

CASE NO.:
Appeal (civil) 2726-2728 of 1999

PETITIONER:
State of Punjab & Ors.

RESPONDENT:
M/s Punjab Fibres Ltd. & Ors.

DATE OF JUDGMENT: 14/12/2004

BENCH:
S. N. Variava, Dr. AR. Lakshmanan & S. H. Kapadia

JUDGMENT:
J U D G M E N T
S. N. VARIAVA, J.

These Appeals are against the Judgment dated 31st August 1998 of the Punjab and Haryana High Court.

Briefly stated the facts are as follows.

The first Respondent is a Spinning Mill, which claimed benefit of Notification issued by the Punjab Government on 23rd November 1979. As the decision in this case depends on the Notification it is reproduced herein for the sake of convenience :-

"The 23rd November, 1979.
No.S.O.82/P.A.46/48/s.5/Amd./79. In exercise of the powers conferred by sub-section (1) of Section 5 of the Punjab General Sales Tax Act, 1948 (Punjab Act No.46 of 1948) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following further amendment in the Punjab Government Excise and Taxation Department Notification No.S.O.26/P.A./46/S.5/72 dated the 10th August, 1972 namely :-

AMENDMENT

In the said notification, after the proviso to item 4, the following further proviso shall be added, namely;-

Provided further that the rate of purchase tax on cotton shall be two paise in a rupee on the purchases made by the textile mills established on or after the first December, 1979 for a period of five years to be reckoned from the aforesaid date subject to the following conditions:-

(i) that these mills shall start production by 31st December 1981; and

(ii) that these mills shall not despatch yarn in the course of inter-state transaction on consignment basis or through ex-state commission agents."

Initially, the Assessing Authority granted to the Respondents concessional rate of tax as per the said Notification. However, the

Joint Excise and Taxation Commissioner invoked his suo motu powers under Section 21 of the Punjab General Sales Tax Act, 1948 on the ground that the Mill was not established prior to 1st December 1979 and that the Respondents had been transferring yarn outside the State. After considering the reply of the Respondents, the Assessing Authority held that the Respondents were not entitled to the benefit of the Notification. They, therefore, asked the Respondents to pay the differential rate of duty and penalty.

The Revision Petition filed by the Respondents before the Sales Tax Tribunal was dismissed on 30th April 1990. It being held that the Respondents had not fulfilled the conditions of the Notification and were thus not entitled to the benefit thereof.

Under the Punjab General Sales Tax Act, there is a provision of Appeal against the Order passed by the Sales Tax Tribunal. The Respondents filed an Appeal. They also filed a Writ Petition in the High Court. Under these circumstances, the learned Single Judge of the High Court should never have entertained the Writ Petition. Surprisingly, the learned Single Judge of the High Court entertains the Writ Petition overruling the objection that the Writ Petition was not maintainable. The learned Single Judge of the High Court held, on facts, that the Mill had not been established prior to 1st December 1979. An additional submission, taken on behalf of the Appellants, that the Respondents were not a Textile Mill, was not accepted. The learned Single Judge further held that the despatches outside the State of Punjab were only to the branches of the Respondents and that second condition of the Notification was not violated as it was not shown that there was a sale transaction outside the State. The High Court held that there was no evidence to show that any sale had taken place outside the State. The learned Single Judge of the High Court held that all the conditions of the Notification had been made out and that the Respondents were entitled to the benefit of the Notification.

The Appeal filed by the Appellants has been dismissed by the Division Bench of the Punjab and Haryana High Court by the impugned Judgment. It has been held that the Mill had started after 1st December 1979. It has held that even though the Respondent is a Spinning Mill it could be treated to be a Textile Mill. It has been noticed that the Assessing Authority had initially taxed sales outside the State at 4% and had given the benefit of the Notification to the other sales. It is held that it is a possible view that the benefit of the Notification was not to be granted only to the sales which have taken place outside the State. The Division Bench thus dismissed the Appeal.

It is settled law that to avail of the benefits of a Notification the party must strictly comply with the conditions of the Notification. It is also settled law that the Notification has to be interpreted in terms of its wording. Where the language is very clear and unambiguous, benefit cannot be granted merely on the ground of sympathy.

As can be seen from the Return filed by the Respondents, which is set out in the assessment order, there was admittedly inter-state sales in a fairly large amount. This has been noticed by the Division Bench. The learned Single Judge of the High Court erred in considering these to be mere branch transfers when the Respondents themselves showed them as inter-state sales in their returns. Thus the reasoning of the learned Single Judge of the High Court that these are mere transfers out of State is erroneous. The reasoning given by the Division Bench is also not acceptable. The wording of clause (ii) are very clear. All that is required is despatch out of the State. Once there is despatch outside the State the benefit of the Notification cannot be claimed. This is so because this Notification has been issued by the Punjab Government under the Punjab General Sales Tax Act. The whole purpose of such Notification is to give benefit only to such Mills as are selling within the State. If the sale is within the State then the Government is getting revenue. Thus a concession is given with a condition that the Mill will not despatch out of the State. With the wording being clear and unambiguous it is not possible to accept

the view that the benefit can be given in respect of sales made within the State whereas sales outside the State can be charged at the higher rate. If the interpretation was to give benefit to sales made within the State, the wording would have been to the effect "on such yarn as is sold within the State". In view of the clear wording of sub-clause (ii), the High Court erred in granting the benefit of the Notification when the Respondents were clearly not entitled to the benefit thereof.

As we have already held that the Respondents were not entitled to the benefit of the Notification, we do not go into the question as to whether or not the Respondent-Mill was established before 1st December 1979 or the question whether they can be considered to be a Textile Mill.

In this view, we are unable to sustain the Order of the learned Single Judge and the impugned Order. They are, accordingly, set aside.

Accordingly, the Appeals are allowed. There will be no order as to costs.