

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**TAX APPEAL No. 536 of 2010
with
TAX APPEAL No. 537 of 2010**

For Approval and Signature:

**HONOURABLE MR.JUSTICE V. M. SAHAI
HONOURABLE MR.JUSTICE N.V. ANJARIA**

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1 Whether Reporters of Local Papers may be allowed          YES
  to see the judgment ?

2 To be referred to the Reporter or not ?                    YES

3 Whether their Lordships wish to see the fair copy         NO
  of the judgment ?

  Whether this case involves a substantial question
4 of law as to the interpretation of the                     NO
  constitution of India, 1950 or any order made
  thereunder ?

5 Whether it is to be circulated to the civil                NO
  judge ?
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AQUAGUARD PLASTICS & POLYMERS PVT LTD - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)
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Appearance :

MR TANVISH BHATT for M/S WADIA GHANDY &CO for Appellant(s) : 1,
MR ROHAN YAGNIK, AGP for Opponent(s) : 1,

**CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI
and
HONOURABLE MR.JUSTICE N.V. ANJARIA**

Date : 29/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

1. These Tax Appeals have been filed by the assessee challenging the order dated 20.02.2009 passed by the Gujarat Value Added Tax Tribunal at Ahmedabad and order dated 07.03.2003 passed by the Assistant Commissioner for Sales Tax, Dispute-4, Vadodara, as well as the assessment order dated 22.01.2001 passed by the Sales Tax Officer-II, Division-45, Vadodara, for the assessment years 1995-96 and 1996-97. The substantial questions of law on which these appeals were admitted are reproduced as under:

“(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Appellant was liable to pay purchase tax on manufacturing of sprinkler sets which were exempted from tax under Entry No.41 of Notification under Section 49(2) of the Act?

(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the levy of turnover tax on the manufacturing of sprinkler sets by the Appellant?”

2. Counsel for the appellant very fairly stated that second question does not survive as he has already paid the turnover tax and he is not pressing the second question.

3. Now coming to the first question it is not disputed that the appellants are manufacturing sprinkler sets for irrigation purpose for which he purchases raw material from the dealers. To give incentive to the new industries, the State Government has issued exemption notification under section 49(2) of the Gujarat Sales Tax Act, 1969 (for short 'the Act') and the sprinkler sets are exempted from payment of sales tax in terms of Entry No.41 of the notification. The Sales Tax Officer as well as the authorities

below have held that the petitioner was manufacturing sprinkler sets, which were exempted under Entry No.41, therefore, the appellant is liable to pay purchase tax under section 13(B) of the Act as the appellant was manufacturing exempted goods. The Tribunal has further recorded a finding that the raw materials were purchased for manufacture of sprinklers by the appellant against Forms Nos.19. The conditions mentioned in the form was that the goods so manufactured should be taxable goods. Since the goods manufactured by the petitioner, namely, sprinkler sets, were exempted goods, therefore, the appellants are liable to pay purchase tax as there was violation of condition of form 19.

4. We have heard Tanvish Bhatt, learned counsel appearing for M/s. Wadia Ghandy & Co. for the appellant and Mr. Rohan Yagnik, learned A.G.P. appearing for the respondent.

5. Mr. Rohan Yagnik has vehemently urged that since there was exemption granted to the appellant industry, which was manufacturing sprinkler sets, therefore, they had violated the terms and conditions of Form 19, and therefore, they are liable to pay purchase tax on the goods manufactured by the appellant.

6. It is not disputed that the petitioner has purchased raw materials for manufacture of sprinkler sets against form no. 19. Form No.19 is a certificate by a recognised dealer purchasing goods for the purposes of clause (B)(1) of section 13 of the Act wherein recognised dealer certifies that the goods purchased by him as raw material would be consumed in manufacture of textile goods. Section 13(B) clearly stipulates that the

recognised dealer has to certify in the prescribed Form No.19 that the goods sold to him are goods purchased by him for use by him as raw or processing material or as simple source in the manufacture of textile goods for sale by him.

7. Similarly, Form 34 is notice for payment of tax due according to the return or declaration under section 40 of the Act. From the finding recorded by the authorities below, we did not find that there is any violation of Form 34.

8. Entry No. 41 with regard to exemption granted on sales of sprinkler sets under section 49(2) of the Act is extracted below:-

<i>"41. Sales of Sprinkler sets</i>	<i><u>Whole of tax</u></i>	<i>Nil"</i>
	<i>IIA - 195</i>	

9. The authorities below have decided against the appellant only in view of the fact that the appellant had manufactured exempted goods and had utilized Form 19, which could be availed only for purchase of raw material for manufacture of taxable textile goods. Exemption granted to a new industry which manufactures sprinkler sets for irrigation purpose, etc., is to give impetus to the industry and for that purpose notification under section 49(2) was issued and by Entry 41. The exemption does not take away the levy of purchase tax or has the effect of erasing the levy of purchase tax. The sprinklers manufactured by the appellant are chargeable to tax under the Act and appellant is liable to pay the purchase tax provided the exemption would have been there.

10. Exemptions are granted by the State government under Section 49 of

the Gujarat Sales Tax Act, 1969. Section 49(2) of the Act reads as under:

“49(2) Subject to such conditions as it may impose, the State Government may, if it considers it necessary so to do, in the public interest, by notification in the Official Gazette (exempt any specified class of sales or of specified sales or of purchasers from payment of the whole or any part of (the tax) payable under the provision of this Act.”

From sub-section (2) of Section 49 of the Act, it is clear that payment of whole or part of tax payable by manufacturer is exempted. Chargeability of tax has not been exempted. In other words, the manufacturer, though is liable to pay tax has been exempted by the notification issued by the State Government from payment of tax for a fixed number of years. Therefore, the view taken by the Tribunal that since the appellant has utilised the raw material by submitting form 19, and though he has not paid any tax is erroneous. The language of sub-section (2) of section 49 is very clear and, therefore, in our considered opinion, there was no violation of conditions of form 19 read with section 13B of the Act, committed by the assessee.

11. In our considered opinion, the object of the exemption notification is to forego the purchase tax to give certain benefits to the manufacturer so that the new industry may survive. Since the sprinklers are chargeable to purchase tax, there is no violation of Form 19 of the Act or the Gujarat Sales Tax Rules, 1970. The appellant was exempted from payment of purchase tax for a period of six years. The assessment year 1995-96 and 1996-97 fall within the exempted period, therefore, the appellant is not liable to pay any purchase tax. For the reasons mentioned aforesaid, we uphold the orders of the authorities below. We answer the first question in the negative in favour

of the assessee and against the Sales Tax Department. The appeal is allowed. The orders passed by the Tribunal, Commissioner of Sales Tax and the Assessing Officer are set aside. Parties to bear their own costs.

(V.M. SAHAI, J.)

(N.V. ANJARIA, J.)

(SN DEVU PPS)