

HINDUSTAN PAPER CORPN. LTD. ETC. ETC.

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v.

STATE OF KERALA AND OTHERS

MARCH 26, 1993

[B.P. JEEVAN REDDY AND N. VENKATACHALA, JJ.]

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Central Sales Tax Act 1956: Section 8(2A).

Kerala General Sales Tax Act 1963: Section 10 & Notification RSO 415 of 1971.

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Central Sales Tax—Exemption—Whether available for inter state sales also—Exemption contained in the 1971 Notification—Whether an exemption from tax 'generally'.

The State of Kerala issued Notification RSO 415 of 1971 under Section 10 of the Kerala General Sales Tax Act providing for an exemption in respect of tax in regard to the turn over of the sales of newsprint for a period of two years from the date of starting production of the newsprint plant. The appellant entered into an agreement with the State Government in 1974 giving the said exemption.

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A major portion of the newsprint manufactured at the factory located within the State was sold in the course of inter-state trade and commerce, and during the assessment years relevant to the period of the two years from the date of the commencement of the production, the appellant claimed exemption not only from the State Sales Tax, by virtue of the 1971 Notification and the 1974 agreement but also from the Central Sales Tax under and by virtue of sub-section (2A) of Section 8 of the Central Sales Tax Act.

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The Sales Tax Officer accepted the claim under the State Sales Tax Act but rejected the claim under the Central Sales Tax Act.

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Appeals preferred by the appellant to the Appellant Assistant Commissioner and the Sales Tax Appellant Tribunal were dismissed, and when the appellant approached the High Court by way of revision under Section 41 of the State Sales Tax Act the High Court also dismissed the revisions petitions.

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A In the appeals to this Court it was contended on behalf of the appellant relying on *Pine Chemicals Limited v. Assessing Authority*, [1992] 2 S.C.C. 683 that the exemption granted to it by the 1971 State Government notification issued under the Kerala Sales Tax Act is a general exemption within the meaning of Section 8(2A) and, therefore, the inter-state sales effected by it are equally exempt from Central Sales Tax by virtue of Section 8(2A).

B The State contested the appeals by contending that the exemption granted to the appellant under the State Sales Tax is not a general exemption but a conditional one, and that the exemption operates only in certain specified circumstances, and that the provision contained in Section 8(2A) does not go to exempt the inter-state sales of the appellant.

C On the question whether the exemption granted under the 1971 State notification exempting the produce of the appellant factory manufacturing newsprint from the State Sales Tax for a period of two years from the date of commencement of production in the factory can be called an exemption from tax 'generally'.

D Allowing the appeals, this Court,

E HELD: 1. The inter-state sales effected by the appellant are those falling under Section 3(a) of the Central Sales Tax Act. The liability to pay Central Sales Tax on inter-state sales arises by virtue of sub-section (1) of Section 6. Sub section (2A) of section 8 seeks to provide exemption to a dealer with respect to his turnover. The explanation appended to the sub-section is couched in negative terms and seeks to define the words "exempt from tax generally", and indicates when a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the State Sales Tax Law. [659 B, 660 B-C]

F 2. An inter-state sale or purchase of a commodity shall not be deemed as exempt from State Tax generally if the exemption is given only (1) in specified circumstances or under specified conditions or (2) the tax is leviable on the sale or purchase of such goods at specified stages or (3) otherwise than with reference to the turnover of the goods. These conditions or limitations are with reference to the transaction of sale or purchase. [663 F-G]

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3. The existence or otherwise of the aforesaid three limitations on claiming exemption the explanation under Section S(2-A) of the Central Sales Tax Act will have to be tested with reference to the transaction of sale or purchase as the case may be of the dealer who claims the exemption in respect of his intrastate sale or purchase of the same goods. [663 H, 664 A]

4. The facts which the dealer has to prove to get the benefit of the government orders are intended only to identify the dealer and the goods in respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted from payment of tax within the meaning of Section 8(2-A). [664 E]

5. The conditions relating to identity of the goods and the dealer are always there in every exemption and that cannot be put as a condition of sale. [664 G]

Pine Chemicals Limited v. Assessing Authority, [1992] 2 S.C.C. 683, explained and followed. [660 H]

Indian Aluminium Cables v. State of Haryana, 38 S.T.C. 108, *Industrial Cables Corporation v. Commercial Tax Officer* 35 S.T.C. 1, distinguished.

[662 A]

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 5073-75/1985

From the Judgment and Order dated 9.9.1985 of the Kerala High Court in T.R.C. Nos. 29, 30 and 31 of 1985.

A.S. Nambiar, Mrs. Shanta Vasudevan, P.K. Manohar and C.N. Sreekumar for the Appellants.

G. Vishwanatha Iyer and M.A. Firoz for the Respondents.

The Judgment of the Court was delivered by.

B.P. JEEVAN REDDY, J. *Civil Appeal Nos. 5073-75/85.*

These appeals arise from a common judgment of the Kerala High Court in a batch of three tax revision cases. The question relates to the interpretation of Section 8(2A) of the Central Sales Tax Act, 1956.

A In exercise of the power conferred upon it by Section 10 of the Kerala Sales Tax Act, the State of Kerala issued a notification RSO-415 of 1971 providing for "an exemption in respect of the tax payable under the said Act in regard to the turn-over of the sales of newsprint by the newsprint plant in the State for the period of two years from the date of starting production of the newsprint by the said plant."

B The appellant-Hindustan Paper Corporation Limited entered into an agreement with the Government of Kerala in the year, 1974 reiterating the said exemption. The relevant portion of the agreement reads thus:

C "The Government of Kerala, with a view to help the project to tide over the difficulties in the initial stages and to establish itself, agree to exempt the turnover relating to the sale, of the products by the corporation from the payment of sales tax for a period of two years from the date of starting of production of the newsprint."

D A major portion of the newsprint manufactured at the factory located within Kerala is sold in the course of inter-state trade and commerce. During the assessment years relevant to the period of the two years from the date of commencement of production at the Kerala Factory, the appellant claimed exemption not only from the State sales tax by virtue of the aforesaid notification and agreement but also from Central Sales Tax under and by virtue of sub-section (2A) of Section 8 of the Central Sales Tax Act. The Sales Tax Officer accepted the claim under the State Sales Tax Act but rejected the claim under the Central Sales Tax Act. The appeals preferred by the appellant to the Appellate Assistant Commissioner and the Sales Tax Appellate Tribunal were dismissed whereupon it approached the High Court by way of revisions under Section 41 of the State Sales Tax Act. The High Court too disagreed with the contentions urged by the appellant and dismissed the tax revision cases. Hence, these appeals.

G The dispute between the parties, in brief, is thus: the appellant says that exemption granted to it by the aforesaid notification issued under the Kerala Sales Tax Tax is a general exemption within the meaning of Section 8(2A) and, therefore, the inter- state sales effected by it are equally exempt from Central Sales Tax by virtue of Section 8(2A). On the other hand, the

case of the Government of Kerala is that the exemption granted to the appellant under the State Sales Tax Act is not a general exemption but a conditional one; further the exemption operates only in certain specified circumstances. Accordingly, they say, the provision contained in Section 8(2A) does not go to exempt the inter-state sales of the appellant.

The inter-state sales effected by the appellant are those falling under Section 3(A) of the Central Sales Tax Act. The liability to pay Central Sales Tax on inter-state sales arises by virtue of sub-section (1) of Section 6. Sub-section (1A) of Sec. 6 says that a dealer shall be liable to pay tax under the Central Act on sale of goods effected by him in the course of inter-state trade or commerce notwithstanding that no tax would have been leviable under the Sales Tax law of the appropriate State if such sale had taken place inside the State. Sub-section (1) of Section 8 prescribes the rate at which the Central Sales Tax is chargeable where the goods are sold to persons and authorities mentioned therein while sub-section (2) prescribes the rate in cases other than those falling under sub-section (1). Sub-section (2A) of Section 8, which is material for our purpose reads thus:

"(2A) Notwithstanding anything contained in sub-section (1A) of Section 6 or sub-section (1) or clause (b) of sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent. (Whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation:- For the purpose of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in special circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

- A What does sub-section (2A) say? It opens with a *non-obstante* clause which gives it an overriding effect over the provisions contained in Sections 6(1A) and over sub-section (1) as well as clause (b) of sub-section (2) of Section 8. The sub-section seeks to provide exemption to a dealer with respect to his turnover in so far as his turnover or any part thereof relates
- B to (a) sale of any goods, the sale or, as the case may be, the purchase of which is under the sales tax law of the appropriate State, exempt from tax generally or (b) where his turnover or any part thereof relates to the sale of any goods the sale or purchase of which is subject to tax generally at a rate which is lower than four per cent. In a case covered by (a) the Central Sales Tax will be nil while in a case falling under (b), Central Sales Tax
- C shall be chargeable at the same lower rate at which the State sales tax is chargeable. The explanation appended to sub-section seeks to define the words "exempt from tax generally." The explanation is couched in negative terms. It says that for the purposes of the said sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally
- D under the State Sales Tax law if (i) under the State law the sale or purchase of such goods is exempt only in specified circumstances or (ii) if under the State law the sale or purchase of such goods is exempt only under specified conditions or (iii) if under the State law the tax is levied on the sale or purchase of such goods at specified stages or (iv) where under the State
- E law the tax is levied otherwise than with reference to the turnover of the goods.

- The sole question in this case is whether the exemption granted under the aforesaid notification exempting the produce of a factory manufacturing newsprint from the State sales tax for a period of two years from the date of commencement of production in the factory can be called an exemption from tax *generally*. To put it differently, the question is whether the said exemption is one operative only in specified circumstances or whether the exemption is one which is operative only under specified
- F conditions in which case it cannot be said to be an exemption "generally".
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- The learned counsel for the appellant relies upon the decision of this Court in *Pine Chemicals Limited v. Assessing Authority*, [1992] 2 S.C.C. 683, a decision rendered by S. Ranganathan, V. Ramaswami and N.D. Ojha, JJ.
- H According to him, the said decision is conclusive on the question.

The counsel for the State of Kerala, on the other hand, seeks to distinguish the said decision. According to him, the said decision does not consider the precise question and aspect which really arises in these appeals. The learned counsel for the State of Kerala, Sri G. Vishwanath Iyer, puts his case thus: if one is asked whether the exemption granted under the aforesaid notification is a general exemption, his obvious answer would be, no. It is not an exemption which operates generally but an exemption limited to two years from the date of commencement of the production of newsprint in the factory. Similarly, if a person is asked whether newsprint is exempt generally from the State sales tax in Kerala, none would answer in the affirmative. He would say that the sale of newsprint in Kerala is exempt only in certain circumstances or subject only to a condition viz., that that newsprint is produced within two years of the commencement of the production in the factory located in Kerala. It is, therefore, idle to contend, says Sri Iyer, that the sale of newsprint within Kerala is exempt generally from the State sales tax. In such a case, says the counsel, the provision contained in sub-section (2A) does not come into operation and the inter-state sales of such newsprint cannot be said to be exempt from the Central Sales Tax. Mr. Iyer further says that the exemption notification issued by the Government of Kerala under Section 10 of the State Act does not exempt newsprint from the State sales tax altogether. It grants exemption only in a specified situation viz., in respect of the newsprint produced within the period of two years from the date of commencement of production by a factory manufacturing newsprint in the State of Kerala. The exemption would thus operate for different periods in the case of different assesseees inasmuch as the date of commencement of production by all the manufacturers of newsprint may not be the same. Moreover, the benefit of the said notification is available only where a factory goes into production after the commencement of the said notification, says Sri Iyer, He elaborates his submission saying that the exemption granted by the said notification is only in favour of certain dealers or a class of dealers, in certain circumstances and is not in the nature of a general exemption. An exemption given under Section 10 of the State Act with reference to dealers or a class of dealers i.e., referable to clause (ii) of sub-section (1), says the counsel, can never be called a general exemption nor can it be characterised as an exemption operating 'generally'. A general exemption, according to the learned counsel, means a general, unqualified/unconditional exemption. Counsel says that the decisions of

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A this Court in *Indian Aluminium Cables v. State of Haryana* 38 S.T.C. 108 and in *Industrial Cables Corporation v. Commercial Tax Officer* 35 S.T.C. 1 support his contention. The learned counsel places strong reliance upon the object and reasons appended to the bill proposing the substitution of sub-section (2A) in the year 1972. The objects and reasons relied upon by the learned counsel read thus:

B "Clause 5 Sub-Clause (a) of this clause seeks to substitute a new sub-section for the existing sub-section (2A) of Section 8 of the Principal Act. The new sub-section seeks to bring out more clearly that an exemption or lower rate of levy under the local sales tax law of the appropriate State would be available in respect of an inter-state sale of goods only if such exemption or lower levy is available generally with reference to such goods or such class of goods under the local sales tax law."

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D According to Sri Iyer the said statement of objects and reasons puts the meaning, purpose and object of the sub-section beyond any doubt.

E On the other hand, Sri A.S. Nambiar, learned counsel for the appellant-corporation submits, adopting the reasoning in *Pine Chemicals* that the circumstances or conditions contemplated by the explanation to sub-section must be the circumstances and conditions attaching to the sale and not to the dealer. The exemption notification merely serves to identify the dealer and the goods entitled to exemption but it does not lay down any circumstances or conditions attaching to the sale of goods (Newsprint).
F Nambiar says that once the goods are identified viz., that it is a newsprint manufactured by a factory within two years of its commencing production, there is no further condition attaching to the exemption; the goods are exempt generally. It is not a case where the exemption is hedged in by certain conditions nor is it a case where the exemption operates only in certain circumstances. The learned counsel submits that the decisions of
G this court in *Indian Aluminium* and *Industrial Cables* have been considered and explained by this Court in *Pine Chemicals* and, therefore, the principle of those decisions cannot be read as supporting the State's submissions.

H While we see the force in the submissions of Sri Iyer, learned counsel for the State of Kerala, we cannot give effect to the same in the light of

the binding decision in *Pine Chemicals* which deals with an almost similar exemption notification. The Government of Jammu & Kashmir had issued orders providing for exemption "from the State sales tax both on raw-materials and finished products for a period of five years from the date the unit goes into production." Question had arisen whether the said exemption attracts the exemption contained in Section 8(2A) of the Central Act? The said question was answered in the affirmative by V. Ramaswami, J. speaking for the Bench. The learned Judge examined the scheme of sub-section (1) and (1A) of Section 6 as well as of sub-sections (1), (2) and (2A) of Section 8 and then observed:

"On a plain reading of Section 8(2-A) of the Central Sales Tax Act it deals with the liability of a dealer to pay tax under the Act on his interstate sales turnover relating to any goods on the turnover relating to such goods if the sale had taken place inside the State is exempt from payment of sales tax under the sales tax law of the appropriate State. It provides that if an intrastate sale or purchase of a commodity by the dealer is exempt from tax generally or subject to tax generally at a rate which is lower than 4 per cent than his liability to tax under the Central Sales Tax Act when such commodity is sold on inter-state trade would be either nil or as the case may be shall be calculated at a lower rate. Explanation states as to when the sale or purchase shall not be deemed as to be exempt from tax generally under the sales tax law. That is to say an intrastate sale or purchase shall not be deemed as to be exempt from tax generally under the sales tax law. That is to say an intrastate sale or purchase of a commodity shall not be deemed as exempt from State tax generally if the exemption is given only (1) in specified circumstances or under specified conditions or (2) the tax is leviable on the sale or purchase of such goods at specified stages or (3) otherwise than with reference to the turnover of the goods. *These conditions or limitations are therefore with reference to the transaction of sale or purchase.* The main clause deals with the turnover of 'a dealer' which term would include 'any dealer' or 'any class of dealers' *The existence or otherwise of the three Limitations under the*

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A *explanation above referred to on claiming exemption under*
Section 8(2-A) of the Central Sales Tax Act will therefore
have to be tested with reference to the transaction of sale or
purchase as the case may be of the dealer who claims the
exemption in respect of his intrastate sale or purchase of the
B *same goods.* Thus the specified circumstances and the
specified conditions referred to in the explanation should
be with reference to the local turnover of the same dealer
who claims exemption under Section 8(2-A) of the Central
Sales Tax Act.

C The learned Advocate-General for the State con-
tended that the conditions that the industry should have
been set up and commissioned subsequent to the Govern-
ment Orders 159 and 414 above referred to and the
commodity sold by him in order to claim the exemption
D under the said government order, shall be those manufac-
tured by that industry are conditions or specified cir-
cumstances within the meaning of the explanation and,
therefore, the dealer (Pine Chemicals) is not entitled to
any exemption under Section 8(2-A) of the Central Sales
Tax Act. We are unable to agree with this submission of
E the learned counsel for the State. *The facts which the*
dealer has to prove to get the benefit of the government
orders are intended only to identify the dealer and the goods
in respect of which the exemption is sought and they are not
conditions or specifications of circumstances relating to the
F *turnover sought to be exempted from payment of tax within*
the meaning of those provision. The specified circumstan-
ces and the specified conditions referred to in the explana-
tion should relate to the transaction of sale of the
commodity and not identification of the dealer or the
commodity in respect of the exemption is claimed. *These*
G *conditions relating to identity of the goods and the dealer*
are always there in every exemption and that cannot be put
as a condition of sale. We have already held that not only
sale by the manufacturer to dealer that is exempt under
the government orders but since the General Sales Tax
H Act had adopted only a single point levy, even the sub-

sequent sales would be covered by the exemption order. Therefore, the question whether the tax is leviable on the sale or purchase at "specified stage" does not arise for consideration. This is not also a case where the exemption is with reference to something other than the turnover of the goods."

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(emphasis added)

The learned Judge then dealt with the decisions of this Court in *Indian Aluminium* and *Industrial Cables* and distinguished them pointing out that the exemption concerned in those cases was clearly a conditional one. The learned Judge pointed out that the exemption concerned therein was with respect to "sales of an undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910 (9 of 1910), of goods for use by it in generation or distribution of such energy." The learned Judge pointed out that the two conditions mentioned in the said notification related to purchaser-company being a licenced undertaking supplying electrical energy to the public and further that the goods sold to it are for use by the said undertaking in generation or distribution of such energy.

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Following the decision in *Pine Chemicals*, we must and accordingly we do allow these appeals. No orders as to costs.

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N.V.K.

Appeals allowed.