

COMMISSIONER OF TRADE TAX, U.P.

v.

VARUN BEVERAGES LIMITED

(Civil Appeal No. 3186 of 2011)

APRIL 11, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Uttar Pradesh Trade Tax Act, 1948: s.4-A(4) – Fixed capital investment – Bottles and crates used by the respondent in its factory for the manufacture of soft drinks and beverages – Inclusion of value of bottles and crates in the fixed capital investment – Held: Bottles are essential part of components and equipments necessary for the running of the factory of the respondent and, therefore, its value would form part of the fixed capital investment and would be entitled to exemption – Crates are used only for the purpose of marketing and their use is necessary only for taking out the bottled beverages out of the factory – Crates having no user so far as running of the factory of the respondent is concerned, therefore, value of crates cannot be deemed to be investment for the purpose of including it within the meaning of expression “Fixed Capital Investment” as per sub-section (4) of s. 4-A of the Act.

The question which arose for consideration in the instant appeal was whether the bottles and crates used by the respondent in its factory for the manufacture of soft drinks and beverages were to be treated as part of “Fixed Capital Investment” as being essential apparatus for the manufacture of soft drinks and, therefore, covered within the meaning of sub-section (4) of Section 4-A of the Uttar Pradesh Trade Tax Act.

Partly allowing the appeal, the Court

A HELD: 1.1. Section 4A of the U.P. Trade Tax Act which
 lays down that 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, it may on the
 B application or otherwise declare that the turnover of sales
 in respect of such goods by the manufacturer thereof
 shall, during such period not exceeding fifteen years is
 exempted from payment of trade tax provided that goods
 manufactured in the new unit has a fixed capital
 C investment of five crore rupees or more. The said section
 further provided in sub-section (4) of Section 4-A of the
 Act as to what is the meaning of the expression "Fixed
 Capital Investment". It is provided therein that "Fixed
 capital investment" means value of land and building and
 D such plants including captive power plant, machinery,
 equipment, apparatus, components, moulds, dyes, jigs
 and fixtures. Sub-clause (b) inserted in the proviso to sub-
 section (4) of Section 4-A of the Act stated that for the
 purposes of determining value of plant including captive
 E power plant, machinery, equipment, apparatus,
 components, moulds, dyes, jigs and fixtures only
 investment, whether by means of purchases, hire or
 lease in such plant, equipment, apparatus, components
 and machinery, as is necessary for the establishment or
 running of the factory or workshop shall be taken into
 F account. The object of the relevant provision in the light
 of other provisions of the Act, made it crystal clear that
 the value of investment for equipments, apparatus and
 components for running the factory and workshop has
 also to be considered as investment and such value is
 G required to be included within the ambit of fixed capital
 investment. [Paras 12, 17] [809-E-F; 810-A-B; 812-G-H]

*CST v. Industrial Coal Enterprises (1999) 2 SCC 607 –
 relied on.*

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State of Bihar and Others v. Steel City Beverage Limited and another (1999) 1 SCC 10– referred to. A

1.2. Considering the wording of the provision itself, it is quite necessary to give full and complete effect to the provision in a purposive manner so as to advance the objective of the provision. The respondents were engaged in the manufacture of soft drink and beverages which were required to be bottled and thereafter sealed, which were essential part of running of the factory and, therefore, the same would have to be included within the said extended meaning of the word 'investment' as appearing from the words 'fixed capital investment'. In the facts and circumstances, so far bottles are concerned, they are essential part of components and equipments necessary for the running of the factory and, therefore, such value of the investment would form part of the fixed capital investment and would be entitled to exemption as provided for. But so far crates are concerned they are used by the respondent only for the purpose of marketing. Use of crates is necessary for taking out the bottled beverages out of the factory and while doing the marketing of the sealed bottled beverages. The said view also receives support from the contents of the eligibility certificate given by the appellant and, therefore, crates have no user so far as running of the factory of the respondent. Therefore, the value of crates cannot be deemed to be investment for the purpose of including it within the meaning of expression "Fixed Capital Investment" as per sub-section (4) of Section 4-A of the Act. The order passed by the High Court so far bottles are concerned is upheld but the same so far crates are concerned is set aside. [Paras 21, 22, 23, 24] [815-A, D-H; 816-A-B] B
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CIT v. Straw Board Mfg. Co. Ltd. 1989 Suppl. (2) SCC 523 – relied on. H

A *State of Bihar v. Steel City Beverages Ltd. (1999) 1 SCC 10 – distinguished.*

Case Law Reference:

(1999) 1 SCC 10 referred to Para 13, 17
B (1999) 2 SCC 607 relied on Para 16
(1999) 1 SCC 10 distinguished Para 18, 22
1989 Suppl. (2) SCC 523 relied on Para 21

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3186 of 2011.

D From the Judgment & Order dated 19.01.2010 of the High Court of Judicature at Allahabad in Trade Tax Revision No. 337 of 2002.

Sunil Gupta, Shail Kumar, Dwivedi, AAG, G. Venkateswara Rao, Tanmay Agarwal, A. Shukla, Manoj Kumar, Dwivedi, Gunnam Venkateswara Rao for the Appellant.

E Dhruv Agarwal, Praveen Kumar for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. Leave granted.

F 2. This appeal is directed against the Judgment and Order dated 19.01.2010 passed by the Allahabad High Court whereby the High Court allowed the revision petition preferred by the respondent holding that values of "bottles" and "crates" are to be treated as part of "Fixed Capital Investment" as they are essential apparatus for manufacture of Soft Drinks and therefore could be governed and covered within the meaning of explanation 4(b)(i) to Section 4-A of the U.P. Trade Tax Act (hereinafter referred to as 'the Act').

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COMMISSIONER OF TRADE TAX, U.P. v. VARUN 807
BEVERAGES LTD. [DR. MUKUNDAKAM SHARMA, J.]

3. The issue, therefore, which falls for our consideration is as to whether or not bottles and crates used by the respondent could be said to be essential apparatus or equipments or components for the establishment and running of the factory of the respondent. A

4. The respondent is engaged in manufacturing and sale of soft drink and beverages. The assessee – respondent applied for the grant of eligibility certificate under Section 4A of the U.P. Trade Tax Act read with notification No. 640 dated 21.02.1997. Pursuant to the aforesaid request, the respondent/ assessee was granted an eligibility certificate on 26.5.2000 by the Divisional Level Committee constituted under section 4A of the Act. The exemptions were granted to the assessee for a period of ten years running from 15.4.1999 to 14.4.2009 or to the extent of 200% of the fixed capital investment of Rs.53,79,49,612/-, whichever was earlier. The exemption certificate granted on 26.5.2000 stipulates that it was granted for the goods, which were manufactured by the assessee as mentioned in the eligibility certificate. Towards the end of the eligibility certificate the goods manufactured by the respondent are described, which are as under: - B
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1. Carbonate Soft Drinks/Aerated Drinks, including syrups and beverages packed in a sealed container.
2. Sealed and no unsealed soft drinks packed in sealed glass containers carbonated drinks and aerated water including sweated and non sweated drinks, mineral water packed in pet bottles and pet pre forms to be used in fillings of beverages and liquids articles. F
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5. Subsequently the assessee applied for a review of the eligibility certificate and sought extension of the period from ten years to fifteen years. In the said review application, the assessee also sought exemptions for fixed capital investment H

A made by it in glass bottles and crates claiming that these items were essential for the manufacture of soft drinks and for running a beverage unit. In that application it was also stated that while computing the fixed capital investment, an amount equal to Rs. 5,73,62,277/- invested by the assessee towards purchases of
 B bottles and crates should also be included in the fixed capital investment.

6. The Divisional Level Committee vide its order dated 10.04.2001 allowed the review application and ordered that the
 C aforesaid amount of Rs. 5,73,62,277/- be included while computing the fixed capital investment of the assessee. By the aforesaid order dated 10.04.2001 the eligibility certificate was also granted to the assessee for a period of 15 years.

7. Being aggrieved by the aforesaid order dated
 D 10.04.2001 the appellant filed an appeal before the UP Tribunal, Trade, Tax, Lucknow. The Tribunal by its order dated 14.05.2002 allowed the said appeal filed by the appellant holding that the bottles and crates are neither directly nor indirectly used in the manufacture of beverages and therefore
 E the same cannot be treated as "Apparatus" as used in the said entry in explanation (4) to Section 4-A of the Act.

8. Being aggrieved by the said order passed by the UP Tribunal, Trade, Tax, Lucknow, the respondent assessee filed
 F a revision petition before the Allahabad High Court which was registered as Trade Tax Revision No. 337 of 2002. The High Court by its order dated 19.01.2010 allowed the said revision petition holding that for the manufacture of soft drink, the bottles and crates are essential apparatus especially in a captive industry where the liquid which is prepared and collected by way
 G of a continuous process in the bottles and thereafter kept it in crates and therefore both bottles and crates are to be accepted as "apparatus" within the meaning of Explanation (4) (b) (i) to section 4-A of the U.P. Trade Tax Act.

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9. The question of law that was framed by the High Court was answered in favour of the assessee holding that such bottles and crates are to be treated as fixed capital investment. It was also held that the period of exemption was for 15 years.

10. The aforesaid order passed by the High Court was challenged by the appellant by filing the present appeal in which we heard learned counsel appearing for the parties. By way of clarification it has to be stated at this stage that in the present appeal what is specifically challenged is first part of the order with regard to bottles and crates forming part of fixed capital investment and not that part of the order granting exemption for a period of 15 years. The appeal, therefore, is restricted to the aforesaid limited issue.

11. The counsel appearing for the appellant during the course of his arguments had taken us through the provisions of Section 4-A of the Act. He submitted that in the light of aforesaid provisions, the State Government granted exemption from payment of trade tax in certain cases.

12. The aforesaid provision relied upon is Section 4A of the Act which lays down that 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, it may on the application or otherwise declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding fifteen years is exempted from payment of trade tax provided that goods manufactured in the new unit has a fixed capital investment of five crore rupees or more. The said section further provides in sub-section (4) of Section 4-A of the Act as to what is the meaning of the expression "Fixed Capital Investment". It is provided therein that "Fixed capital investment" means value of land and building and such plants including captive power plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures. It is mentioned in sub-clause (b) inserted

A in the proviso to sub-section (4) of Section 4-A of the Act that for the purposes of determining value of plant including captive power plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures only the following shall be taken into account:-

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

C 13. Relying on the aforesaid provisions the counsel appearing for the appellant submitted that bottles and crates cannot be held to be 'Fixed Capital Investment' either for establishment or running of the factory or workshop of the respondent and therefore the value of the same cannot be included within the expression "fixed capital investment" and, therefore, the High Court was not justified in directing for inclusion of the value of the aforesaid bottles and crates to be read within the expression of "fixed capital investment". Counsel appearing for the appellant further submitted that the impugned order is contrary to the ruling of this Court in *State of Bihar and Others vs. Steel City Beverage Limited and another* reported in (1999) 1 SCC 10. It was held by this Court that in respect of an industry manufacturing soft drinks and beverages, it can be said that plant would mean that apparatus which is used for manufacturing soft drinks or beverages and not articles like crates and bottles used for storing the manufactured goods. It was also submitted by the counsel that the High Court erred in enlarging the scope of the definition of the word "Fixed Capital Investment" ignoring the specific words used in the said definition. It was also submitted that the use of word "Apparatus" in the definition of "Fixed Capital Investment" is restricted to such apparatus which are actually used in the manufacture of finished product and that it cannot be extended to such apparatus which are used for storing of finished products.

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14. Counsel appearing for the respondent, however, not only refuted the aforesaid submissions but also submitted that the above referred decision of this Court is clearly distinguishable from the facts of the present case in view of the clear distinction between the provision of law upon which the above referred decision was rendered by this Court and the provision of law which is applicable to the facts of the present case. He also submitted that the definition of fixed capital investment as per sub-section (4) of Section 4-A of the Act would indicate that respondent is entitled to exemption for all the fixed capital investment which not only include within its ambit the value of the land and building but also such apparatus, components and equipments, which are necessary for the establishment or running of the factory or workshop. He further submitted that provisions of the Act includes not only plants, machinery but also includes apparatus, components, moulds, dyes, jigs and fixtures. He also submitted that the glass bottles and creates are absolutely necessary for the unit of soft drink as without the use of these apparatus, the manufacture of soft drink would not be complete.

15. In the light of the submissions made by counsel appearing for the parties, we heard learned counsel appearing for the parties and considered the scope and ambit of the question which falls for our determination.

16. This Court in the case of *CST v. Industrial Coal Enterprises*, reported at (1999) 2 SCC 607, observed that as under: -

"6. Admittedly the provisions for exemption from sales tax have been introduced in the Act for the purpose of increasing the production of goods and for promoting the development of industries in the State. In fact, when the scheme called "Grant of Sales Tax Exemption Scheme 1982 to industrial units under Section 4-A of the Sales Tax Act" was originally framed, it was expressly stated that the Government granted the facility of exemption in order to

A encourage the capital investment and establishment of industrial units in the State. The Scheme contained various rules for grant of such exemption.....

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11. In *CIT v. Straw Board Mfg. Co. Ltd.* this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in *Bajaj Tempo Ltd. v. CIT* it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

12. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State. If the test laid down in *Bajaj Tempo Ltd.* case is applied, there is no doubt whatever that the exemption granted to the respondent from 9-8-1985 when it fulfilled all the prescribed conditions will not cease to operate just because the capital investment exceeded the limit of Rs 3 lakhs on account of the respondent becoming the owner of land and building to which the unit was shifted.....”

17. The aforesaid object of the relevant provision in the light of other provisions of the Act, makes it crystal clear that the value of investment for equipments, apparatus and components for running the factory and workshop has also to be considered as investment and such value is required to be included within the ambit of fixed capital investment. The

wordings of the provision of law which call for our interpretation are not identical and similar which were considered and interpreted by this court in the decision in *State of Bihar and Others* (supra). A

18. This Court in the case of *State of Bihar v. Steel City Beverages Ltd.*, reported as (1999) 1 SCC 10, observed that as under: - B

"8. It is also relevant to refer to the two notifications of the Government of India in the Ministry of Industry (Department of Industrial Development) dated 2-4-1991 and 1-1-1993 issued under Section 11-B of the Industries (Development & Regulation) Act, 1951. Notification No. 232 dated 2-4-1991 while stating what has to be included under fixed assets while ascertaining whether a small-scale industrial unit's investment has exceeded the limit of Rs 60 lakhs has clarified that the cost of storage tanks which store raw material or finished products is to be excluded. The 1993 notification has amended the notification of 2-4-1991 and clarified by adding Note 2 that in calculating the value of plant and machinery, the cost of storage tanks which store raw materials/finished products only and which are not linked with the manufacturing process shall be excluded. On 8-5-1995, the Government of India again issued a circular, after having received representations from the industry seeking clarification whether bottles and crates are to be taken into account for determining the SSI status of the units engaged in manufacture of soft drinks/concentrates, clarifying that investment in bottles and crates in such units is in the nature of storage of finished products and, therefore, such investment has to be excluded while computing the value of plant and machinery. C D E F G

9. As pointed out in the affidavit-in-rejoinder, the Company had applied for an Eligibility Certificate claiming the status of a small-scale industry. It is, in fact, registered as a small-scale industrial unit. While declaring its investment at the H

A time of seeking registration as a small-scale industrial unit, it did not include investment in bottles and crates under the head "Plant and Machinery". The investment in bottles and crates was shown under a separate head. It is further pointed out in the said affidavit that if the investment of the
B Company in bottles and crates is included under the head "Plant" then its total fixed capital investment will reach the level of 137.36 lakhs and it can no longer be regarded as a small-scale industrial unit. As the Company had applied as a SSI unit, the District Level Committee had to verify
C the status of the Company as SSI unit and, therefore, it was bound to take into account the above-referred two notifications of the years 1991 and 1993. If under these circumstances, the District Level Committee came to the conclusion that the Company is not entitled to the benefit
D of deferment in respect of its investment in bottles and crates, it cannot be said that it has acted contrary to law."

19. A careful reading of the ratio of the aforesaid decision would reveal that expression plant and machinery in the said case was intended to take such articles which are required for
E the purpose of manufacture and not for storage. Besides, the said decision was rendered in the context of the two notifications which specifically excluded value of bottles and crates to be included in the expression "plant and machinery" as the same are used for the purpose of storage of finished
F products and not used for the purpose of manufacture of finished products.

20. However, in this case, not only the wordings of the Act are wider but there is also no such notification issued by the
G State Government giving a restricted meaning to the expression "fixed capital investment" which as per provision enacted also includes all such investment made for equipment, apparatus, components and machinery which are necessary for running of the factory or workshop.

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21. In that view of the matter and considering the wording of the provision itself, it is quite necessary to give full and complete effect to the provision in a purposive manner so as to advance the objective of the provision. So in the instant case all those apparatus, equipments and components which are necessary for running of the factory would also be considered as investment and would therefore be part of the definition of fixed capital investment. Besides, as laid down in the decision of this Court in *CIT v. Straw Board Mfg. Co. Ltd.* reported as 1989 Suppl. (2) SCC 523, in taxing statutes, provisions for concessional rate of tax should be liberally construed.

22. The respondents are engaged in the manufacture of soft drink and beverages which are required to be bottled and thereafter sealed, which are essential part of running of the factory and therefore the same will have to be included within the aforesaid extended meaning of the word 'investment' as appearing from the words 'fixed capital investment'. To that extent, facts of the present case are distinguishable from the facts of *State of Bihar and Others* (supra) on which reliance was placed by the counsel appearing for the appellant.

23. Considering the facts and circumstances, we hold that so far bottles are concerned, they are essential part of components and equipments necessary for the running of the factory and therefore such value of the investment would form part of the fixed capital investment and would be entitled to exemption as provided for. But so far crates are concerned they are used by the respondent only for the purpose of marketing. Use of crates is necessary for taking out the bottled beverages out of the factory and while doing the marketing of the sealed bottled beverages. The aforesaid view taken by us also receives support from the contents of the eligibility certificate given by the appellant and therefore crates have no user so far as running of the factory of the respondent. Therefore, the value of crates in our considered opinion cannot be deemed to be

A investment for the purpose of including it within the meaning of expression "Fixed Capital Investment" as per sub-section (4) of Section 4-A of the Act.

B 24. Having held thus, we allow this appeal partly to the aforesaid extent. We uphold the order passed by the High Court so far bottles are concerned but set aside the same so far crates are concerned. In terms of the aforesaid order and observations, this appeal stands disposed of but there will be no order as to costs.

C D.G. Appeal partly allowed.