IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

1. S.B. Civil Sales Tax Revision No.1121/2001

M/s. Shivam Agro Foods P.Ltd.

vs.

The State of Rajasthan and another.

2. S.B. Civil Writ Petition No.3846/2001

M/s. Shivam Agro Foods P.Ltd.

vs.

The State of Rajasthan and others.

Date of Order ::: 31.7.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Anjay Kothari, for the petitioner.

Mr. Sangeet Lodha, for the respondents.

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BY THE COURT:

REPORTABLE

Heard learned counsel for the parties.

The petitioner, in the revision petition no.1121/2001, has challenged the decision of the District Level Screening Committee (DLSC) dated 20.1.2001 (Annex.21) and the order of Tax Board dated 20.7.2001 (Annex.26) by which the DLSC refused to grant tax exemption benefit to the petitioner under Sales Tax Incentive Scheme, 1998 with effect from

26.5.1998 and the Tax Board dismissed the appeal. The petitioner also challenged the order of the assessing authority as well as the demand notice issued against the petitioner in consequence of denial of benefit of sales tax incentive scheme to the petitioner by the orders of DLSC and Tax Board referred above.

The petitioner also by filing writ petition no.3846/2001 separately challenged the decision of DLSC.

The issue involved in both these matters are same, therefore, both the matters are heard and decided together. The facts of the revision petition will be sufficient for deciding the writ petition also. Therefore, the facts of the revision petition are given in the present order.

Time to time the State Government declared sales tax incentive schemes. One of the scheme was dated 23.5.1987 (Scheme of 1987) which provides exemption to 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 as provided in the Scheme of 1987. Though this scheme is dated 23.5.1987 but its operation was made retrospective with effect from 5.3.1987.

Again by exercising the same power conferred by Section 4(2) of the Rajasthan Sales Tax Act, 1954 (for short 'the RST Act'), the State Government issued another sales tax incentive scheme dated 6.7.1989 (Scheme of 1989). The operation of this new scheme was also not only retrospective but with effect from 5.3.1987 which is the period provided for the Scheme of 1987.

In the year 1998, the State Government again issued another sales tax exemption scheme (Scheme of 1998) by exercising powers conferred under Section 15 of the RST Act read with Section 5 of the Central Sales Tax Act (for short 'the CST Act'). This scheme was also made to give benefit retrospectively but not like as given in the Scheme of 1989 with effect from 5.3.1987 as provided by the Scheme of 1987 and the Scheme of 1989. Scheme of 1998 for which notification was issued on 7.4.1998 has operational period from 1.4.1998.

The petitioner/assessee is a rice producing industrial unit and applied for grant of eligibility certificate under the Scheme of 1989 on 6.3.1998. The application submitted by the petitioner was completed on 28.3.1998. It would be relevant to mention here that the benefit under the Scheme of 1989 was from the date of completion of the application and not from the date of mere filing of the application. Since the petitioner's application was not decided under the Scheme of 1989 and new scheme of 1998 came into force providing option for industrial units of which the application under Scheme of 1989 was pending on the date of commencement of the Scheme of 1998 for switching over to the Scheme of 1998 by making a fresh application in accordance with the provisions made under the Scheme of 1998 within a period of 90 days from the date of commencement of the Scheme of 1998. The petitioner applied for this benefit under Clause 1(e) of the Scheme of 1998 by submitting application on 26.5.1998.

The DLSC considered the case of the petitioner and allowed it benefits under the Scheme of 1998 with effect from 26.5.1998 which is the date of submission of fresh application by the petitioner under Clause 1(e) of the Scheme of 1998.

The petitioner submitted a review application before the DLSC for changing the date of benefit from 26.5.1998 to 1.4.1998, the date which is the starting date of operation of the Scheme of 1998 as per Clause 1(a) of the Scheme of 1998. The review application was rejected by DLSC on 20.1.2001 on the ground that the petitioner submitted its option to avail benefit under the Scheme of 1998 on 26.5.1998, therefore, he can take benefit from the said date and not from prior date from 1.4.1998.

The petitioner preferred an appeal before the Tax Board which was also dismissed vide order dated 20.7.2001.

The Tax Board observed that under the Scheme of 1998, a fresh application is necessary and the old application already completed under the old Scheme (of 1989) cannot be considered and further Sub-para (h) of Para (4) clearly states that the benefit under the Scheme shall be available from the date of completion of the application, complete in all respects, therefore, since the petitioner's application itself was submitted on 26.5.1998 and that application is fresh application and benefit can be given to the industrial unit from the date of completion of the application in all respects, therefore, the DLSC has rightly decided to give benefit to the petitioner with

effect from the date of his application i.e. from 26.5.1998.

Aggrieved against the order of the Tax Board dated 20.7.2001 and the order of the DLSC dated 20.1.2001, the petitioner has preferred this sales tax revision.

According to learned counsel for the petitioner, the petitioner's unit was eligible to take benefit under the Scheme of 1989. The petitioner submitted application duly completed before the authorities under the Scheme of 1989. The petitioner's unit's production commenced prior to 1.4.1998 and the Scheme of 1998 has been made operational expressly retrospective by issuing notification on 7.4.1998 making it operative with effect from 1.4.1998, therefore, petitioner is entitled to get the benefit, if not from the date of his completed application i.e. 28.3.1998 submitted under Scheme of 1989, then at least from the date when the Scheme of 1998 came into force. According to learned counsel for the petitioner, in the exemption notification of Scheme of 1998 itself, it is provided that the operation of the scheme shall be from 1.4.1998 and if the interpretation by the DLSC and the Tax Board is accepted, then the Scheme will be prospective in operation and in no case, it can be operative with effect from 1.4.1998 despite when the scheme has been made operative with effect from 1.4.1998 expressly. According to learned counsel for the petitioner, it is true that in clause 4(h), it has been provided that the benefit under this Scheme of 1998 shall be available from the date of application filed by the

petitioner unit completed in all respects as certified by the Member Secretary of the appropriate Screening Committee but if the Clause 4(h) of the Scheme of 1998 is read in isolation to the Clause 1(a) of the Scheme of 1998, then alone, it can be said that in no case, the benefit can be given to the applicants with effect from 1.4.1998. Clause 4 (h) cannot destroy the express intention of the State Government of making the scheme operative with effect from 1.4.1998. It is also submitted that the specific provision made in Clause 1(c) will be of no use unless the benefit can be made available to the applicants of the Scheme of 1998 from 1.4.1998. It is also submitted that if there would not have been Clause 1(c) of the Scheme of 1998, the applicant could have submitted application afresh under the Scheme of 1998. There was no need to provide clause for switching over from the Scheme of 1989 to the Scheme of 1998. The intention of the State Government was to give benefit to the industrial units who might have started industrial production even before the operative period of the Scheme of 1989.

Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court delivered in the case of Commissioner of Sales Tax vs. Industrial Coal Enterprises reported in 1999 STC Vol.114 P.365 wherein the Hon'ble Apex Court observed that a 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. The Hon'ble Apex Court further observed 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.

Learned counsel for the petitioner further heavily relied upon the judgment of this Court delivered in the case of C.T.O., Jalore vs. M/s. Quality Granites & Another reported in (2001) 10 Sales Tax Today P.314 (RHC). According to learned counsel for the petitioner, the issue raised in the present case is identical to the issue involved in the case of Quality Granites (supra). This Court in the case of Quality Granites (supra), after considering the sales tax incentive schemes of 1987 and 1989, held that the applicant who applied for grant of sales tax exemption under the Scheme of 1987 submitted application for switching over under Clause 1(c) of Scheme of 1989, he is entitled to benefit of Scheme of 1989 from the date when the scheme came into force though he might have submitted option form or switching over application subsequent to the date of operative period of Scheme of 1989. This Court also observed that otherwise in no case, the new incentive scheme can become operative prior to the date of its notification.

Learned counsel for the Revenue vehemently submitted that the incentive schemes are required to be construed strictly and the benefit which has been given by the Scheme

alone can be given. The benefits cannot be given by deeming something somewhere in the specific clauses made under the Scheme. The Hon'ble Apex Court in the case of Novopan India Ltd., Hyderabad vs. Collector of Central Excise Customs, Hyderabad reported in 1994 Supp.(3) SCC 606, even held that not only the provisions of the exemption schemes are required to be construed strictly, but in case of doubt or ambiguity, the benefit of doubt must got to the State. The Hon'ble Apex Court also held that the onus to prove that the case is covered by the exception or exemption provision, lies upon the person invoking such provision.

According to learned counsel for the revenue, the notification is required to be construed as it is and need not to be judged even by the object which the rule making authority had in mind as held by the Hon'ble Apex Court in the case of Hansraj Gordhandas vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and others reported in AIR 1970 SC 755 wherein the Hon'ble Apex Court also laid down that it is well established that in a taxing statute, there is no room for any intendment. The entire matter is governed wholly by the language of the notification.

The Hon'ble Apex Court in a recent judgment delivered in the case of State of Jharkhand and others vs. Ambay Cements and another reported in (2005) 1 SCC 368 held that the Court cannot direct the grant of exemption under industrial policy ignoring the eligibility conditions prescribed therein and in exemption notifications.

Learned counsel for the revenue submits that the

judgment relied upon by the learned counsel for the petitioner in the case of Quality Granites (supra) has no application to the present controversy because of the reason that the Schemes of 1987 and 1989 both had operative period with effect from 5.3.1987, therefore, the scheme of 1989 had overlapping period for entire operative period of the Scheme of 1987. The further distinction is that under the Scheme of 1989, the applicant was required to submit an application on plain paper disclosing the intention of switching over from the Scheme of 1987 to the Scheme of 1989 whereas under the Scheme of 1998, it is specifically provided in Clause 1(c) that the applicant shall have to submit a fresh application and that too in accordance with the provision of the Scheme of 1998, therefore, earlier applications submitted by the applicant in the Scheme of 1989 is of no consequence and cannot be considered to be a valid application under the Scheme of 1989. According to learned counsel for the revenue, even if no one can take benefit of the Scheme from the date from which the Scheme had been made operative than no one will get the benefit and it is not necessary to give benefit of the scheme to those who are not entitled to the benefit of the scheme. The benefit cannot be granted to the applicant simply because in case, the benefit is not given to the said or such applicants or any applicant, then no one will get the benefit with effect from the date of operation of the Scheme of 1998. According to learned counsel for the revenue because of Clause 1(c) of the Scheme of 1998 alone, the applicant became eligible to apply for tax exemption

under the Scheme of 1998 as admittedly, the applicants started industrial production prior to the date fixed under the Scheme of 1998 making the industrial unit eligible for seeking tax exemption. The purpose of Clause 1(c) is only to the effect that the units which have started commercial production before the operative period of the Scheme of 1998, they may also be included in the Scheme.

I have considered the submissions of learned counsel for the parties and perused the relevant schemes of 1987, 1989 and 1998 as well as the record and the judgments relied by the learned counsel for the parties.

It is not in dispute that the petitioner's industrial unit is eligible industrial unit for taking benefit of tax exemption under the Scheme of 1998. The petitioner before coming into force of the Scheme of 1998 applied for the benefit under the Scheme of 1989. The Scheme of 1998 has operative period with effect from 1.4.1998. The petitioner could have submitted his option form under Clause 1(c) of the Scheme of 1998 after 7.4.1998 because the scheme itself was notified only on 7.4.1998. The persons whose applications were submitted for availing benefit under Scheme of 1989 and their applications were pending when the scheme of 1998 came in operation, they have been given period of 90 days for submitting option by submitting fresh application under scheme of 1998. If the clause is construed as suggested by learned counsel for the revenue, then admittedly, not a single applicant will be benefited

under the Scheme of 1998 for the period from 1.4.1998 inspite of the fact that the State consciously made the scheme retrospective in operation. Clause 4(h) cannot be read in a manner which will destroy another clause of scheme redundant. State has made the operation period of the scheme knowingly. It cannot be presumed that the State made the scheme of 1998 to operative from the date specifically in the notification unknowingly. The State properly made the sales tax exemption scheme operative from the date of notification i.e. 1.4.1998 and reason for it only can be to give benefit to those units whose applications for tax exemption were pending for decision under the earlier scheme of 1989 and which have not been decided till scheme of 1998 was launched.

It appears from Clause 1(c) of the Scheme of 1998 that the applicants who even submitted their applications for tax exemption under the RST Act and CST Act and who commenced their commercial production prior to coming into force of the scheme of 1998 are eligible to get the benefit of the Scheme of 1998. Not only this, under Clause 1(c) of the Scheme of 1998, the applicants of the Scheme of 1989 have been given a period of 90 days from the date of commencement of the scheme for submitting their option to switch over from the scheme of 1989 to the scheme of 1998. The intention not only in the mind of the frames of the Scheme is clear but made specifically clear by specific language employed in Sub-clauses (a) and (c) of Clause (1) of the Scheme of 1998, it is clear that the scheme provides

for the benefit to the applicants of the Scheme of 1989. It is not even the case of liberal interpretation of all the relevant clauses and specifically sub-clauses (a) and (c) of Clause 1 of the Scheme of 1998 only to give benefit of scheme to applicants but that can be in consonance with the language used in the scheme.

There is no conflict with Clause 4(h) which provides that the benefit under the Scheme of 1998 shall be available from the date of the application filed by the applicant unit completed in all respects as certified by the Member Secretary of the appropriate screening committee. Despite the fact that words “fresh application” have been used in Clause 1(c) of the Scheme of 1998, the words “opt for this scheme” also have been used before the words “by making fresh application in accordance with the provisions of this scheme”. The fresh application is required to be submitted in accordance with the provision of the Scheme of 1998 but that is indicating applicant's option to opt for the scheme of 1998 in place of scheme of 1989. Much emphasis has been put on the words “fresh application” but by ignoring the prefix before the fresh application “opt for this scheme by making” fresh application.

It is the duty of the Court to fill in the blanks if some blanks are left in rules. The retrospective effect of the operation period of the Scheme of 1998 can be saved only by making the benefit available to the applicants from

the date of commencement of the scheme and otherwise, the provision of the scheme making it retrospective cannot be given effect to and contrary to the specific language in the notification itself, the scheme will become operative prospectively. Therefore, such interpretation requires to be avoided which will destroy the express provision of the notification itself. Because of this reason also, the applicant was entitled to get the benefit of the scheme with effect from 1.4.1998 and not from the date of his submitting option application under Clause 1(c) of the Scheme of 1998. Admittedly, the application of the applicant submitted in the Scheme of 1989 was complete in all respects and that was submitted on 26.3.1998. Though the application of the applicant under the scheme of 1998 is from the date prior to the operation period of the scheme of 1998 but since the scheme of 1998 is operative from 1.4.1998, therefore, the operation of the scheme cannot be extended backward beyond the period which has been provided in the notification of 1998.

This Court in the case of Quality Granites (supra) considered the schemes of 1987 and 1989. It is true that the Scheme of 1989 was operative with effect from the same date which was the date of commencement of the Scheme of 1989 and after switching over from the Schemes of 1987 and 1989, a simple plain paper application was required as contra to submitting a 'fresh application' for shifting from the scheme of 1989 to the scheme of 1998 but at the same time, as mentioned above, fresh application is only

for the purpose of disclosing intention of the applicant for option to opt for the scheme of 1998 in place of scheme of 1989. Therefore also, the judgment of this Court delivered in the case of Quality Granites (supra) also supports the view taken by me as above.

Consequently, this revision petition is allowed, the order of Tax Board dated 20.7.2001 (Annex.26) and the decision of the District Level Screening Committee (DLSC) dated 20.1.2001 (Annex.21) are quashed. It is held that the petitioner shall be entitled to the benefit under the Scheme of 1998 with effect from 1.4.1998 and the DLSC is directed to issue proper eligibility certificate in favour of the petitioner making it effective with effect from 1.4.1998. The impugned orders dated 14.12.2000 (Annex.23) and 28.3.2001 (Annex.25) so far as denying the tax exemption benefit to the petitioner from 1.4.1998 are concerned, are quashed and the respondents may pass fresh orders taking into account the benefit of which the petitioner has been held to be entitled. No order as to costs.

In view of the above order, the writ petition no.3846/2001 filed by the petitioner has become infructuous and hence, dismissed as infructuous.

(PRAKASH TATIA), J.

S.Phophaliya