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VIJAY ENTERPRISES AND ORS.

v.

SALES TAX OFFICER AND ORS.

FEBRUARY 11, 1992

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[K. JAYACHANDRA REDDY AND R.C. PATNAIK; JJ.]

Uttar Pradesh Sales Tax Act, 1948:

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Section 4-A and Notification dated 29.1.1985—Exemption of Sales tax to new industrial units—First sale of manufactured goods made within six months from date of production—Diesel set purchased before date of first sale—Whether cost of diesel set to be included in capital investment and exemption granted for five years from date of first sale.

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The petitioners were a small scale industrial unit manufacturing cycle stands and carriers. They applied for power connection in December, 1984, but it was given only on 20.5.86, though it was sanctioned on 19.1.86. Meanwhile, the petitioners started production manually with effect from 1.3.85 and effected first sale of the manufactured goods on 30.3.85. On their application for exemption from the payment of sales tax under Section 4-A of the U.P. Sales Tax Act, 1948, and the Notifications issued thereunder from time to time, the Divisional Joint Director of the Sales Tax Department granted exemption for a period of three years only commencing from 1.3.85.

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The petitioners filed a review application contending that the exemption should be with effect from 20.5.86, on which date the power connection was given and production commenced with the help of electricity and that the exemption should be for five years from 20.5.86; since on that date their capital investment was more than Rs. 3,00,000 including Rs. 72,800, the cost of diesel set purchased by them. The petitioners' plea that 30.3.85 as the date of first sale was accepted, but their plea that the date of starting of production should be 20.5.86 was rejected. Hence the petitioners filed a Writ Petition before the High Court.

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Rejecting the petitioners' pleas that the date of getting power connection, i.e. 20.5.86 should be taken as the date of starting production, and that the capital investment in the unit was more than Rs. 3,00,000 during

the period between 1.3.85 i.e. the date of starting production, and 30.3.85, i.e. the date of first sale, the High Court held that the date of first sale, i.e. 30.3.1985, should be taken as date of commencement of the period of exemption and that the petitioners were entitled for exemption only for a period of three years from that date in view of Section 4-A of the Act and the relevant notifications.

In the special leave Petition before this Court, the petitioners contended that once it was accepted that the date of first sale was 30.3.85, the cost of diesel unit amounting to Rs. 72,800 should also be included in the capital investment, in which case the total capital investment would be above Rs. 3 lakhs and accordingly, the exemption should be for five years as per the relevant provisions.

Disposing of the Special Leave Petition, this Court,

HELD: 1. The petitioners are entitled for exemption under Section 4-A of the U.P. Sales Tax Act, 1948, for five years from 30.3.1985 and accordingly they should be given the benefit.

2.1. Section 4-A of the Act provides for granting exemption to the new industrial units with a view to increase the production of any goods and the period of exemption should be from the date of first sale within the six months' time from the date of starting production. The Notification dated 29.1.1985 issued by the State Government under Section 4-A specified the date of commencement of the period of exemption as the date of first sale, if such sale took place not later than six months from the date of starting production, or, in other cases, from the date following the expiration of six months from the date of starting production. Column 3 of the Table appended to the Notification shows that in respect of the units mentioned therein in Serial No. 3, the exemption should be for three years if the total capital investment does not exceed Rs. 3,00,000 and if it exceeds Rs. 3,00,000 it should be five years. [598A-B, E]

2.2. In the instant case, the petitioners' case has been that they purchased and installed a diesel unit on 4.3.1985 amounting to Rs. 72,800 and as such, it must be held that the cost of the diesel unit should be included in the capital investment, in which case the total capital investment would be more than Rs. 3,00,000 on the date of first sale, namely, 30.3.1985, and therefore, the exemption should be for five years. The Joint

- A Director rejected the claim to include the cost of diesel unit on the sole ground that it was purchased after starting production. However, before the High Court the State Government alongwith their counter-affidavit have annexed the bill dated 4.3.1985, which shows that the diesel set was purchased by the petitioners for total cost of Rs. 72,800. Therefore, it cannot be in dispute that the diesel set was purchased by the petitioners on 4.3.1985. [598E, 601D]

- C 2.3. In view of the categorical finding of the High Court that the date of commencement of production was 1.3.1985 and the date of first sale was 30.3.1985, the date of purchase of diesel set which is 4.3.1985, was clearly prior to the date of first sale, and, therefore, the cost of the diesel set should also be included in the capital investment as on 30.3.1985, and then it would be more than Rs. 3,00,000. Thus, it is clear that the exemption should be for five years from 30.3.1985 i.e. date of first sale, as per the relevant provisions. [601E-F]

- D CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 8543 of 1990.

From the Judgment and Order dated 25.5.1990 of the Allahabad High Court in Civil Misc. Writ No. 36 (Tax) of 1989.

- E P.P. Rao and A.S. Pundir for the Petitioners.

Ashok K. Srivastava for the Respondents.

The following Order of the court was delivered:

- F The matter is being disposed of at the stage of admission after hearing both sides.

- G The petitioners in these appeals have filed the S.L.P. against the order of the Allahabad High Court. The petitioners belong to a re-established small scale industrial unit for manufacturing cycle stands and carriers during the year 1984-85. They applied for power connection in December, 1984 but it was sanctioned on 19.1.86. Meanwhile the petitioners, however, started production manually with effect from 1.3.85. They effected their first sale of the manufactured goods on 30.3.85. It is their case that they purchased a diesel unit and installed it on 4.3.85.
- H According to them the total investment including the cost of diesel unit

was more than Rs. 3,00,000 as on 30.3.85, when the first sale was effected. The petitioners applied for exemption from the payment of sales tax under Section 4-A of the U.P. Sales Tax Act and the Notifications thereunder issued from time to time. The Divisional Joint Director by his Order dated 26.4.1988 informed the petitioners that exemption was granted under Section 4-A for a period of three years only commencing from 1.3.85. A review was filed by the petitioners contending that the exemption should be with effect from 20.5.86 on which date the power connection was given and production commenced with the help of electricity and on that date their capital investment was more than Rs. 3,00,000 and therefore the exemption should be for five years. By proceedings dated 23.12.1988 the petitioners were informed that 30.3.85 has been accepted as the date of first sale, but their plea that the date of starting of production should be 20.5.85 was rejected. Questioning the same a Writ Petition was filed before the High Court.

The High Court accepted the petitioners' plea that 30.3.85 is the date of first sale of manufactured goods by the petitioners. However, the plea of the petitioners that the date of getting power connection i.e. 20.5.86 should be taken as the date of starting production was rejected. The High Court also observed that the date of first sale, namely 30.3.85, should be taken as the date of commencement of the period of exemption. Having thus found, the High court, however, was not prepared to accept the petitioners' plea that the capital investment in the unit was more than Rs. 3,00,000 during the period between 1.3.85, i.e. the date of starting production, and 30.3.85, i.e. the date of first sale. In the result, it was declared that the petitioners were entitled for exemption only for a period of three years from the date of first sale, namely 30.3.85, in view of Section 4-A of the Act and the relevant notifications.

The learned counsel for the petitioners contended that when once it is accepted that the date of first sale is 30.3.85, then the exemption should be on the basis of the capital investment as it stood on that date and since the petitioners have already installed the diesel unit and the cost of diesel unit amounting to Rs. 72,800 should also be included in the capital investment, then the total capital investment would be above Rs. 3,00,000 and on which the exemption should be for five years as per the relevant provisions. To appreciate this contention it becomes necessary to refer to some of the provisions and the notifications thereunder.

A Section 4-A of the Act provides for granting exemption to the new industrial units with a view to increase the production of any goods and the period of exemption should be from the date of the first sale within the six months' time from the date of starting production. A Notification was issued by the State Government on 29.1.85 under Section 4-A of the Act specifying the date of commencement of the period of exemption as "the date of first sale, if such sale takes place not later than six months from the date of starting production, or, in other cases, from the date following the expiration of six months from the date of starting production". In the light of the above provisions and the notifications thereunder, the date of exemption in the instant case should be taken as 30.3.1985, namely the date of first sale. This aspect is not in dispute. Then the question is whether the exemption should be for three years or five years? It depends upon the question as to what was the total capital investment on 30.3.1985; was it less than Rs. 3,00,000 or more?

D Column 3 of the Table appended to the Notification dated 29.1.1985 issued under Section 4-A of the Act shows that in respect of the units mentioned therein in Serial No. 3, the exemption should for three years if the total capital investment does not exceed Rs. 3,00,000 and if it exceeds Rs. 3,00,000 it should be five years. The petitioners' case throughout has been that they purchased and installed a diesel unit on 4.3.1985 amounting to Rs. 72,800 and that since the same is not in dispute at all, it must be held that the cost of the diesel unit should be included in the capital investment, and then the total capital investment would be more than Rs. 3,00,000 as on the date of first sale namely 30.3.1985, in which case the exemption should be for five years. We may mention here that this point was not considered by the High Court in the manner it is submitted by the petitioners. No doubt, before the High Court the petitioners' contention was that the date 20.5.86, when the power was supplied, should be the date of starting of production and from that date the exemption should be for five years. The High Court rejected this contention by observing:

G "The petitioners did not aver specifically that even on 1.3.1985/30.3.1985, their investment was more than rupees three lacks. In such a situation, we cannot find fault with the authority for not recording a clear find on this issue."

H In observing so, the High Court relied on two paragraphs in the

review petition filed before the Sales Tax Authorities. A

The learned counsel submitted that even if the period of exemption cannot be reckoned from 20.5.86 (the date on which the power was supplied), yet the same should be reckoned atleast from 30.3.1985, on which date the total capital investment was above Rs. 3,00,000 undoubtedly. The learned counsel for the State submitted that such a contention was not put forward by the petitioners before the High Court and, therefore, the petitioners cannot raise the same before this Court. B

The High Court has given a categorical finding as under:

"In the circumstances of the present case, we find that the date of starting production in the petitioners unit is 1.3.1985 and in view of sub-section (1) of section 4-A, the date of the first sale, i.e., 30.3.1985, should be taken as the date of commencement of the period of exemption, the same falling within six months of the date of starting production". (emphasis supplied) C D

Therefore, 30.3.1985 should be the date of commencement of the period of exemption. In the review petition filed before the Joint Director of Industries, no doubt, it is clearly mentioned that on 19.4.1986 the capital investment was Rs. 5,26,273 and that the Sales Tax Officer cannot reduce the capital investment by excluding the cost of diesel set. But in the counter-affidavit filed by the State Government before the High Court, it is mentioned thus: E

"The dealer filed a review application before the Joint Director of Industries stating that exemption should be granted w.e.f. 30.3.85, the date of first sale. It was also stated that capital investment upto 30.3.85 was more than 3 lacks including generator for Rs. 72,800 purchase vide Bill No. 107/84-85 dt. 4.3.85. Regarding this application enquiries were made and it was found that dealer started production from 1.3.85 manually and he had not purchased any machine driven by power before 1.3.85 and generator was purchased locally on 4.3.85 i.e. after the date of starting production vide Bill No. 107/84-85 dated 4.3.85 for Rs. 72,800 by transfer of documents against form 'C'. Therefore, investment in the generator cannot be included in the machinery investment because the generator was not used F G H

A for production."

B Relying on these admissions, the learned counsel submitted that it is an admitted fact that the Bill dated 4.3.85 which is for Rs. 72,800 in respect of the diesel set purchased should be included in the capital investment and that the Joint Director excluded that amount on the wrong assumption that the exemption period should be counted from the date of production and the total investment as on that day alone is relevant which is erroneous. From the above material it cannot be said that this aspect was not an issue before the High Court but the same lost its significance in view of the larger claim made by the petitioners that the exemption should be from 20.5.86. C The learned counsel for the State, however, submits that the matter may be remanded. We do not think it is necessary to do so in view of the cogent and clear material, which cannot be controverted.

Before proceeding we may extract the order which was impugned before the High Court:

D "Letter No. 8971 DS/8/Sales Tax/88-89

Office
Joint Director Industries (D.S.)
Dated: 29th Dec. 1988

E M/s. Vijay Enterprises,
93, A Cooperative Ind. Estate
Kanpur.

F Kindly refer to your letter dated 16.6.1988 which is on the subject of reconsideration of relief of exemption of Sales Tax granted to your unit.

The Division of Committee in meeting dated 23.12.1988 having considered in this respect has decided as follows:

G 1. Sales Tax exemption is hereby amended with effect from date of first sale 30.3.1985 instead of date of production 1.3.1985 for 3 years. The other terms relating to exemption shall be according to eligibility certificate dated 26.4.1988.

H 2. Investment on land/building exceeds the necessity. The generator is not utilised for starting production and the permission of the Electricity

Department for this is also not there. *The Generator has been purchased after starting production hence investment of generator amounting to Rs. 72,800 till the date of starting production is not acceptable as capital investment. Thus on the date of starting production investment on Land/Building and Machines is less than Rs. 3 lacs. Hence the demand for 5 years tax exemption is rejected.*

sd/-

Joint Director Industries (DS)"
[emphasis supplied]

The last few lines in the above Order which are underlined show that the Joint Director rejected the claim to include the cost of diesel unit on the sole ground that it was purchased after starting production. Before the High Court the State Government alongwith their counter-affidavit have annexed the Bill dated 4.3.1985 which shows that the diesel set was purchased by the petitioners for total cost of Rs. 72,800. If we take into the account the above admission made in the counter-affidavit by the State Government and the contents of this bill it cannot be in dispute that the diesel set was purchased by the petitioners on 1.3.1985. Now, in view of the categorical finding of the High Court that the date of commencement of production was 1.3.1985 and the date of first sale was 30.3.85, the date of purchase of diesel set which is 4.3.1985 was clearly prior to the date of first sale, and therefore, the cost of the diesel set should also be included in the capital investment as on 30.3.1985, and then it would be more than Rs. 3,00,000. Thus the position becomes clear that the exemption should be for five years from the date of 30.3.1985 as per the relevant provisions mentioned above. We are satisfied that the petitioners are entitled for exemption under Section 4-A of the U.P. Sales Tax Act for five years from 30.3.1985 and accordingly they should be given the benefit.

With this direction the Special Leave Petition is disposed of. There will be no order as to costs.

N.P.V.

Petition disposed of.