

COMMERCIAL TAXES OFFICER, JODHPUR

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v.

M/S. VISHNU METALS

NOVEMBER 7, 2006

[ASHOK BHAN, ALTAMAS KABIR AND DALVEER BHANDARI, JJ.]

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*Rajasthan Sales Tax Act, 1954; Section 4(2)/Sales Tax New Incentive Scheme for Industries, 1989; Clause 26:*

*Assessee manufacture steel sheets—Claiming exemption from payment of sales tax in terms of Sales Tax Incentive Scheme on ground of increase in production—Taking into account job-work undertaken—Job work—Nature of—Eligibility for the purpose of claiming exemption—Held: Tax exemption as provided under the Incentive Scheme requires actual production of the unit/goods in question—Both the Rajasthan Tax Board and the High Court erred in proceeding on the basis of presumption, that the job work undertaken by the assessee is similar in nature to the production of goods by the assessee, while allowing the exemption to assessee—Hence, orders passed by the Rajasthan Tax Board and the High Court set aside.*

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**Respondent-company manufactures stainless steel sheets. Its original installed capacity was 1300 M.T. per annum, which was subsequently expanded to 1600 M.T. per annum. It utilized more than 85% of its installed capacity during certain period. Taking into account the goods manufactured and the job work undertaken by it for others, total increase in the production was 25% during certain period. The assessee claimed exemption of sales tax in terms of Sales Tax New Scheme for Industrial Unit, 1989 on ground of increase in production. The District Level Screening Committee did not grant Eligibility Certificate for claiming exemption under the provisions of the Incentive Scheme. Aggrieved, the assessee filed an appeal before the Rajasthan Tax Board. Allowing the appeal, the Tax Board held that the assessee was entitled to add the job work performed in the production to qualify for the Eligibility Certificate under the 1989 Incentive Scheme. The same view was reiterated by the High Court in the Revision petition preferred by the Revenue. Hence the present appeal and the connected appeals.**

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**A** Allowing the appeal and the connected appeals, the Court

**HELD:** Both the Rajasthan Tax Board and the High Court laboured under the presumption that the job work performed by the respondent-assessee involved manufacture of goods which were similar in nature to its own goods for sale. Such an approach was erroneous, since the very nature of the incentive given under the 1989 Incentive Scheme involves calculation of the actual production of the unit in question. In the absence of any material to indicate the nature of job work undertaken, it would be improper to proceed only on the basis of presumption. [656-G-H; 657-A]

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4944 of 2001.

From the Judgment and Final Order dated 18.1.2000 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. Sales Tax Revision No. 1165/1999.

**D** Sushil Kr. Jain, Puneet Jain and Sarad Singhania for the Appellant.

Dr. Manish Singhvi (for K.K. Gupta) and P.V. Yogeswaran for the Respondent.

The Judgment of the Court was delivered by

**E** **ALTAMAS KABIR, J.** Civil Appeal No. 4944 of 2001 is directed against the judgment of the Rajasthan High Court at Jodhpur dated 18th January, 2000, in S.B. Sales Tax Revision No. 1165 of 1999 under Section 86(2) of the Rajasthan Sales Tax Act, 1994. The said revision was directed against the judgment dated 9th February, 1999 passed by the Rajasthan Tax Board, Ajmer, allowing the appeal preferred by the respondent / assessee and setting aside the decision of the District Level Screening Committee taken on 19th March, 1998, rejecting the assessee's application for Eligibility Certificate under the Sales Tax New Incentive Scheme for Industries, 1989.

**G** The assessee, which is the respondent in the present appeal, manufactures stainless steel sheets. Its original installed capacity was 1300 M.T. per annum prior to 16th February, 1995. Subsequently, the assessee expanded its production capacity to 1600 M.T. per annum and achieved the production of more than 85% of the installed capacity between 16th February, 1995 and 16th June, 1996. According to the materials on record, the production of the assessee between April, 1994 to 15th February, 1995 was 1292.913 M.T.

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and during the year following the date of expansion, the assessee manufactured its own goods to the extent of 1447.489 M.T. It is the case of the assessee that apart from manufacturing its own goods, the assessee had also manufactured goods by doing job work for others and the entire production, taking into account the goods manufactured for its own purposes and the job work, would amount to a total of 2193.76 M.T. In other words, if the job work undertaken by the assessee for others is also taken into consideration, along with the production for its own purposes, such production would constitute an increase in the production to more than 25% of the original installed capacity.

On 6th July, 1989, the Rajasthan Government, in exercise of its powers conferred by Section 4(2) for the Rajasthan Sales Tax Act, 1954, notified the "Sales Tax New Incentive Scheme of Industries, 1989" which exempted the industrial units from payment of tax on the sale of goods manufactured by them within the State in the manner and to the extent and for the period as covered by the notification. Clause 2(f) dealt with expansion of units and defined such expansion in the following terms:-

"2(f) *Expansion* means increase in the value of fixed capital investment by not less than 25% of the net fixed assets of the existing project and accompanied by an increase in the production to the extent of at least 25% of the original licensed /registered capacity.

Explanation: The benefits of Sales Tax incentive for Expansion shall be admissible to the eligible units only after they have achieved at least 85% of their licensed/registered capacity before expansion."

The assessee applied to the District level Screening Committee for grant of Eligibility Certificate under the provisions of the said 1989 Incentive Scheme on account of expansion of its installed capacity. The said Committee came to the conclusion that since the production by the assessee had been raised during the period in question from 1292.913 M.T. to 1447.489 M.T., it had utilized more than 85% capacity, but the production had not increased to the extent of 25% of the licensed / registered capacity and accordingly rejected the claim of the assessee. Against the said decision of the District Level Screening Committee, the assessee went before the Rajasthan Tax Board by way of Appeal No. 798/98/S.T./Jodhpur, wherein it was contended that apart from the production for its own purposes, the assessee had also undertaken "job work" and that the two taken together would far exceed the required

A increase in the production to the extent of at least 25% of the licensed/registered capacity.

B Accepting the submissions made on behalf of the assessee that since the definition of the expression "expansion" did not stipulate that the production had to be for its own purposes, the Tax Board held that the assessee was entitled to add the job work performed to its own production for its own purposes to qualify for the Eligibility Certificate under the 1989 Incentive Scheme.

C The same view was reiterated by the High Court in the revision preferred by the Department.

D The question that, therefore, falls for determination in this appeal is whether the job work performed by the assessee in addition to its production for its own purposes can be taken into consideration for the purposes of clause 2(f) of the 1989 Incentive Scheme, as had been held both by the Rajasthan Tax Board and the High Court. Although, the Rajasthan Tax Board was of the view that the job work performed by the assessee would have to be added to the production capacity of the assessee's unit, there is no reasoning in support thereof. The said lacuna has been addressed by the High Court by holding that the expression used in the statute did not indicate that the manufacture of goods for sale must be by any particular individual and that the entire production in order to make the unit eligible for grant of benefit under the 1989 Incentive Scheme must be on its own account and not by way of doing job work. On such interpretation of clause 2(f) of the 1989 Incentive Scheme, the High Court affirmed the finding of the Rajasthan Tax Board and directed the District Level Screening Committee to issue necessary Eligibility Certificate to the respondent assessee.

G While arriving at a conclusion that job work would also have to be taken into consideration for grant of eligibility certificate under Clause 2(f), both the Rajasthan Tax Board and the High Court omitted to take into consideration the nature of job work performed by the respondent-assessee and whether the same would amount to production as contemplated in the said clause. Learned counsel appearing for the respondent assessee was also unable to specify the nature of job work said to have been undertaken by the respondent-assessee. Both the Rajasthan Tax Board and the High Court laboured under the presumption that the job work performed by the respondent-assessee involved manufacture of goods which were similar in nature to its

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own goods for sale. Such an approach, in our view, was erroneous, since the very nature of the incentive given under the aforesaid 1989 Incentive Scheme involves calculation of the actual production of the unit in question. In the absence of any material to indicate the nature of job work undertaken it would be improper to proceed only on the basis of presumption.

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The Department's appeal must, therefore, succeed and is allowed and the judgments of both the Rajasthan Tax Board and the High Court dated 18th January, 2000 and 9th February, 1999, respectively, are set aside.

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There will, however, be no order as to costs.

Civil Appeal No. 47001/2006

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(Arising out of SLP (C) No. 2165 of 2003)

Leave granted.

The Civil Appeal arising out of S.L.P. (Civil) No. 2165 of 2003 involves the same question as in Civil Appeal No. 4944 of 2001 and is directed against the judgment of the Rajasthan High Court at Jodhpur dated 14th August, 2002, in S.B. Sales Tax Revision No. 457 of 2002 under Section 86(2) of the Rajasthan Sales Tax Act, 1994. The said revision was directed against the judgment dated 3rd October, 2001, passed by the Rajasthan Tax Board, Ajmer, allowing the appeal preferred by the respondent / assessee and setting aside the decision of the District Level Screening Committee taken on 7th August, 1999.

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Relying on its decision in the *Vishnu Metals'* case in S.B. Sales Tax Revision No. 1165 of 1999, the High Court dismissed the revisional application of the appellant in the instant appeal as well.

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As the issue involved is the same in both these appeals, the decision in Civil Appeal No. 4944 of 2001 will govern this appeal as well. Consequently, the Department's appeal succeeds and the judgments of both the Rajasthan Tax Board and the High Court dated 14th August, 2002, and 3rd October, 2001, respectively, are set aside.

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There will be no order as to costs.

S.K.S.

*Appeals allowed.*