

CASE NO.:
Appeal (civil) 1817 of 2008

PETITIONER:
State of Haryana

RESPONDENT:
M/s Samtel India Ltd

DATE OF JUDGMENT: 07/03/2008

BENCH:
S.H. Kapadia & B. Sudershan Reddy

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO 1817 OF 2008
(Arising out of SLP(C) No. 6197 /2008 @ CC 2494/08)

Delay condoned.

Leave granted.

A short point which arises for determination in this civil appeal is: whether the respondent herein was entitled to addition of Colour Monitors in eligibility certificate dated 23.2.1995 entitling it to sales tax exemption under rule 28A of Haryana General Sales Tax Rules, 1975 (for short, "1975 Rules") for the manufacture of monochrome monitors and black and white TV sets? In other words, whether the respondent was entitled to claim addition of a new item (colour monitor) in the eligibility certificate given to it, which certificate was restricted to the manufacture of monochrome monitors and black and white TV sets.

On 23.2.1995, the respondent was granted "eligibility certificate" entitling it to avail of sales tax exemption under rule 28A of 1975 Rules to the extent of Rs. 276.95 lakhs for a period of 7 years commencing from 23.2.1995 to 22.2.2002 for the manufacture of monochrome monitors and black and white TV sets alone. In other words, the said eligibility certificate did not cover colour monitors. At that time, the capital investment of the company was Rs. 55.39 lakhs. On 13.3.1996, the respondent submitted an application claiming tax benefit for an investment of Rs. 26.74 lakhs made for diversification of extending the unit to manufacture "colour monitor". The said application was allowed. Respondent was granted a new eligibility certificate on 15.9.1997 entitling it to avail the benefit of exemption from sales tax to the extent of Rs. 122.85 lakhs for the period commencing from 15.12.1995 to 14.12.2001.

On 1.2.1998, however, the respondent submitted an application requesting for insertion of "colour monitor" in the earlier eligibility certificate dated 23.2.1995. By order dated 11.10.1999 the competent authority rejected the application on the ground that there was no provision under rule 28A authorizing such addition in the eligibility certificate already granted.

Suffice it to state that the decision of the competent authority dated 11.10.1999 ultimately came to be challenged before Haryana Tax Tribunal. By its order dated 30.11.2005, the Tribunal accepted the appeal inter alia on the ground that a liberal approach needs to be taken while interpreting the said rule 28A and, accordingly, directed the Department (appellant herein) to add "colour monitor" to the eligibility certificate dated 23.2.1995. The decision of the Tribunal has been affirmed by the High Court by impugned

judgment dated 9.7.2007 in CWP No. 9764/07.

At the outset, we quote hereinbelow sub-rule (2)(d) of rule 28A of the 1975 Rules, which reads as under:

"Expansion/diversification of industrial unit means a capacity set up or installed during the operative period which creates additional productions/manufacturing facilities for manufacture of the same product/product as of the existing unit (expansion) or different products (diversification) at the same or new location; and

(i) in which the additional fixed capital investment made during the operative period exceeds 25% of the fixed capital investment of the existing unit; and

(ii) which results into increase in annual production by 25% of the installed capacity of the existing unit in case of expansion."

In this case, the High Court was concerned with interpretation of the above rule. It was not concerned with interpretation of a notification. Be that as it may, it is well settled, that, in a matter of exemption the rule/notification is required to be interpreted strictly. The question raised by the Department before the High Court was that the above rule confines the certificate of eligibility to the manufacture of the same product. Before the High Court inter alia it was contended that expansion/diversification of industrial unit meant creation of additional manufacturing facility for the manufacture of the same product (monochrome monitors). That, there was no scope for addition of colour monitor in existing eligibility certificate dated 23.2.1995, which was granted only in respect of manufacture of monochrome monitors. Further, according to the Department, under sub-rule (4)(a), different scales of tax benefit and different duration of exemption period have been provided for new industrial units and units undertaking expansion/diversification. Therefore, according to the Department, there was no question of liberal interpretation of rule 28A.

According to the respondent herein, colour monitor was an improved version of monochrome monitor and, therefore, it was entitled to the modification of eligibility certificate dated 23.2.1995. It was further urged on behalf of the respondent that, with the improved technology, liberal interpretation of the rule was warranted.

In this case we find that, while deciding the writ petition filed by the Department, the above rule has not been analysed by the High Court. No reason has been given by the High Court in its impugned judgment as to what weightage should be given to the words used in the above rule, particularly, the expression "for manufacture of the same product". Similarly, the High Court has failed to consider the effect of a cap/ceiling being put on the capital investment which, in the present case, stood at Rs. 276.95 lakhs vide eligibility certificate dated 23.2.1995. Similarly, the High Court has not discussed the scope of sub-rule (4)(a) which provides for different scales of tax benefit and different duration of exemption period. In this case, the High Court has primarily proceeded to dismiss the Department's writ petition on the ground that it had already issued modified eligibility certificate in terms of the directions given by the Tribunal. Secondly, the High Court has proceeded on the basis of its earlier judgment in the case of State of Haryana v. Bharti Teletech Ltd., Gurgaon in CWP NO. 11884/03.

In our view, the High Court had erred in relying upon the fact that modified eligibility certificate stood granted as it was granted pursuant to the impugned judgment of the Tribunal. Similarly, the High Court has relied upon its earlier judgment in Bharti Teletech Ltd. (supra) in which the writ

petition filed by the Department stood dismissed on the ground of laches. Therefore, in our view, both the above circumstances were irrelevant. As stated above, High Court should have considered the matter on interpretation of rule 28A of 1975 Rules. It has not considered the said rule. It has not considered the above arguments.

For the aforestated reasons, we set aside the impugned judgment dated 9.7.2007 dismissing the Department's CWP No. 9764/07 and, consequently, we remit the matter to the High Court for fresh consideration in accordance with law. Accordingly, we direct restoration of CWP No. 9764/07 on to the file of the High Court.

Accordingly, the Department's civil appeal stands allowed with no order as to costs.

JUDIS