

CASE NO.:
Appeal (civil) 5831 of 1999

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE

RESPONDENT:
M.P.V. & ENGG. INDUSTRIES

DATE OF JUDGMENT: 11/03/2003

BENCH:
S.N. VARIAVA & B.P. SINGH

JUDGMENT:
JUDGMENT

2003 (2) SCR 924

The Judgment of the Court was delivered by

B.P. SINGH, J. The short question which arises for consideration in this appeal is as to the date from which the respondent is entitled to the benefit of exemption contained in the notification dated March 1, 1986, issued by the Govt. of India in exercise of powers conferred by sub rule 1 of Rule 8 of the Central Excise Rules, 1944. While the appellant contends that the benefit of exemption can be availed only with effect from the date on which the certificate of registration is issued by the Director of Industries in any State, the respondent contends that the benefit of such exemption must be extended from the date of the application for registration and the respondent should not be deprived of the benefit of such exemption merely because on account of administrative delays the certificate of registration is issued much later.

Briefly stated the facts of the case are that the respondent is engaged in the business of manufacturing cooling towers. It commenced production with effect from June, 1986. On December 3, 1986 it applied to the Director of Industries, West Bengal, for grant of registration. There is some dispute as to whether this application was for grant of registration or for the grant of provisional registration, a question on which we wish to express no opinion. It appears that the said application was not disposed of and therefore sometime after February, 1988 as contended by the appellant, the respondent applied afresh for permanent registration which was granted by order dated March 31, 1988. The question, which arises for consideration, is whether the respondent is entitled to the benefit of exemption under the aforesaid notification with effect from the date of application or with effect from March 31, 1988, the date on which registration was granted.

The Collector by his order dated January 31, 1989 took the view that benefit of the exemption can be granted only with effect from the date on which the registration certificate was issued. He observed that the respondent had applied for provisional registration on 3.12.1986: which was not granted to it. Later a permanent registration certificate as a small scale Industrial unit was issued to it on 31.3.1988 in response to another application made for grant of permanent registration. Thus the Respondent was given permanent registration pursuant to a fresh application made subsequently, and not pursuant of its earlier application submitted on 3.12.1986 for provisional registration.

In the appeal before the Customs, Excise and (Gold) Appellate Tribunal, Eastern Bench, Calcutta, the Members of the Tribunal took differing views. While the judicial member held that the respondent was entitled to the benefit of exemption with effect from the date of application, the technical member took the view that the benefit of exemption could be extended only with effect from the date of registration. The matter was

therefore referred to a third member who agreed with the judicial member and held that the respondent was entitled to the benefit of exemption under the notification in question with effect from the date of application.

The Learned Addl. Solicitor General appearing for the appellant commended for our acceptance, the view of the technical member and laid emphasis on the language of the notification particularly paragraph 4 thereof which reads as under :

"The exemption contained in this notification shall be applicable only to a factory which is an undertaking registered with the Director of Industries in any State or the Developmental Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulations) Act, 1951 (65 of 1951)."

On the other hand, Dr. Debi Pal, learned Sr. counsel appearing on behalf of the Respondent contends that paragraph 4 does not prescribe the date with effect from which the certificate becomes effective. He submitted that the certificate issued by the Director of Industries merely recognises the status of an industry as a small scale industry and the right to claim exemption under the notification flows from such status. He has relied upon decisions of this Court in support of his contention which we shall consider hereafter.

Paragraph 4 of the notification does not in terms specify the date with effect from which the certificate becomes effective. We have therefore to consider the notification as a whole to ascertain its true intent. So considered it would appear that with a view to give some relief to small scale industries, certain exemptions were provided under the said notification. The exemption was meant to benefit an industry which qualified as a small scale industry. With a view to avoid any controversy as to their status as a small scale industry, the notification recognized the certificate issued by the Director of Industries to this effect. Once it is found by the Director of Industries that the industry qualifies as a small scale industrial unit, he is bound to issue the certificate of registration. However, no time bound procedure has been provided. It may at times take several months or years for the competent authority to issue the certificate envisaged in paragraph 4 of the notification. In such a situation can it be said that the small scale industry should be deprived of the benefit which would have accrued to it had the application for registration been disposed of immediately. In our view it would be unreasonable to deprive a small scale industry of the benefit under the notification particularly when the notification does not in terms provide that the certificate shall become effective from the date of its issuance, which is the view of the member (judicial) and the third member who held in favour of the respondent.

We may usefully refer to the decisions of this Court in State of U.P. and Anr. v. Haji Ismail Noor Mohammad and Co., [1988] 3 SCC 398 wherein this Court considered the provisions of Section 4-B and Rule 25-A(5): B the U.P. Sales Tax Act, 1948. Though Section 4 (B)(1)(a) did employ the words "holds a recognition certificate issued under sub section (2) in respect thereof. . Rule 25-A provided that such certificate shall take effect from date of its issue. No doubt, in that case the question of vires of the rules was raised, but in dealing with the matter the Court made certain observations which support the respondents' case. This Court negatived the contention urged on behalf of the appellant-State of U.P. that the High Court had virtually introduces a fiction that under certain circumstances where there had been a delay in issuing the certificate, the dealer must be deemed to have held the certificate. Noticing the submission urged on behalf of the State that the clear intendment of the provision was that the dealer should hold the registration certificate at the time of the purchases and that it would not be sufficient compliance with the statutes if the dealer comes to hold it subsequently, the Court observed that it was merely a matter of construction of the language of Section 4-B; whether the dealer should hold

a registration certificate at the time the purchases were made or whether the requirements of the section should be held to be satisfied if the dealer holds such a "recognition certificate" at the time of the assessment of the turnover in question. This Court approved the view of the High Court that the requirements of the section are substantially complied with if the certificate is available to the dealer at the time the liability to tax of the turnover in question is sought to be determined, subject to the requirement that the turnover is after the date of the application filed by the dealer for issue of a certificate. It was further observed:.

"On a consideration of the matter we are persuaded to the view that the construction placed on the provision by the High Court is an eminently plausible one. There is nothing basically wrong in the approach of the High Court that the statutory language does not insist upon the contemporaneity of the holding of the certificate with the purchases and that it is sufficient if the dealer, subsequently, comes to hold certificate "in respect thereof. It seems possible to say that to insist up a contemporaneity of the purchases and the certificates would also amount to qualifying the word 'holds' in the section by adding the words "at the time of the purchases."

In *The Assessing Authority and Ors. v. Patiala Biscuits Manufacturers Pvt. Ltd.*, [1977] Sales Tax Cases (39) 381 this Court was called upon to interpret Rule 5 as it existed before its amendment in October 1966. The earlier rule provided for registration of a dealer and issuance of a certificate of registration in the prescribed form. By amendment of October 10, 1966 some of the words were deleted and the following was added towards the end of Rule 6 :

"....in form S.T. IV which shall be valid from the date of receipt of application for registration by the Assessing Authority or from the date of commencement of the liability to pay tax, whichever is Later."

The submission before this Court was that as from the date of the amendment, the benefit of notification could be extended to the assessee from the date of the receipt of application for registration by the assessing authority, but the same did not apply to a dealer having taxable turnover before that date, unless he was actually registered and was in physical possession of registration certificate issued under Section 7. The submission was negatived and this Court held that the amendment of Rule 5 on October, 10, 1966 did not confer any new or additional power on the registering authority. The power to grant the registration certificate with effect from the date of application was already there. The amendment was only clarificatory of the law as it stood prior to it. It only made explicit which was formerly implicit. The Court observed :

"Be that as it may, the words "has been registered and possesses a registration certificate used in sub-section (1) of section 7 have to be construed in accord with the general tenor of the section as a whole, and in a manner which would avoid oppressive, unreasonable and anomalous results. As rightly pointed out in *Chandra Industries v. Punjab State*, it could never be the intention of the legislature that a dealer liable to pay tax who has in compliance with the requirements of sub-sections (2) and (3) of section 7." done all which lay in his power to obtain the registration certificate should pull down his shutters and keep his business closed under pain of being punished under section 23(1) and await indefinitely the pleasure and leisure of the prescribed authority in issuing the registration certificate. Adoption of such a construction would be to make the applicant liable to punishment for the laches and delays of the authority and its office".

It was then submitted by the Appellant that in construing a notification granting exemption, the notification must be strictly construed without stretching the language of the notification to confer any unintended benefit. Similar argument was advanced before the Tribunal. In dealing with

the submission the Tribunal noticed the decision of this Court in Collector of Central Excise v. Parle Exports (Pvt.) Ltd., reported in [1988] 38 ELT 741 wherein this Court held that exemption should be strictly construed although the exemption clause in the notification may be construed liberally. In other words, eligibility criteria should be construed strictly but a liberal approach may be adopted in construing other conditions. Reliance was also placed in U.O.I, v. Wood Papers Ltd. reported in [1990] 47 ELT 500. We may apply this principle to the case in hand. No doubt, so far the authorities are concerned they must examine the claim of the respondent to be a small scale industry strictly and in accordance with the rules. However, once it is found that the industry qualifies as a small scale industry, in the matter of grant of exemption a liberal approach is permissible if it does no violence to the language of the notification. In a case of this nature it is only reasonable to take the view that the benefit of exemption will accrue to a unit found to be small scale industrial unit from the date on which the application was made for grant of registration certificate. Such a unit should not be deprived of the benefit to which it is otherwise entitled as a small scale industrial unit merely because the authorities concerned took their own time in disposing of the application. We therefore, agree with the majority view of the Tribunal and hold that the benefit of exemption under the notification in question should be extended to the respondent with effect from the date on which the application for grant of registration was made by it before the competent authority. This is also in accord with the principle which found favour with this Court in State of U.P. and Anr. v. Haji Ismail Noor Mohammad & Co. and The Assessing Authority and Ors. v. Patiala Biscuits Manufacturers Pvt. Ltd., (Supra).

The question then arises as to whether the date 3rd December, 1986 or some date in February, 1988 should be reckoned as the date on which the application for registration was made. In this regard the factual position is not very clear. While the Collector in his impugned order has observed that the respondent had applied for provisional registration on 3rd December, 1986, which was not granted, and that the respondent was granted permanent registration on the basis of a second application, which was submitted later, the learned Judicial member in paragraph 1 of the impugned order has observed that the respondent had moved a provisional application on 3rd December, 1986, but no action was taken on this application by the Directorate of Cottage and Small Scale Industries, and it was only after lot of persuasion that the officer visited the factory of the respondent during the early part of 1988 and informed the respondent to move an application for permanent registration. In these circumstances another application v/as filed by the respondent in continuation of, or as a supplementary to their earlier application filed on 3rd December, 1986. On the basis of the record before us we are not in a position to record a categorical finding on this aspect of the matter. Learned Addl. Solicitor General rightly submitted that since the collector has recorded a finding in clear terms that the first application made by the respondent was not granted and that it was only the second application which was granted, if the respondents wished to challenge this finding, the same should have been specifically urged before the Tribunal, and it was open to the Tribunal to record its finding on this aspect of the matter: Unfortunately there is no clear finding on this question, but in view of the observations in the order of the judicial member which do not appear to have been controverted in the other two orders of the members of the Tribunal, the factual position is quite confusing and we therefore do not wish to express any opinion in the matter. We therefore remit the matter to the Tribunal to hear the parties and record a clear finding as to whether the first application made on 3rd December, 1986 was an application for registration whether provisional or permanent, and whether the second application made sometime in February/ March, 1988 was an application which was supplemental in nature or in continuation of the first application made on 3rd December, 1986. If the Tribunal comes to the conclusion that the application made on the 3rd of December, 1986 was rejected, then the benefit of exemption should be extended to the respondent only with effect from the date of the

second application made sometime in February, 1988. However if the Tribunal comes to the finding that the first application made on 3rd December, 1986 remained pending and the second application made sometime in February/March, 1988 was merely a continuation of the first application, being supplemental in nature, then the respondent would be entitled to the benefit of exemption with effect from the date of the first application i.e. from 3rd December, 1986. The Tribunal will dispose of the appeal accordingly.

The bank guarantee furnished by the respondent pursuant to the Judgment and order dated 7th February, 2000 shall be kept alive till the matter is decided by the Tribunal.

This appeal stands disposed of in the above terms. No. order as to costs.

JUDIS