Coastal Chemicals* (supra).

In our view, one of the important tests applied by this Court in *J.K. Cotton* and *Ballarpur Industries* is the “test of essentiality” or the “test of dependency” in deciding the question as to whether the expression 'raw materials' or 'processing materials' or 'consumable sources' would cover various fuels like naphtha, liquid diesel oil, natural gas etc.

We may reiterate for the sake of clarity that in this case, the fuels consumed are natural gas, furnace oil, diesel oil and naphtha. Broadly, these fuels are used by the industry for carrying on its manufacturing process. In most cases, these fuels are used to generate electricity which is then used in the manufacture of end products like caustic soda, industrial chemicals etc.

The point which arises for consideration is whether the above-mentioned fuels would come within the meaning of the expression 'raw materials' 'processing materials' or 'consumable sources'. For that purpose, it is the case of the assessee that the tests laid down in *Ballarpur Industries* and in *J.K. Cotton* should be applied to the Gujarat Law which is different and distinct from the A.P. Law whereas, according to the Department, after the judgment of this Court in *Coastal Chemicals*, the tests laid down therein would prevail over the tests laid down in *Ballarpur Industries* and *J.K. Cotton*. Therefore, in short, we want the Gujarat High Court to decide as to which line of cases it should apply while deciding the question mentioned hereinabove.

Questions to be answered by the High Court on remand

“(1) Whether the Fuels consumed, namely, natural gas, furnace oil, light diesel oil, naphtha etc., by the industry to generate electricity which is then used in the manufacture of end products, namely, caustic soda, industrial chemicals etc, can be considered to be 'raw material' or 'processing material' or 'consumable source' for the purposes of Section 15B of the Gujarat Sales Tax Act, 1969 or for the purposes of Rule 42A or for the purposes of exemption notification issued from time to time under the Act?

(2) Whether the tests laid down by this Court in the case of *Coastal Chemicals* would apply for deciding the above question or whether the tests laid down by this Court in the case of *J.K. Cotton* and in the case of *Ballarpur Industries* would apply? In other words, which line of decisions would apply, while deciding the above question, to the Gujarat Law.”

It may be noted that according to the appellant-State of Gujarat, the controversy is covered by the judgment of this Court in the case of *Coastal Chemicals* (supra) whereas, according to the assesseees, it is not so because the two laws, namely, the Gujarat Law and the A.P. Law stand on different footing. This controversy needs to be answered by the High Court, on remand, in accordance with law.

Clarification

We may make it clear that the High Court will decide the above questions on merits without reference to the Circulars dated 19th February, 2001 or the

Circular dated 2nd September, 2005 and uninfluenced by the observations in the impugned judgment. The question whether the 2001 Circular gives rise to accrued rights in favour of the assesseees or whether the Revenue is estopped from impugning the legality of 2005 Circular will not be the subject matter of the remand or any proceedings thereafter.

Directions regarding pending and disposed of proceedings

It is pointed out to us that by the impugned judgment, the Gujarat High Court has set aside cases of reopening of assessments by the Department on the basis of 2005 Circular. That position will not be disturbed and shall continue to remain. However, in certain cases, the Department has adopted reassessment proceedings which are pending even today before the Assessing Officer/Appellate Authority on the basis of 2005 Circular. Those proceedings shall continue to remain pending till the Gujarat High Court gives its answers to the questions framed hereinabove. However, no demands for sales tax will be raised on the assesseees in respect of purchase of fuels during the period for which assessments have been completed on the basis of requisite Forms furnished by the assesseees under the exemption Notification and where no issue in that regard is pending before the Assessing Officer/Appellate Authority. We may add that regarding pending cases of assessments/appeals, no recovery shall be made for a period of six weeks after the judgment of the Gujarat High Court answering the above questions. In other words, the pending proceedings shall remain stayed till the High Court decides the above questions.

In the event of the High Court ultimately answering the questions in favour of the Department and against the assesseees, which exercise may result in the assesseees' becoming liable to pay the tax, the same shall be recovered without imposing any penalty. However, in such an eventuality, as far as the interest is concerned, the same shall be recoverable in accordance with law.

This order will only apply to the respondent-assesseees before this Court in the special leave petitions.

Accordingly, the impugned judgment is set aside. Matters are remitted back to the High Court. The above-mentioned Special Civil Applications shall stand restored to the file of the High Court which shall be decided by the High Court in accordance with the directions given hereinabove.

Civil Appeals are disposed of with no order as to costs.

**.....J.
(S.H. KAPADIA)**

**.....J.
(H.L. DATTU)**

**New Delhi,
February 04, 2009.**

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ORDER

In continuation of our order dated 4th February, 2009, we request the High Court to expeditiously hear and dispose of the matters, preferably within six months from today.

In the said order dated 4th February, 2009, there are typing mistakes. The words 'consumable sources' should be read as 'consumable stores'. The word 'Rule 42A' at page 5 should be read as 'Rule 42'.

.....J.
(S.H. KAPADIA)

.....J.
(H.L. DATTU)

**New Delhi,
February 12, 2009.**