

A COMMISSIONER, TRADE TAX, U.P.  
v.  
M/S. D.S.M. GROUP OF INDUSTRIES

DECEMBER 9, 2004

B [S.N. VARIAVA AND DR. AR. LAKSHMANAN, JJ.]

*Trade Tax :*

C U.P. Trade Tax Act, 1948—Section 4-A—Trade Tax—Exemption—  
Notification granting exemption to undertaking manufacturing goods which  
made a fixed capital investment of Rs. 50 crores or more in expansion,  
modernization or diversification—Joint application for claim of exemption  
by company having multiple units—Rejection of, on the ground that the  
application was joint, time barred and the company in arrears of tax—  
D On appeal held : Plain reading of the Notification shows that for expansion,  
modernization and diversification, industrial undertaking is considered to  
be a unit—Unit refers to more than one unit—Clause (b) of Section 4-  
A (6)(5) clearly indicates that reference is to industrial undertaking as a  
while and not a unit of industrial undertaking—For expression expansion,  
modernization there is no qualifying words 'in any one unit'—Furthermore,  
E manufacturer is entitled to the benefit of exemption if application is made  
at later date though benefit would be limited—Also manufacturer cannot  
be said to be in arrears of tax—Hence, the Assessing Authority and the  
Tribunal erred in rejecting the application and the order of High Court  
upheld—However, order of High Court directing issuance of Eligibility Tax  
F and directing reimbursement not correct—Hence that part of the order set  
aside—Matter is remitted back.

*Words and Phrases :*

G Unit and Industrial Undertaking—Meaning of in the context of Section  
4-A(6)(5) of the U.P. Trade Tax Act, 1948.

By a Notification certain exemption from payment of trade tax was  
granted to an undertaking which made a fixed capital investment of Rs.  
50 crores or more in expansion, modernization or diversification or  
H backward integration.

**Respondent-company has more than one unit in different localities. Company's principal place of business is at District B. It filed joint application before the General Manager of District B for claiming exemptions under the Notification on the grounds of expansion, diversification and modernization. Assessing Authority rejected the application on the ground that a joint application for multiple units was not permissible and was time barred; and that the company was in arrears of tax. Trade Tax Tribunal rejected the appeal. High Court set aside the order of the Tribunal and allowed the Revision. It directed the Authority concerned to issue an Eligibility Certificate under Section 4-A of the U.P. Trade Tax Act, 1948 for benefit of tax rebate and reimburse the amount paid earlier. Hence the present appeal.**

**Appellant contended that term 'Unit' refers not to the industrial undertaking as a whole but to a unit of the Company and each unit is considered to be a separate entity; that the Company making a capital investment of Rs. fifty crores or more in its various units cannot club the units to claim exemption under the Notification but the investment has to be in respect of one unit only; that the increase in production in respect of any one particular manufacturing concern under expansion or modernization should be compared with the pre-existing figure of 'base production' of that concern only; that clause (d) of Section 4-A(6)(5) brings out the necessity of giving the narrow meaning to the expression 'industrial undertaking'; that under clause (e) the enhanced portion of the undertaking should be established within the same district in which the existing industrial unit is established having reference only to one manufacturing concern at a time which is undergoing expansion etc. and the district in which it is located and not to all the existing industrial units belonging to the dealer, that expression 'base production' in explanation can have reference only to the production capacity or production figures in respect of the one 'existing industrial unit' which is undergoing expansion etc; that the application was time barred; and that the Company was in arrears of tax and as such not entitled to the benefit to the Notification.**

**Disposing of the appeal, the Court**

**HELD : 1.1. The Preamble to the Notification shows that the capital investment of Rs. fifty crore or more has to be in a new unit or**

**A** in expansion, modernization and diversification. A plain reading of the Notification shows that for “expansion, modernization and diversification” it is the industrial undertaking which is considered to be the ‘Unit’. Section 4-A (6)(5) of the Trade Tax Act, 1948 defines the term ‘Unit’ to mean an industrial undertaking, which has undertaken

**B** expansion, modernization and diversification. To the words ‘expansion, modernization and diversification’ in the Notification, there are no qualifying words to the effect ‘in any one Unit’ or ‘in one unit’. In none of the clauses there is any requirement of the investment being in one unit of the Industrial Undertaking. It is not stated that these must be in one unit of the Industrial Undertaking. Therefore, the Preamble,

**C** clearly supports the case of the respondents that the expansion, diversification and modernization need not be only in one of the units of the Industrial Undertaking. This becomes further clear that if one looks at Clause (1) of the Notification. Under sub-clause (a) the benefit is in respect of a new unit but under sub-clause (b) it is in respect in a

**D** unit which has undertaken expansion, modernization or diversification between 1st December 1994 and 31st March 2000. Even under the General Clauses Act, where the context so requires the singular can include the plural. [824-C, F, G, H]

**E** 1.2. The purpose of Notification being to encourage increased production and to give benefit to industries which have invested Rs. fifty crores or more in the State and whose production has thus increased, an interpretation must be given which would extend benefit to such industries. There would be no purpose in denying, an industry which has invested Rs. fifty crores or more and whose production in the State has

**F** as a result increased, the benefit of the exemption granted by this Notification merely because the whole of the investment is not in any particular unit. Thus even where the investment is made by the Company in more than one unit, so long as the total investment is Rs. fifty crores or more, the benefit of the Notification would be available. Such benefit

**G** would be distributed in the manner set out in the Schedule depending on where a unit in which expansion, diversification or modernization has taken place, is situated. [825-A, B, C]

**H** 1.3. Clause (b) of Section 4-A(6)(5) of the Act clearly indicates that the reference is to the industrial undertaking as a whole and not a unit of the industrial undertaking. There could be diversification in one unit

in respect of which the first date of production would be as per clause (b)(i). Clause (b)(ii) puts the matter beyond any doubt. It uses the words “in such undertaking in case of units undertaking expansion or modernization”. Thus now there is clear reference not just to the undertaking i.e. the Company but also to Units of that Company. The term “units” clearly refers to more than one units. This shows that the expansion and modernization can be in more than one unit. [820-F, G]

1.4. It is not necessary to decide whether the production capacity of the undertaking or a unit is to be considered. Even if production capacity of only the unit/s, in which expansion, modernization or diversification has taken place, is to be taken into account then also it would not show that the entire investment is to be only in one unit. The very fact that clause (c) of Section 4-A(6)(5) is dealing with all three aspects i.e. expansion, modernization and diversification shows that in most cases they would be in separate units. [821-C, D]

1.5. It is the industrial undertaking which is diversifying in some or one of its unit. Undoubtedly the industrial undertaking may diversify in any one of its units. But that does not mean that it is the unit and not the industrial undertaking which is diversifying. [821-F]

1.6. Clause (d) of Section 4-A(6)(5) of the Act makes it clear that it is the industrial undertaking and not a unit which is making the additional fixed capital investment. It could not be denied that the provision for depreciation would necessarily be made by the Company. Thus, it is the Company which has to make an additional investment of at least 25% without providing for depreciation. [821-G, H]

1.7. Sub-clause (e) of Section 4-A(6)(5) of the Act merely sets out that the expansion, diversification or modernization must be in respect of a unit, which has been established within the same district in which the industrial unit is established. In this case, the expansion, diversification or modernization is not claimed in respect of any new unit. It is claimed in respect of existing units. That the term “Unit” in the context of expansion, diversification and modernization refers to the Industrial Undertaking and not to a unit of a Industrial Undertaking. Thus an expansion of one unit at the same location or a modernization of any unit or a diversification in an existing unit would suffice. All that this clause is ensuring is that there is distinction between a new unit and an

**A** expansion, modernization and diversification. A new unit may be at a different place but expansion, modernization or diversification must be at the place/places where the existing units of the industrial undertaking are situated. [822-G, H; 823-A]

**B** 1.8. Even if the figures are to be in respect of only one unit it still would not mean that the entire investment of Rs. 50 crores or more must be in one unit only. Separate figures of each unit in which expansion, modernization or diversification has taken place may and can be worked out. That the expansion, modernization or diversification need not be in one unit is also clear from the wording of the Notification.

**C** [823-G, H; 824-A]

**D** 1.9. The Assessing Authority was wrong in rejecting the application on the ground that a joint application was not permissible. A joint application is permissible. As the principal place of business is at place B, the Assessing Authority would be the General manager, at District B. The Officer or the concerned Committee can always call for information from the concerned Officer of the other District/s or even the Company if required. [826-E, G]

**E** 2. In view of Section 4-A(5) even if an application is made at a later date it does not preclude the dealer from getting the benefit of the exemption. If an application is made at a later date the benefit of exemption will be limited. It will be computed from the date of the application till the end of the period of facility and as such there was no ground for rejecting the application. [826-B]

**F** 3. Respondents had obtained stay orders from the High Court. There is nothing to show whether for any period when there were no orders the respondents were still in arrears of tax. During the period the stay orders were in operation the respondents cannot be said to be in arrears of tax. Therefore, they cannot be said to be in arrears of tax.

**G** [826-C]

**H** 4. High Court was wrong in directing issuance of an Eligibility Certificate as well as directing reimbursement of the amounts paid and thus, the order directing the same is set aside. Matter is remitted back to the Divisional Level Committee which would decide the application.

[826-G; 827-C]

*Oblum Electrical Industries Pvt. Ltd., Hyderabad v. Collector of Customs, Bombay*, [1997] 7 SCC 581; *Commissioner of Sales Tax v. Industrial Coal Enterprises*, [1999] 2 SCC 607 and *K.R. Steel Union Ltd. v. Commissioner of Customs, Kandla (Gujarat)*, [2001] 4 SCC 736, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6635 of 2003.

Form the Judgment and Order dated 24.5.2002 of the Allahabad High Court in T.T.R. No. 30 of 2001.

Sunil Gupta, (Additional Advocate General for State of U.P.), Punit Dutt Tyagi, Vivek Vishnoi, Mukesh Verma and Ram Kishore Singh Yadav for the Appellant.

Sudhir Chandra, Ashok Sagar, Achintya Dvivedi and Rajesh Kumar for the Respondent.

The Judgment of the Court was delivered by

**S.N. VARIAVA, J. :** This Appeal is against the Judgment of the Allahabad High Court dated 24th May, 2002.

Briefly stated the facts are as follows.

M/s Dhampur Sugar Mills Limited [hereinafter called the 'Company'] is having its Registered Office at Dhampur, Bijnore District, U.P. It carried on business of manufacturing sugar. In 1991 it opened, at Dhampur, a unit manufacturing Chemicals. In 1993, it opened a unit manufacturing Particle Board at Agwanpur, Moradabad District, U.P. In 1993, it established another unit manufacturing Sugar at Rozagaon, Barabanki District and in 1995 it established a unit manufacturing Sugar at Asmoli, Moradabad District, U.P.

By a Notification dated 21st February, 1997 certain exemptions were granted to an undertaking which made a fixed capital investment of Rs.50 crores or more in expansion, modernization or diversification or backward integration.

**A** On 17th May, 2000 the Company styling itself as Dhampur Sugar Mills Group of Industries filed an application before the General Manager, District Industries Centre, District Bijnore. It claimed exemptions under the Notification dated 21st February, 1997 on grounds of expansion, diversification and modernization. This application was rejected by an **B** Order dated 31st October, 2000 on three grounds, namely, (a) A joint application for multiple units is not permissible under the Rules; (b) The application was time-barred; and (c) the Company was in arrears of tax for Rs.1742.25 lakhs. The Company filed an Appeal to the Trade Tax Tribunal, against this Order. This Appeal was rejected by an Order dated 20th March, 2001. The Trade Tax Tribunal held that every unit was a separate unit and **C** that a joint application could not be made.

The Company then filed a Trade Tax Revision before the High Court. The High Court has allowed the Revision and set aside the Orders dated 30th October, 2000 and 20th March, 2001. The High Court has directed the **D** concerned authority to issue an Eligibility Certificate under Section 4-A for the benefit of tax rebate on all goods manufactured as well as on the waste products. The High Court has further directed reimbursement of amounts paid earlier with interest thereon at 9% from the date of deposit.

**E** The questions for consideration by us are (a) whether one application can be filed or each unit of an industrial undertaking needs to file an application; (b) whether the application filed on 17th May, 2000 can be said to be time-barred; and (c) whether the Company was in arrears of tax for Rs.1742.25 lakhs or in any other amount.

**F** To answer these questions, one needs to notice various provisions as well as the concerned Notification. Under Section 8-A of the U.P. Trade Tax Act, 1948 every dealer who commences business, during the course of an assessment year and whose average monthly estimated turnover is as set out in sub-clause (d) thereof, must get himself registered. Rule 6 of the U.P. **G** Trade Tax Rules, 1948 provides that the Assessing Authority will be the one within whose jurisdiction the dealer carries on business. It further provides that if a dealer carries on business within the limits of jurisdiction of more than one Trade Tax Officer then he may declare one of the places of his business as his principal place of business with an intimation to all other Trade Tax Officers, within whose jurisdiction his other places of business **H** are situated, that the Trade Tax Officer where the principal place of business

is situate shall be the Assessing Authority in respect of such dealer. Thus, in cases like the present where a Company has more than one unit in different localities, the Company can if it so desires have the Trade Tax Officer of the principal place of business as the Assessing Authority of that Company.

Relevant portion of Section 4-A of the U.P. Trade Tax Act, 1948 reads as follows:-”

*4-A. Exemption from trade tax in certain cases.* - (1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or any district or part of district in particular, it may on application or otherwise, in any particular case or generally by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding fifteen years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may be the date of the notification or a date prior or subsequent to the date of such notification, and where no date is so specified from the date of first sale by such manufacturer if such sale takes place within six months from the date of starting production and in any other case from the date following the expiration of six months from the date of starting production, and subject to such conditions as may be specified be exempt from trade tax on sale of goods [whether wholly or partly] or be liable to tax at such reduced rate as it may fix :

Provided that in respect of goods manufactured in a new unit having a fixed capital investment of five crore rupees or more or in an existing unit which may make fixed capital investment of five crore rupees or more in expansion, diversification, modernization and backward integration or in any one of them, within such period not exceeding five years as may be specified in the notification, the exemption from or reduction in the rate of tax may be granted.

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or

A reduction in the rate of tax, shall be admissible —

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

B (b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October, 1982; or

(bb) in respect of those finished goods which are manufactured in a unit which has undertaken backward integration; or

C (c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification or modernization on or after April 1, 1990, and which, in case of diversification are different from the goods manufactured before such diversification, and in the case of exemption or modernization are additional production as a result of such expansion or modernization; and

D (d) only if the manufacturer furnishes to the assessing authority an Eligibility Certificate granted by such officer, in accordance with such procedure, as may be specified.”

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F (5) A manufacturer shall be entitled to the facility of exemption from, or reduction in the rate of tax, notified under sub-section (1) —

G (a) if he applies for such facility within six months from the relevant date of commencement of the period of facility referred to in that sub-section or within six months from the date of notification issued under that sub-section or by September 30, 1992, which ever, expires later, for the entire period notified under the sub-section;

H (b) if he applies for such facility later than the date specified in Clause (a) only for part of the period notified under sub-section (1),

which shall be computed from the date of the application till the end of the period of facility;

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(6) Where the State Government is of the opinion that the purpose for which the facility of exemption from or reduction in the rate of tax was granted under this section has been fulfilled or that the continuation of such facility is no longer in public interest or is against the public interest, it may, by notification, withdraw such facility granted to any industry, dealer or class of dealers :

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Provided that no such facility shall be withdrawn with retrospective effect.

*Explanation.* — For the purposes of this Section—

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(3) 'Date of starting production' means, the later of the following dates, namely :

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(a) the date of which any raw material (which term includes accessories, components, parts and packing material) required for use in the manufacturing (whether on trial or commercial basis) or as the case may be, packing of the goods is purchased for the first time; or

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(b) where the manufacture of goods is not possible without power, the first date on which power supply for manufacturing (whether on trial or commercial basis) from whatever source is obtained by the Unit :

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Provided that in respect of such raw material or packing material purchased on or after April 1, 1990 from outside India, the date of clearance by the Customs Authorities under the Customs Act, 1962, shall be reckoned as the date of its purchase for the purposes of Clause (a) :

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A Provided further that where any stage of manufacture is commenced before any of the dates referred to above, the date of such commencement shall be the date of starting production.

B (4) "Fixed capital investment" means value of land and building and such plants including captive power plant, machinery, equipment, apparatus and components, moulds, dyes, jigs, and fixtures as have not been used in any other factory or workshop in India :

C Provided that—

(a) for the purposes of determining value of land and building only the following shall be taken into account—

D (i) value of only such portion of land and building as is necessary for the establishment or running of the factory or workshop of the unit;

E (ii) expenses incurred in registration of land and building under the provisions of the Registration Act, 1908 and in development of land as development charges payable to any statutory body;

F (iii) the value of land or building already owned and given by the proprietor, partner, managing director, promoter director or holding company as his or its share in the capital in case the unit is established in such land or building;

G (iv) the amount or proportionate amount paid or payable as premium during the period for which expansion under Section 4-A is granted on account of lease and the expenses incurred on registration of the lease deed under the Registration Act, 1908, in case the unit is established in land or building taken on lease;

H (v) the value of land or building which is necessary for establishing or running the unit under some statutory obligation.

(b) for the purposes of determining value of plant including captive power plant, machinery, equipment, apparatus and components only the following shall be taken into account : A

(i) investment whether by means of purchase, hire or lease in such plant, equipment, apparatus, components and machinery as is necessary for the establishment or running of the factory or workshop; B

(ii) investment as is necessary under some statutory obligation; C

(iii) expenses incurred in erection and installation of such plant and machinery and bringing it to the site.

(c) the State Government may be notified order specify the procedure for determining fixed capital investment. D

(d) if a unit has made fixed capital investment under two or more heads of expansion, diversification, modernization and backward integration but fixed capital investment made under each such head is not as certainable, then the break up of fixed capital investment furnished by the unit will be accepted. E

(e) The facility of exemption from or reduction in the rate of tax on the basis of fixed capital investment in a captive power plant will be available when the unit does not sell the power which is in excess of its consumption to any person other than the Uttar Pradesh State Electricity Board and in case the unit sells such excess power to person other than the said board, the unit will be liable to pay the tax on the sale of its manufactured goods on pro-rata basis alongwith the interest in accordance with the provisions of sub-section (1) of Section 8. F  
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(5) "Unit which has undertaken expansion, diversification or modernization" means an industrial undertaking—

(a) of a dealer who is not a defaulter in payment of any dues under this Act or the Central Sales Tax Act, 1956 or under any loan, H

A scheme, administered by the Pradeshiya Industrial and Investment Corporation of Uttar Pradesh regarding trade tax sale or purchase of goods;

(b) whose first date of production of goods—

B (i) of a nature different from those manufactured earlier by such undertaking in case of units undertaking diversification, and

C (ii) manufactured in excess of base production in such undertaking in case of units undertaking expansion or modernization, falls at any time after March 31, 1990;

D (c) the production capacity whereof except as provided in the proviso to sub-section (1) has increased by at least twenty-five per cent as a result of expansion or modernization, or wherein goods of a nature different from those manufactured earlier are manufactured after diversification;

E (d) wherein an additional fixed capital investment of at least twenty-five per cent of such original fixed capital investment (without providing for depreciation) is made.

(e) which has been established within the same district in which the existing industrial unit is established.

F (6) For the purposes of this section the expression “base production” means,—

(a) eighty per cent of the installed annual production capacity;

G (b) maximum production achieved during any one of the preceding five consecutive assessment years or if the unit were in production for less than five years, the maximum production achieved during any one of the preceding assessment years whichever is higher:

H Provided that where a unit manufacturing more than one goods has not undertaken expansion or modernization in respect of all such

goods, its base production will be determined on the basis of production of goods in respect of which expansion or modernization has been undertaken :

Provided further that where investment made during certain period is clubbed together for the purpose of determining the fixed capital investment, the production immediately prior to the date on which such investment was first started to be made in respect of expansion or modernization shall be taken into account for determining the base production.”

Section 25 of the U. P. Trade Tax Act provides that an application for grant of Eligibility Certificate is to be made to the General Manager, District Industries Centre of the district in which the unit is situated. This Section also provides that the State Government may constitute Committees for disposal of applications for grant of Eligibility Certificate. It further provides that an application of a unit having a fixed capital investment exceeding Rs.5 lakhs shall be disposed of by the Divisional Level Committee. Once the Committee decides then the Eligibility Certificate is to be issued by the Additional or Joint Director of Industries of the concerned range.

The concerned Notification dated 21st February, 1997 reads as follows:

“Whereas the State Government is of the opinion that it is necessary for increasing the production of certain goods in the State, manufactured by industrial units, having a fixed capital investment of rupees fifty crore or more as new units, or making an additional fixed capital investment of rupees fifty crore or more in expansion, modernization, diversification or backward integration, to grant exemption from, or reduction in rate of tax to such units:

Now, therefore, in exercise of the powers under Section 4-A of the Uttar Pradesh Trade Tax Act, 1948 (U. P. Act No. XV of 1948), hereinafter referred to as the Act, the Governor is pleased to declare that :—

1. (a) in respect of goods manufactured in a new unit established in the areas mentioned in Column 2 of the Annexure the date of

- A** the starting production whereof falls on or after December 1, 1994 but not later than March 31, 2000, no tax shall be payable, or, as the case may be, the tax shall be payable at the reduced rates by the manufacturer thereof on the turnover of sales of such goods for the period of twelve years or till the maximum amount of tax relief
- B** by such exemption from, or reduction in the rate of tax as specified in Column 3 of the Annexure is achieved, whichever is earlier. The period shall be reckoned from the date of the first sale or the date following the expiration of six months from the date of starting production, whichever is earlier;
- C** (b) in respect of goods manufactured in a unit which has undertaken expansion, modernization or diversification on or after December 1, 1994 but not later than March 31, 2000, in the areas mentioned in Column 2 of the Annexure, no tax shall be payable or, as the case may be, the tax shall be payable at a reduced rate by the manufacturer thereof for the period of twelve years or till the maximum amount of tax relief by such exemption from, or reduction in the rate of, tax as specified in Column 3 of the Annexure is achieved, whichever is earlier, on the turnover of sales—
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- E** (i) of the quantity of goods, manufactured in excess of the base production in the case of unit undertaking expansion or modernization; and
- (ii) of goods manufactured by the unit which are of a nature different from those manufactured earlier by such unit in the case of unit undertaking diversification;
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- (c) in respect of goods manufactured in a unit, which has undertaken 'backward integration' on or after December 1, 1994 but not later than March 31, 2000, in the areas mentioned in Column 2 of the Annexure, no tax shall be payable, or as the case may be, the tax shall be payable at the reduced rates by the manufacturer thereof on the turnover of sales of such finished goods, for the period of twelve years or till the maximum amount of tax relief by such exemption from, or reduction in the rate of, tax as specified in Column 3 of the Annexure is achieved whichever is earlier on the turnover of sales. The benefit of exemption from, or reduction in,
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the rate of tax to the unit which has undertaken backward integration, shall be admissible only if the unit starts manufacturing such raw material, parts, intermediates or components as were not manufactured by it to such backward integration.

2. The facility of exemption from, or reduction in, the rate of tax including additional tax to any unit on any transaction of sale shall not exceed five per cent of the sale price. The tax including additional tax in excess of five per cent shall be payable by such unit according to law.

3. The facility of exemption from, or reduction in the rate of tax shall be subject to the following conditions in addition to the conditions referred to in Section 4-A of the Act:—

(a) that the unit will have a fixed capital investment of rupees fifty crore or more as a new unit or making an additional fixed capital investment of rupees fifty crore or more in expansion, modernization, diversification or backward integration. The fixed capital investment which is made during the period of five years commencing from the first day of such investment in the case of expansion, modernization, diversification or backward integration and from the date of starting production in the case of new units will be included in fixed capital investment for the purpose of this notification and also for the purpose of exemption from, or reduction in the rate of, tax benefit;

(b) that the facility of exemption from, or reduction in the rate of, tax on the basis of new units expansion, modernization, diversification or backward integration, as the case may be, under this notification shall not be simultaneously be available to a unit availing such tax facility on the same basis under Section 4-A.

(c) that the new unit is licensed or in respect whereof a letter of intent has been issued, or which is registered, permanently or otherwise, by the appropriate authority

- A in accordance with any law for the time being in force relating to licensing or registration of such units;
- B (d) that the new unit is established on land or building or both owned or taken on lease for a period of not less than fifteen years by such unit or allotted to such unit by the Central or the State Government or any Government Company or any Corporation owned or controlled by the Central or the State Government;
- C (e) that the exemption from tax or as the case may be, reduction in the rate of tax shall be admissible only in respect of such goods manufactured by the unit and such by-products and waste-products as are mentioned in the eligibility certificate issued to such unit under Section 4-A;
- D (f) that the said unit furnishes to the assessing authority concerned an eligibility certificate granted in this behalf by the General Manager, District Industries Centre, Area Development Officer (Industry) of the concerned Industrial Development Authority, Additional or Joint Director Industries of the range or Additional Director or Joint Director Industries of the concerned Industrial Development Authority, as the case may be:
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- F (g) that the exemption from, or reduction in the rate of, tax under this notification shall be available to a unit only when fixed capital investment or as the case may be, an additional fixed capital investment of at least rupees fifty crore is made by it as specified in clause (a) of Para 3. If the investment is not so made by a unit, it shall be liable to pay penalty, if any, imposed and the entire tax benefit availed by the unit together with interest thereon shall become due and be payable by the unit as admitted tax, such unit shall however before it starts availing facility under this notification creates first or second charge on its property in the favour of the State Government, sufficient to cover its aforesaid liability;
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(h) that the total amount of tax exemption under the Act as also under the Central Sales Tax Act, 1956 (Act No. 74 of 1956) in any assessment year shall not exceed the amount which is equal to the multiple of percentage mentioned in Column 3 of the Annexure and the fixed capital investment, made by the unit during the said assessment year, but the amount of exemption under both the aforesaid Acts up to the end of any assessment year shall not exceed the amount equal to multiple of percentage mentioned in Column 3 of the Annexure and the fixed capital investment in the case of a new unit or additional fixed capital investment, as the case may be, made up to the end of that assessment year;

(i) that the unit shall after close of every assessment year during which exemption from, or reduction in the rate of tax is admissible but not later than thirty days of the approval of its balance sheet by concerned authority of the unit submit to the assessing authority a certificate from a chartered accountant in respect of each assessment year. Such certificate shall contain the following details :—

(a) additional fixed capital investment made during the assessment year;

(b) cumulative additional fixed capital investment made from or after December 1, 1994 up to the close of such assessment year; and

(c) amount of tax exemption from, or reduction in the rate of, tax availed by the unit during the assessment year and from or after December 1, 1994 up to the close of such assessment year;

(d) the facility of exemption from, or reduction in the rate of, tax under this notification shall not be available to such industrial units as are notified by the State Government.

- A 4. That the period of facility of exemption from, or reduction in the rate of tax shall be reckoned from the first date of production,—
- B (a) of goods of a nature different from those manufactured earlier by such unit in case of diversification;
- (b) of goods manufactured in excess of the base production in the case of unit undertaking expansion modernization; and
- C (c) of such raw material, parts, intermediate or components as were earlier imported from outside the State and not manufactured by the unit which has undertaken backward integration.
- D 5. Fixed capital investment or additional fixed capital investment, as the case may be, may, unless otherwise established, be determined in the case of an industrial undertaking financed by a term-loan advanced by a public financial institution or a Scheduled Bank according to the certificate to that effect issued by such institution or the Bank and in any other case, according to —
- E (a) the value of the land certified by the Collector in accordance with the procedure laid down for determination of the value of land for the purpose of payment of stamp duty under the Indian Stamp Act, 1899;
- F (b) the value of building certified by an evaluator approved by the Income Tax Department for the purpose;
- G (c) the value of plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures certified by a Chartered Accountant.
- H 6. In determining the fixed capital investment in case of new units or additional fixed capital investment referred to in

clause (d) of explanation (5) or clause (ii) of explanation (7) of Section 4-A in case of units which have undertaken expansion, diversification or modernization or backward integration, the investment in only such land, building, plant, machinery, equipment, apparatus, components, moulds, dyes, jigs, and fixtures shall be taken into account as were acquired on or before expiration of the period specified in sub-clause (a) of Para 3 of this notification.

7. (1) Turnover of sale of goods in any assessment year to the extent of the quantity covered by base production of that year and the stock of base production of previous years shall be deemed to be the turnover of base production.

(2) Only the turnover of goods in any assessment year in excess of the quantity referred to in sub-para (1) shall be entitled to the facility of exemption from, or reduction in the rate of, tax.

ANNEXURE

Sr. No.	Location of units	Monetary limit up to which the Limit benefit of exemption from or reduction in the rate of tax under the Act together with the benefit of exemption from, or reduction in the rate, of tax under the Central Sales Tax Act, 1956 is admissible.
1	2	3
1.	The districts of Almora, Banda, Chamoli, Dehradun, Fatehpur, Hamirpur, Jalaun, Jaunpur, Kanpur(Dehat), Mahoba, Nainital, Pauri Garhwal, Sultanpur, Uttar Kashi, Pithoragarh, Tehri Garhwal, Udham Singh Nagar and Growth Centres.	250 per cent of the fixed capital investment or as the case may be the additional fixed capital investment.

A	2.(i)	The districts of Azamgarh, Ambedkar Nagar, Bahraich, Balia, Barabanki, Basti, Badaun, Bulandshahr, Deoria, Etah, Etawah, Faizabad, Farrukhabad, Ghazipur, Gonda, Hardoi, Jhansi, Lalitpur, Mainpuri, Mathura, Mau, Moradabad, Padrauna, Pilibhit, Pratapgarh, Rae Bareli, Rampur, Shahjahanpur, Siddarth Nagar, Sitapur and Unnao.	200 per cent of the fixed capital investment or as the case may be, the additional fixed capital investment.
B			
C	(ii)	The area of Allahabad District in South of the river Jamuna and Confluent Ganga (excluding the Area included under Municipal Corporation, Allahabad).	
D			
	(iii)	The Taj Trapezium area.	
	(iv)	Greater NOIDA Industrial Development Area.	
E	3.	The Districts of Agra (excluding Taj Trapezium area), Aligarh (excluding Taj Trapezium area), Allahabad (excluding the area in South of rivers Jamuna and Confluent Ganga but including the Area included under Municipal Corporation, Allahabad), Bareilly, Bhadohi, Bijnore, Firozabad (excluding Taj Trapezium area), Ghaziabad excluding (Greater NOIDA Industrial Development Area), Gorakhpur, Haridwar, Kanpur (Nagar), Lakhimpur Kheri, Lucknow, Maharajganj, Meerut, Mirzapur, Muzaffarnagar, Saharanpur, Sonbhadra and Varanasi.	150 per cent of the fixed capital investment or as the case may be, the additional fixed capital investment.
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Mr. Sunil Gupta, Additional Solicitor General for the State of U.P., submitted that the reading of the above provisions and the Notification along with Form 46 (being the form in which an application for exemption is to be made) clearly indicate that for the purposes of exemption each unit is considered to be a separate entity. He submits that to avail the benefits of the Notification, an investment of Rs. fifty crores or more must be in respect of one unit only. He submitted that the Company making a capital investment of Rs. fifty crores or more in its various units cannot, by clubbing the units, claim an exemption under the said Notification. He further submitted that, in any event, the application was made belatedly and, therefore, deserved to be dismissed. He submitted that even otherwise the Company was in arrears of tax approximating Rs.1742.25 lakhs and, therefore, also they were not entitled to the benefit of the Notification.

On the other hand, Mr. Sudhir Chandra, on behalf of the Company, submitted that a reading of the provisions and the Notification make it clear that it is the Company which is to make the investment and get the benefit of tax exemption. He submitted that, therefore, so long as the Company makes a capital investment of Rs. fifty crores or more even though such investment is spread over various units of the Company it becomes entitled to the benefit of the Notification.

Mr. Sudhir Chandra cited a number of authorities for the proposition that Notifications have to be interpreted keeping in view the object. He submitted that the object was to encourage investments and production. He submitted that a liberal interpretation which advances the object of the Notification should be given. Mr. Sudhir Chandra relied upon the authorities in the cases of *Oblum Electrical Industries Pvt. Ltd., Hyderabad v. Collector of Customs, Bombay*, reported in [1997] 7 SCC 581; *Commissioner of Sales Tax v. Industrial Coal Enterprises*, reported in [1999] 2 SCC 607 and *K. R. Steel Union Ltd. v. Commissioner of Customs, Kandla (Gujarat)*, reported in [2001] 4 SCC 736. In our view, there can be no dispute with the above mentioned proposition of law. Therefore, there is no necessity to consider in detail the authorities relied upon.

In our view, the answer depends on the wording of the Notification read along with Section 4-A of the U. P. Trade Tax Act. One must also keep in mind Rule 6-A of the U.P. Trade Tax Rules which provides that if a dealer is carrying on business in more than one place then the Assessing Authority

A for that dealer can be one where his principal place of business is.

B It is undisputed fact that the principal place of business of the Company is Dhampur, District Bijnore. The exemption claimed by the Respondent, under the Notification dated 21st February, 1997, was for expansion, modernization or diversification. What is a "Unit" for purposes of expansion, diversification or modernization has been defined in Section 4-A (6) (5), which has been set out hereinabove. Under this "unit" means an "industrial undertaking" of a dealer who is not a defaulter and who meets the requirements as set out in sub-clause (b) thereof. The dealer, indisputably, is the Respondent Company. The industrial undertaking of the Respondent is the Company.

C It is the Company which will be paying the tax and which will get the benefit of exemption, if entitled to it.

D Mr. Sunil Gupta, the learned A.S.G. however submitted that a reading of the various sub-clauses indicates that the term "Unit" refers not to the industrial undertaking as a whole but to a unit of the Company. He submitted that Clause (b) requires that the 'first date of production of the goods' consequent upon the expansion, modernization or diversification of the undertaking in question should be a date falling at any time after March 31, 1980. He submitted that the expression the 'first date of production of the goods' can have reference to the production of goods by only one manufacturing concern or entity at a time. It cannot refer to multiple manufacturing concerns of the dealer taken collectively because all of them would not be expected to have a common first date of production of the goods. In our view clause (b) clearly indicates that the referance is to the industrial undertaking as a whole and not a unit of the industrial undertaking.

E There could be diversification in one unit in respect of which the first date of production would be as per clause (b)(i). Clause (b)(ii) puts the matter beyond any doubt. It uses the words "in such undertaking in case of units undertaking expansion or modernization". Thus now there is clear referance not just to the undertaking i.e. the Company but also to Units of that Company. The term "units" clearly refers to more than one unit. This shows

F that the expansion and modernization can be in more than one unit.

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H Mr. Sunil Gupta, the learned A.S.G. next relied on *clause (c)* and submitted that in cases of expansion or modernization clause (c) required that the production capacity of the undertaking should increase by at least 25%. He submitted that this increase is relative and has to be achieved in

comparison to the pre-existing figure of 'base production'. He submitted that the increase contemplated is not in the enhanced production of all the manufacturing concerns taken collectively together in comparison with their collective pre-existing 'base production'. He submitted that there would be no sense in comparing the over-all production capacity of all the manufacturing concerns of the dealer regardless of the goods (products) they are manufacturing at different places (possibly in different States) and by means of different kinds of plant, machinery etc. He submitted that such an interpretation would render the provision both implausible and unworkable. He submitted that the increase in production in respect of any one particular manufacturing concern under expansion or modernization can and should be compared with the pre-existing figure of 'base production' of that concern only. In our view it is not necessary for us to decide whether the production capacity of the undertaking or a unit is to be considered. Even if production capacity of only the unit/s, in which expansion, modernization or diversification has taken place, is to be taken into account then also it would not show that the entire investment is to be only in one unit. The very fact that this clause is dealing with all 3 aspects i.e. expansion, modernization and diversification shows that in most cases they would be in separate units.

We are also unimpressed by the submission that in cases of diversification if the meaning given is that the goods manufactured should not have been manufactured by the dealer anywhere in any concern of his, whether the present concern applied for or any other concern at any other place, then again the provision would be deprived of all its sensibility and reasonableness and would serve no purpose. It is the industrial undertaking which is diversifying in some or one of its unit. Undoubtedly the industrial undertaking may diversify in any one of its units. But that does not mean that it is the unit and not the industrial undertaking which is diversifying.

Mr. Sunil Gupta, the learned A.S.G. next submitted that clause (d) brings out the necessity of giving the narrow meaning to the expression 'industrial undertaking'. In our view clause (d) makes it clear that it is the industrial undertaking and not a unit which is making the additional fixed capital investment. It could not be denied that the provision for depreciation would necessarily be made by the Company. Thus it is the Company who has to make an additional investment of at least 25% without providing for depreciation.

A Mr. Sunil Gupta, the learned A.S.G., placed very strong reliance on sub-clause (e), which reads as follows:-

“which has been established within the same district in which the existing industrial unit is established.”

- B He submitted that clause (e) proves beyond any doubt that the expression ‘industrial undertaking’ envisages only one manufacturing concern at a time and not all such concerns belonging to the dealer. He submitted that the expression ‘the existing industrial unit’ brings about the much wanted connectivity between the old existing manufacturing concern and its enhancement (expansion, modernization or diversification) in terms of establishment of both being required in *one and the same district*. He submitted that this clause required that the enhanced portion (expansion, modernization and diversification) of an undertaking should be located in the same district as the original ‘existing industrial unit’ of that undertaking.
- C He submitted that if it is located outside that district, the law would not treat it as expansion, modernization or diversification of that undertaking. In that event, it would be more akin to a new unit rather than an expanded or modernized unit or a unit undergoing diversification. He submitted that the requirement as to location, namely, that the enhanced portion of the undertaking should be ‘established within the same district in which the existing industrial unit is established; can have reference only to one manufacturing concern (the existing industrial unit) at a time i.e. the one particular concern which is undergoing expansion etc. and the district in which it is located and not to all the concerns (all the existing industrial units) belonging to the dealer for they may possibly be located even in different districts.
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- E
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We are unable to accept this submission. This sub-clause merely sets out that the expansion, diversification or modernization must be in respect of a unit, which has been established within the same district in which the industrial unit is established. In this case, the expansion, diversification or modernization is not claimed in respect of any new unit. It is claimed in respect of existing units at Dhampur, Agwanpur, Rozagaon and Asmoli. That the term “Unit” in the context of expansion, diversification and modernization refers to the Industrial Undertaking and not to a unit of an Industrial Undertaking. Thus an expansion of one unit at the same location or a modernization of any unit or a diversification in an existing unit would

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suffice. All that this clause is ensuring is that there is distinction between a new unit and an expansion, modernization and diversification. A new unit may be at a different place but expansion, modernization or diversification must be at the place/places where the existing units of the industrial undertaking are situated.

Mr. Sunil Gupta, learned A.S.G. next submitted that the definition of the expression 'base production' in Explanation (6) further underscores the individual identity of each manufacturing concern. He submitted that one of the two figures, whichever is higher, is taken as the base production-either eighty percent of the installed annual production capacity or the maximum production achieved during any one of the preceding five consecutive assessment years. He submitted that this can have reference only to the production capacity or production figures in respect of the one 'existing industrial unit' which is undergoing expansion etc. He submitted that the concept of 'base production' has relevance only to expansion and modernization and not to diversification. He submitted that if a wide meaning of 'industrial undertaking' viz. multiple concerns belonging to a dealer is applied, the production capacity and production figures of the other manufacturing concern or concerns of the dealer, producing possibly even some other kind of goods, shall have to be taken into consideration even though it would be wholly irrelevant for the purposes of determining the base production of the particular concern undergoing expansion for there would be no rational basis or linkage for comparison between the two. He submitted that this is also in consonance with the first proviso to Explanation (6). He relied on the first proviso and submitted that whilst dealing with one unit manufacturing more than one goods but not undertaking expansion etc. in respect of all such goods, requires the base production to be determined only on the basis of production of goods in respect of which the expansion etc. has been undertaken. He submitted that in such a case, the comparison is made even more specific. It is determined not merely unit-wise but even goods-wise.

We are unimpressed by these submissions. As stated above even if the figures are to be in respect of only one unit it still would not mean that the entire investment of Rs. 50 crores or more must be in one unit only. Separate figures of each unit in which expansion, modernization or diversification has taken place may and can be worked out.

A That the expansion, modernization or diversification need not be in one unit is also clear from the wording of the Notification.

The Preamble to the Notification reads as follows :-

B “Whereas the State Government is of the opinion that it is necessary  
for increasing the production of certain goods in the State,  
manufactured by industrial units, having a fixed capital investment  
of rupees fifty crore or more as new units, or making an additional  
fixed capital investment of rupees fifty crore or more in expansion,  
C modernization, diversification or backward integration, to grant  
exemption from, or reduction in rate of tax to such units.”

Thus, the Preamble shows that the capital investment of Rs. fifty crore or more has to be in a new unit or in expansion, modernization and diversification. To be noted that to the words “expansion, modernization and diversification”, there are no qualifying words. It is not stated that these must be in one unit of the Industrial Undertaking. The Preamble, therefore, clearly supports the case of the Respondents that the expansion, diversification and modernization need not be only in one of the units of the Industrial Undertaking. This becomes further clear that if one looks at Clause (1) of the Notification. Under sub-clause (a) the benefit is in respect of a new unit but under sub-clause (b) it is in respect in a unit which has undertaken expansion, modernization or diversification between 1st December 1994 and 31st March 2000. As seen above, the term ‘Unit’ has the meaning as defined in Section 4-A. As we have already seen, Section 4-A defines the term ‘Unit’ to mean an industrial undertaking, which has undertaken expansion, modernization and diversification. Even under the General Clauses Act, where the context so requires the singular can include the plural. A plain reading of the Notification shows that for “expansion, modernization and diversification” it is the industrial undertaking which is considered to be the “Unit”. This is also clear from fact that in the Notification wherever the words “expansion, modernization or diversification” are used, there is no qualifying words to the effect “in any one Unit”. In none of the clauses is there any requirement of the investment being in one unit of the Industrial Undertaking. Words to the effect “in a particular unit” or “in one unit” are missing. To accept Mr. Sunil Gupta’s submission would require adding words to a Notification which the Government purposely omitted to add.

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Even otherwise, the purpose of Notification being to encourage increased production and to give benefit to industries which have invested Rs. fifty crore or more in the State and whose production has thus increased, an interpretation must be given which would extend benefit to such industries. There would be no purpose in denying, an industry which has invested Rs. fifty crore or more and whose production in the State has as a result increased, the benefit of the exemption granted by this Notification merely because the whole of the investment is not in any particular unit. Thus even where the investment is made by the Company in more than one units, so long as the total investment is Rs. fifty crore or more, the benefit of the Notification would be available. Such benefit would then be distributed in the manner set out in the Schedule depending on where a unit in which expansion, diversification or modernization has taken place, is situated. Thus, for example, in respect of the units situated in Barabanki and Moradabad, the benefit would be to the extent of 200% of the fixed capital investment in those units, whereas in respect of units in Bijnore the benefit would be to the extent of 150% of the fixed capital investment in that unit. Similarly, the base production and the starting date of production could be in respect of those units. However, it is the Company which has made the investment. It is the Company which is paying the tax. It is the Company which would be getting the benefit of the exemption. The manner in which the Company gets the benefit would be as set out hereinabove.

The second question is whether the application could have been rejected on the ground that it is time-barred. The relevant portion of Section 4-A(5) reads as follows:

“(5) A manufacturer shall be entitled to the facility of exemption form, or reduction in the rate of tax, notified under sub-section (1) —

(a) if he applies for such facility within six months from the relevant date of commencement of the period of facility referred to in that sub-section or within six months from the date of notification issued under that sub-section or by September 30, 1992, which ever, expires later, for the entire period notified under the sub-section;

A (b) if he applies for such facility later than the date specified in Clause (a) only for part of the period notified under sub-section (1), which shall be computed from the date of the application till the end of the period of facility;

B Thus, even if an application is made at a later date it does not preclude the dealer from getting the benefit of the exemption. If an application is made at a later date the benefit of exemption will be limited. It will be computed from the date of the application till the end of the period of facility. This, therefore, was no ground for rejecting the application.

C The third ground on which the application was rejected was that the Respondents were in arrears of tax. We, however, find that the Respondents had obtained stay orders from the High Court. Neither side could enlighten us, whether for any period when there were no stay orders the Respondents were still in arrears of tax. During the period the stay orders were in operation the Respondents cannot be said to be in arrears of tax. During the period of the stay the Respondents were not bound to pay. Therefore, they cannot be said to be in arrears. These are matters of fact which need to be looked into by the Assessing Authority.

E We are, therefore, of the opinion that the Assessing Authority was wrong in rejecting the application on the ground that a joint application was not permissible. As stated above, a joint application is permissible. As the principal place of business is at Bijnore, the Assessing Authority would be the General Manager, District Industries Centre, Bijnore. If this Officer or the concerned Committee requires any further information from any other District, it can always call for information from the concerned Officer of the other District/s or even call upon the Company to furnish relevant information.

G We, however, find that the High Court was wrong in directing issuance of an Eligibility Certificate as well as directing reimbursement of the amounts paid. Whether, factually, there has been any expansion, modernization or diversification has to be ascertained by the concerned Committee. The Committee will also have to determine to what extent there has been expansion, modernization and/or diversification after 1st December 1994 and before 31st March 2000. The Assessing Authority will also require to consider whether Clause 3(b) of the Notification is applicable and whether

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the expansion, modernization and diversification now claimed is not in respect of any exemption already claimed and made available to the Respondent-Company or any of its units earlier. It must be mentioned that under an earlier Notification dated 13.8.1991 various units of the Respondent-company had applied for exemption and had been granted exemption to certain extent.

Thus, we set aside that portion of the impugned Order which directs issuance of the Eligibility Certificate and directs reimbursement. We remit the matter back to the Divisional Level Committee which shall decide the application on its merit within a period of six months from today. The Committee, among the other things, will consider whether the Company was in arrears of tax. It is again clarified that during the period of stay orders the Company cannot be said to be in arrears of tax.

With these observations, the Appeal stands disposed of. There will be no order as to costs.

N.J.

Appeal disposed of.