

M/S. SHREE BHAGWATI ROLLER FLOUR MILLS

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v.

THE COMMISSIONER OF SALES (TRADE) TAX

NOVEMBER 25, 1997

[SUHAS C. SEN AND M. JAGANNADHA RAO, JJ.]

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SALES TAX :

U. P. Sales Tax Act, 1948—Sections 4-B and 4-A—Exemption on purchase tax can be granted only under Section 4-B and not under Section 4-A—Purchase tax on wheat purchased from open market for manufacturing notified commodities can not be exempted—Notification dated 18.7.79 issued under Section 4-B of the Act provides exemption on purchase tax on wheat for the roller flour mills only when purchased from FCI—This pre-condition not done away with by any subsequent notification—Notification dated 29.1.1995 issued under Section 4-A does not have the effect of modifying the notification dt. 18.7.79, issued under Section 4-B, as the notification issued under Section 4-A can not grant exemption on purchase tax.

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The appellant Roller Flour Mills claimed exemption of purchase tax on wheat purchased from the open market for manufacturing notified commodities. By a Notification dt. 18.7.1 979 issued under Section 4-B of the U.P. Sales Tax Act, 1948, the Government of U.P. exempted the roller flour mills from paying tax on purchase of wheat for manufacturing of notified goods provided the purchase of wheat was made from F.C.I. Another notification dated 29.1.85 issued under Section 4-A of the Act provided that in respect of any goods manufactured in a new industrial unit, starting production between 1.10.1982 and 31.3.1990, no tax was payable by the manufacturer on the turnover of sales for the period specified in the notification.

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The appellant contended that the precondition of purchase of wheat from FCI contained in notification dt. 18.7.79 was withdrawn by the subsequent notification dt. 29.1.1985 and as such the appellant was entitled to exemption on the wheat purchased by it from the open market. The claim as well as the appeal was rejected by the Commercial Tax Authority and the Tribunal respectively on the ground that the exemption was available only if the purchase of wheat was made from the FCI. The appellant made an application before the Tribunal for rectification of the appellate order. Tribunal rectified

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A the appellate order upholding the claim for exemption. The Commissioner of Trade Tax filed a revision petition in the High Court challenging the rectification order. The High Court set aside the order of rectification. Hence this appeal.

Dismissing the appeal, this Court

B HELD : 1. The High Court rightly held that unless there was an error apparent on record, the Tribunal could not exercise its power of rectification. There was no error apparent on the face of the record of the case. The Tribunal revised its order wrongly exercising the power of rectification on a highly disputed question of law. [386-D]

C 2.1. The assessee is not entitled for the exemption claimed on the wheat purchased from the open market because the notification dated 18.7.1979, issued under Section 4-B of the U.P. Sales Tax Act, 1948 made it absolutely clear that a Roller Flour Mill holding recognition certificate could be entitled to exemption from payment of purchase tax on wheat for manufacturing the notified goods, provided the wheat was purchased from FCI. This proviso had not been done away with by any subsequent notification. Therefore, the appellant is not entitled for the exemption under the notification, as admittedly the wheat was purchased from the open market. The Commercial Tax Officer was clearly justified in disallowing the claim of exemption made by the assessee. [387-B]

E 2.2. The High Court rightly pointed out that the reliance on the notification dt. 29.1.1985 on behalf of the assessee was misplaced because it was issued under Section 4-A of the Act. The Government could grant exemption to the turnover of a dealer wholly or in part by a notification issued under Section 4-A, but could not grant exemption from purchase tax. F Therefore, the notification dt. 29.1.1985 did not have the effect of modifying the earlier notification dt. 18.7.1979 issued under Section 4-B. It can no way override or control the meaning of a notification issued under Section 4-B. Therefore, the exemption from purchase tax under Section 4-B could only be claimed if the wheat was purchased from FCI and not from the open market. [387-H; 388-A]

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8282-95 of 1997.

H From the Judgment and Order dated 27.11.96 of the Allahabad High Court in S.T.R. Nos. 1476-82/93, T.T.R. Nos. 1496-97 of 1994 and 1500-1504 of 1994.

Rakesh Dwevedi and K.K. Mohan for the Appellant -

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A.K. Goel, Arvind Verma and Kamendra Misra the Respondent.

The Judgment of the Court was delivered by

SEN, J. Leave granted.

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The appellant, Shree Bhagwati Roller Flour Mills, carries on business of purchase of wheat and manufacturing and selling Atta, Maida and Suji therefrom. Section 4 of the U.P. Sales Tax Act has empowered the State Government to grant exemption to any dealer from payment of sales tax and purchase tax, if the Government is of the opinion that it is necessary to do so for the purpose of increasing production of goods or for permitting development of industries in the State generally or in any particular district or in any part of a district. The case of the appellant is that it is a new unit recognised by the Government and it has been given an eligibility certificate for a period for six years from 10.8.1983 to 9.8.1989. The appellant has also been given a recognition certificate under Section 4B of the Act.

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The appellant purchased wheat from the market for manufacturing Atta, Maida and Suji which were notified commodities. The appellant's case is that it should be exempted from paying purchase tax from the purchases made by it because it is a new unit and has been exempted from purchase and sales tax under the Incentive Scheme evolved by the State Government for the development of industries in the State. Secondly, the goods purchased by the appellant were used as raw material for manufacturing notified commodities. Therefore, on both counts no purchase tax should be levied on the purchases of notified commodities by the appellant.

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The difficulty of the appellant in this case is that it purchased wheat from the open market and not from the Food Corporation of India (FCI). By a notification dated 18.7.79, the Government of U.P. has exempted the roller flour mills from payment of purchase tax on the purchase of wheat for use as raw material for manufacture of notified goods provided the purchase of wheat was from FCI. The case of the appellant is that the FCI was unable to supply the requisite quantity of wheat. The flour mills were compelled to purchase wheat from the open market. In fact a large number of Writ Petitions were filed in the Allahabad High Court and interim orders were passed by the High Court permitting the flour mills to purchase wheat from the open market to be used as raw material for the manufacture of notified goods.

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A The assessee's claim for exemption of purchase tax on wheat purchased by it from the open market was rejected by the Commercial Tax Authority on the ground that the exemption was available only if purchases of wheat were made from the FCI. The assessee's appeal to the Tribunal did not meet with any success. The assessee went to the High Court against the order of Tribunal and at the same time made an application before the Tribunal for rectification of the appellate order dated 14.6.93. The Tribunal by an order dated 9.2.94 rectified its appellate order dated 14.6.93 by upholding the assessee's claim. Thereupon, the Commissioner of Trade Tax made a revision petition to the High Court challenging the rectification order passed by the Tribunal on 9.2.94.

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C The High Court had no difficulty in setting aside the order of rectification. The High Court rightly held that unless there was an error apparent on record, the Tribunal could not exercise its power of rectification. There was no error apparent on the face of the record of this case. The view taken by the Commercial Tax Officer, the first Appellate Authority as well as the Tribunal was reversed by the rectification order. The Tribunal in effect revised its order altogether on a highly disputed question of law. The High Court, therefore, rightly held that the power of rectification was wrongly exercised and the rectification order dated 9.2.94 should be quashed. We are in agreement with the view expressed by the High Court.

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E So far as the assessee's application for revision against the appellate order of the Tribunal dated 9.2.94 was concerned, the view taken by the High Court was that the assessee could not claim the benefit of exemption from payment of purchase tax unless the purchases were made from the FCI. On behalf of the appellant, reliance was placed on a notification dated 29.1.85 issued under Section 4A of the Act. This notification has to be read with an earlier notification dated 27.8.84 by which it was prescribed that a new unit could claim exemption under Section 4B on the purchase of raw material from the FCI. The contention of appellant before the High Court as well as before this Court is that the pre-condition of purchase of wheat from the FCI was withdrawn by a subsequent notification dated 29.1.85. It has been argued that

F a dealer who held a recognition certificate under Section 4B and an eligibility certificate under Section 4A could claim exemption from purchase tax on the purchase of raw material as well as from sales tax on sale of notified goods manufactured by it.

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H This contention of the assessee was rightly rejected by the High Court.

Section 4B of the Act provides for special relief to certain manufacturers under special circumstances. Exemption from tax on purchases made by a section of dealers can be granted by the State Government either unconditionally or subject to the conditions and restrictions specified in that behalf as may be notified in the Gazette by the State Government. A notification under this Section was issued on 18.7.1979 by which Roller Flour Mills having a recognition certificate were exempted from payment of tax on purchase of wheat required for its own needs as raw material in the manufacture of notified goods provided such wheat was purchased from FCI. Admittedly, the appellant made purchase of wheat from the open market. The Commercial Tax Officer was clearly justified in disallowing the claim of exemption made by the assessee in respect of these goods.

The notification dated 29.1.1985 merely declares that in respect of any goods manufactured in an industrial unit, which was a new unit and of which the date of starting production fell between 1.10.1982 and 31.3.1990, no tax shall be payable by the manufacturer on the turnover of sales of such goods for the period specified in that notification. This notification was issued in exercise of powers conferred by Section 4A of the U.P. Sales Tax Act, 1948 and cannot override or control the meaning of a notification issued under Section 4B.

There is no dispute that the appellant fulfils all the terms and conditions of a new unit prescribed in Section 4B of the Act. The appellant holds a proper eligibility certificate issued by the Director of Industries, U.P for entitlement to exemption from sales tax as well as purchase tax for the period 10.8.1983 to 9.8.1989. There is also no dispute that Atta, Maida and Suji are notified goods under Section 4B of the Act. The notification dated 18.7.1979 had made it quite clear that a Roller Flour Mill holding recognition certificate would be entitled to exemption from payment of purchase tax on purchase of, *inter alia*, wheat if it was used by it in manufacture of Atta, Maida, Suji etc. This proviso has not been done away with by any subsequent notification. The subsequent notification issued under Section 4A empowers the State Government to exempt the turnover of a dealer in whole or in part from liability to pay tax. But relief from payment of purchase tax could only be given by a notification issued under Section 4B.

The High Court rightly pointed out that the reliance on the notification dated 29.1.1985 on behalf of the assessee was misplaced because, it was issued under Section 4A of the Act. The Government could grant exemptions

A to the turnover of a dealer wholly or in part by a notification issued under Section 4A. That, however, did not have the effect of modifying the earlier notification dated 18.7.1979 issued under Section 4B. Therefore, the exemption from purchase tax under Section 4B could only be claimed if wheat was purchased from FCI and not from the open market.

B We are in agreement with the view expressed by the High Court. No other point has been pressed in these appeals. The appeals are dismissed. There will be no order as to costs.

H.K.

Appeals dismissed.