COMMISSIONER OF SALES TAX

v.

INDUSTRIAL COAL ENTERPRISES

FEBRUARY 24, 1999

[M. SRINIVASAN AND U.C. BANERJEE, JJ.]

SALES TAX :

U.P. Sales Tax Act, 1948 : Section 4-A (as it stood prior to 13. 9.1985).

Sales Tax—Exemption—Small Scale Unit (SSU)—New unit—Registered with Directorate of Industries as SSU—Granted exemption for a particular period under S.4-A—Capital investment exceeded the prescribed limit during the period of exemption—However, unit obtained registration under the Factories Act after expiry of maximum period of exemption (4 years)—Therefore, unit denied exemption beyond date already sanctioned since capital investment exceeded the prescribed limit—Validity of—Held : In the circumstances of the case, discontinuance of exemption even if unit did not fulfil prescribed conditions for large industries, not warranted—Subsequent amendment of S.4-A not relevant—U.P. Government Notification No. ST-II-604/X-9(208)/61-U.P. Act 15/48—Order 85 dated 29.1.1985.

Interpretation of Statutes :

External aids—Other statutes—Subsequent legislation—Amending Act—Effect of—Held : May be remedial and not relevant—More so when there is no ambiguity in the unamended legislation.

Taxing statutes—Provisions for incentive—Strict construction—Applicability of—Held : Should be liberally construed.

The respondent established a manufacturing unit in a rented premises under a sale deed for seven years w.e.f. 1.1.1985. The unit was also registered with the Directorate of Industries as a small-scale unit for the manufacture of coal-briquettes. It was granted a term loan of Rs. 30,000 from the State Bank of Patiala. The first date of purchase of raw material was on 9.2.1985 and the unit started production on 15.2.1985 with the help of a new generator. The first date of sale of the finished product was

A 1.10.1985. The first date of production as defined in the Rules under the U.P. Sales Tax Act, 1948 was 9.8.1985 i.e. after six months from the date of purchase of raw material. Thus the unit was entitled to exemption from sales tax w.e.f. 9.8.1985 as it fulfilled all the prescribed conditions. The unit applied for exemption under Section 4-A of the Act on 20.12.1985 since its capital investment was much below Rs. 3. lakhs. Later on, the respondent B changed the place of manufacturing from the rented premises to a new site purchased and owned by it. The unit remained closed from 23.7.1986 to 31.7.1986 for the purpose for shifting machines to the new premises. The production started in the new place from 1.8.1986.

C As a result of purchase of new site and construction of own building, the capital investment of the unit increased to beyond Rs. 3 lakhs. The unit applied for registration under the Factories Act, 1948, which was granted w.e.f. 11.8.1989. The unit was granted sales tax exemption from 9.8.1985 to 22.7.1986, the date till which the capital investment of the unit was below Rs. 3 lakhs. However, since the registration under the Factories Act was ob- D tained after the expiry of the maximum period of exemption (4 years) under Government Notification dated 29.1.1985 no exemption beyond 22.7.1986 was granted. The review application filed by the respondent was rejected. But the High Court held that the unit was entitled to exemption for a period of 4 years from 9.8.1985. Hence this appeal.

E On behalf of the appellant-Revenue it was contended that the provisions of an exemption clause should be strictly construed and if the conditions under which exemption was granted stood changed on account of subsequent event, the exemption would not operate, and that the amendment of Section 4-A w.e.f. 13.9.1983 made by U.P. Act 28 of 1991, being a F subsequent legislation, could be taken for purpose of guidance for interpreting the provisions of the Act as it stood earlier.

Dismissing the appeal, this Court

G HELD : 1. Admittedly, the provisions for exemption from sales tax have been introduced in the U.P. Tax Act, 1948 for the purpose of increasing the production of goods and for promoting the development of industries in the State. When the scheme called "Grant of Sales Tax Exemption Scheme, 1982 to industrial units under Section 4-A of the U.P. Sales Tax Act, 1948" was originally framed, it was expressly stated that the Government granted H the facility of exemption in order to encourage the capital investment and

establishment of industrial units in the State Under the Government Notification dated 29.1.1985 the period of exemption in case of unit with capital investment not exceeding, Rs. 3 lakhs was four years. Neither Section 4-A nor the Notification contains any condition that if the capital investment of the unit exceeds Rs. 3 lakhs after the grant of exemption, such exemption would cease to operate unless and until the conditions prescribed for units having capital investment exceeding Rs. 3 lakhs are fulfilled. Therefore, there is no warrant for the stand taken by the appellant that after 23.7.1986 the unit was not entitled to the benefit of exemption as its capital investment exceeded Rs. 3 lakhs from such date.

[881-D-H; 882-A-C]

2.1. The appellant's contention that the amendment of Section 4-A w.e.f. 13.9.1983 by U.P. Act 28 of 1991, being a subsequent legislation could be taken for the purpose of guidance for interpreting the provisions in the Act as it stood earlier, cannot be accepted. The subsequent Act in the instant case is one of amendment and it may be remedial. Moreover, in this case there is no ambiguity in the provisions of the Act as it stood at the relevant time warranting interpretation by the Legislature. [883-D-F]

Attorney General v. *Clarkson,* (1900) 1 QB 156, referred to.

2.2. 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 objective 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. Therefore, 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. Otherwise the very purpose and object of the grant exemption will be defeated. [883-H; 884-C]

CIT v. *Straw Board Manufacturing Co. Ltd.,* [1989] Supp. 2 SCC 523 and *Bajaj Tempo* v. *CIT,* [1992] 3 SCC 78, relied on.

State Level Committee v. *Morgardshammar India Ltd.,* [1996] 1 SCC

A **108;** *Pappu Sweets and Biscuits* **v.** *Commissioner of Trade Tax, U.P.,* **[1998] 7 SCC 228 and** *Divisional Level Committee* **v.** *Sahu Stone Crushing Industries,* **[1998] 8 SCC 435, held inapplicable.**

Novopan India Ltd. **v.** *Collector of Central Excise and Customs,* **[1994] Supp. 3 SCC 606 and** *Sahu Stone Crushing Industries* **v.** *Divisional Level*
B *Committee, Jhansi,* **(1994) UPTC 1 (All), referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7451 of 1993.

From the Judgment and Order dated 25.11.92 of the Allahabad High
C Court in C.M.W.P. No. 819 of 1990.

Kavin Gulati, R.B. Misra and K. Misra for the Appellant.

Dhruv Aggarwal and Irshad Ahmad for the Respondent.

D The Judgment of the Court was delivered by

SRINIVASAN, J. The decision in this case depends upon the construction of the relevant provisions of the U.P. Sales Tax Act, 1948 (hereinafter referred to as the 'Act') and the Government Notification issued thereunder granting exemption from sales tax of certain goods for
E specified period. Section 4-A is the Section with which we are concerned and for the purpose of this case the Section as it stood at the relevant time reads as follows :

> *4.A. Exemption from sales tax of certain goods for specified period.* - (1) Notwithstanding anything contained in Section 3 or 3-A, where
F 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 industry in the State generally or in any districts or parts of districts in particular, it may on application or otherwise, by notification declare that the turnover of sales in respect of such
G goods by the manufacturer thereof shall, during such period not exceeding seven years 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
H sales tax or be liable to tax at such reduced rate as it may fix".

Cl. (2)..... A

Explanation : For the purposes of this Section

(1) 'new unit during the period ending with March 31, 1990' means an industrial undertaking set-up by a dealer on or after October 1, 1982 but not later than March 31, 1990 - B

(a) which is licenced or in respect whereof a letter of intent has been issued or which is registered, permanently or otherwise by the appropriate authority in accordance with any law for the time being in force relating to licensing or registration of industrial undertakings; C

(b) (i) which is registered under the Factories Act, 1948; or

(ii) an application for registration in respect whereof has been made under that Act; or D

(iii) after making an application for a Term Loan from the Uttar Pradesh Financial Corporation or a Scheduled Commercial Bank whether such Term Loan is sanctioned and disbursed before or after the undertaking is set-up (where the capital investment in the undertaking does not exceed three lakh rupees); E

(c) on land or building or both owned or taken on lease for a period of not less than seven years by such dealer or allotted to such dealer by any Government company or any corporation owned or controlled by the Central or the State Government; F

(d) using machinery, accessories or components not already used, or acquired for use, in any other factory workshop in India; G

(e) fulfilling all the conditions specified in this Act or the rules; or notifications made thereunder in regard to grant of facility under this section on the date from which such facility may be granted to him; H

A and includes an industrial undertaking fulfilling the conditions laid down in clauses (a) to (e) set-up by a dealer -

(i) already having an industrial undertaking manufacturing the same goods at any other place in the State, or

B (ii) on or adjacent to the site of an existing factory or workshop manufacturing any other goods,

but does not include, -

C (i) any factory or workshop manufacturing the same goods established by a person on or adjacent to the site of an existing factory or workshop wherein such person has interest as proprietor or partner or agent or promotor or holding company or subsidiary company, so however that where the date of starting production of such factory or D workshop falls before January 19, 1985 this clause shall be construed as if the words "or adjacemt to" were *omitted*, or

(ii) any addition to or extension of an existing factory or E workshop;

provided that-

(i) in relation to a new unit whose date of starting production falls before March 24, 1984, in clause (d) *for* the F words "in India" the words "in Uttar Pradesh" shall be deemed to have been *substituted*;

(ii) in relation in a new unit whose date of starting production falls before August 27, 1984 and the capital investG ment wherein is not less than three lakh rupees, the condition of registration or application for registration under the Factories Act, 1948, shall not apply;

(iii) in relation to a new unit whose date of starting production falls before March 6, 1986, the condition regarding lease H for a period of not less than seven years shall not apply.

(c) the unit in relation to which the application for under the Factories Act, 1948 is made on and the registration is granted with effect from, a date later than the date of commencement of the period of facility notified under sub-section (1), shall be deemed to be new unit for entitlement to the facility of exemption from or reduction in the rate of tax notified under sub-section (1) only for part of period, notified under sub-section (1), be computed from the date from which such registration becomes effective, till the end of the period of such facility".

The remaining part of the Section is omitted as unnecessary.

2. The relevant Notification prevalent at that time was in the following terms :

(64)

Not. No. ST-11-604/X-9(208)/81-U.P. Act 15/48-Order/85, dated 29th January, 1985.

(Published in U.P. Gazette Extraordinary, dated 29th January, 1985),

Whereas the State Government is of the opinion that it is necessary so to do for promoting the development of industry in the State generally and in certain districts and parts of districts in particular;

Now, therefore, in exercise of the powers under section 4-A of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), read with section 21 of the U.P. General Clauses Act, 1904 (Act No. 1 of 1904), and in supersession of Notification No. ST-11- 6468/X-9(208)/81-U.P. Act XV/48-Order-84, dated August 27, 1984 (S.No. 55), the Governor is pleased to declare that, in respect of any goods manufactured in an industrial unit, which is a new unit as defined in the aforesaid Act of 1948 established in the areas mentioned in column 2 of the Table below, the date of starting production whereof falls on or after the first day of October, 1982, but not later than thirty-first day of March, 1990, no tax under the aforesaid Act of 1948, shall be payable by the manufacturer thereof on the

turnover of sales of shall of such goods for the period specified in column-3 against each, which shall be reckoned from the date of sale, if such sale takes place not later than six months from the date of starting production, or, in other cases, from the date following the expiration of six months from the date of starting production subject to the condition that the said industrial unit has not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year.

TABLE

S. No.	*Location of Unit*	*Period of Exemption*	
1.	In case of unit with capital investment not exceeding 3 lakh rupees	In case of units with capital investment not exceeding 3 lakh rupees	
1	2	3(a)	3(b)
1.	The Districts of Banda Jalaun, Hamirpur, Jaunpur, Fatehpur, Pauri Garhwal, Tehri Garhwal, Chamoli, Uttar Kashi, Sultanpur and Kanpur (Rural), Almora, Pithoragarh, Nainital & Dehradun.	Five years	Seven years
2.	The Districts of Azamgarh, Bahraich, Ballia, Barabanki, Basti, Budaun, Bulandshahr, Deoria, Etah, Etawah, Faizabad, Farrukhabad, Ghaziabad, Gonda, Hardoi, Jhansi, Mainpuri, Mathura, Moradabad, Pilibhit, Pratapgarh, Rai Bareli, Rampur, Shahjahanpur, Sitapur and Unnao.	Four years	Six years.

3.	The Districts of Agra, Aligarh, Bijnor, Ghaziabad, Gorakhpur, Kanpur, (Urban), Lakhimpur-Kheri, Lalitpur, Lucknow, Meerut, Mirzapur, Muzaffarnagar, Saharanpur and Varanasi.	Three years	Five years	A

Explanation - For the purposes of this notification. -

(1) "Industrial Unit" means an industrial unit holding permanent registration with the Directorate of Industries, U.P. as a small, handloom or handicraft industry of an industrial licence granted by the Iron and Steel Controller or the Textile Commissioner or the Director General of Technical Development or the Government of India; and

(a) registered under the India Factories Act, 1948, or established after obtaining a Term Loan from the U.P. Financial Corporation or a Scheduled Commercial Bank, in the case of units with a capital investment not exceeding three lakh rupees; or

(b) registered under the India Factories Act, 1948 or having applied for registration under the said Act and deposited the required fee for the purpose, in the case of units other than those referred to above;

(2) "Date of starting production" and "new unit" shall have the same meaning as assigned to them in the Explanation to section 4-A of the U.P. Sales Tax Act, 1948; and

(3) "Capital Investment" means investment in land, building, plant machinery, equipments and apparatuses.

3. The facts of the case are as follows :

The respondent had a manufacturing unit in Moradabad registered both under the provisions of the Act and the Central Sales Tax Act, 1956. It was also registered with the Directorate of Industries as small scale unit for the manufacture of coal- briquettes. The unit was established in the

A beginning in a rented premises for which a lease deed for seven years was registered with effect from 1.1.1985. It was granted a term loan of Rs. 30,000 from the State Bank of Patiala, Moradabad. The first date of purchase of raw material was 9.2.1985 and the unit started production on 15.2.1985 with the help of a new generator. The first date of sale of the finished product was 1.10.1985. It is not in dispute that the first date of B production as defined in the Rules under the Act was 9.8.85 i.e. after six months from the date of purchase of raw material. Thus the unit was admittedly entitled to exemption from sales tax w.e.f. 9.8.1985 as it fulfilled all the prescribed conditions. The unit applied for exemption under the Act on 20.12.1985 since its capital investment was much below Rs. 3 lakhs. C Later on, the respondent changed the place of manufacturing from the rented premises to a new site purchased and owned by it. The unit remained closed from 23.7.1986 to 31.7.1986 for the purpose of shifting machines to the new premises. The production started in the new place from 1.8.1986.

D

4. As a result of purchase of new site and construction of own building, the capital investment of the unit increased to Rs. 3,86,299. The unit applied for registration under the Factories Act, 1948 which was granted w.e.f. 11.8.1989. The application for exemption from sales tax filed by the unit on 20.12.85 was considered by the Divisional Level Committee, E Moradabad on 30.1.1990 and the Joint Director of Industries, Moradabad issued sales tax exemption certificate vide his letter date 10.4.1990. Such exemption was granted from 9.8.1985 to 22.7.1986 the date till which the capital investment of the unit was below Rs. 3 lakhs. The authorities took the view that the capital investment of the unit having increased to an F amount exceeding Rs. 3 lakhs, the registration of the unit under the Factories Act was necessary for the purpose of exemption and as such registration was effective only from 11.8.1989 the unit was not entitled to exemption between the period 23.7.1986 to 10.8.1989, but the total period of four years for which the unit would be entitled to exemption under the relevant Notification having expired on 8.8.1989, the unit was not entitled G to any exemption beyond 22.7.1986.

5. Aggrieved by the said order, the respondent filed a review application date 16.4.1990 which was rejected by order dated 7.7.1990. The said order was challenged by the respondent in a writ petition before the High H Court of Judicature at Allahabad. The High Court by its judgment dated

25.11.1992 allowed the writ petition and quashed the impugned order. The concerned authority was directed to modify the eligibility certificate issued to the respondent as one for a period of four years from 9.8.1985. The reasoning of the High Court is that the relevant date for fulfilling the conditions prescribed for grant of exemption is the date from which the unit became eligible in the first instance for such exemption and in this case admittedly it was 9.8.1985. The High Court held that in this case the investment having increased to an amount more than Rs. 3 lakhs merely because of the shifting of the unit from one place to another, it would not disentitle the respondent to have the benefit of exemption continuously for a period of four years from 9.8.1985. The High Court arrived at that conclusion by construing the provisions of Section 4-A of the Act quoted earlier. The Commissioner of Sales Tax has preferred this appeal by Special Leave.

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 encourage the capital investment and establishment of industrial units in the State. The Scheme contained various rules for grant of such exemption. The Section itself has referred to the purpose for which the Government could grant such exemption. Sub-s. (1) of Section 4-A prescribes the maximum period for which the exemption could be granted as 7 years. As per the section, such exemption should commence from the date of first sale by such manufacture 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. The expression "date of starting production" has been defined in the Explanation as the date on which any raw material required for use in the manufacture or packing of the goods is purchased for the first time. The term "new unit" used in the Section has also been defined in the Explanation. It is admitted that the respondent fulfilled the relevant conditions at the time when it applied for exemption as its capital investment did not exceed Rs 3 lakhs. Under the Notification extracted earlier, the period of exemption in case of unit with capital investment not exceeding Rs. 3 lakhs was four years. Such period was to be reckoned from the date of first sale if such sale took place not later than six months from the date

A starting production and in other cases from the date following the expiration of six months from the date of starting production subject to the condition that the unit had not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year. Neither the Section nor the Notification contains any condition that if the capital investment of the unit exceeds Rs. 3 lakhs after the grant of exemption, B such exemption would cease to operate unless and until the conditions prescribed for units having capital investment exceeding Rs. 3 lakhs are fulfilled. In the absence of such express provision there is no warrant for the stand taken by the appellant that after 23.7.1986 the unit was not entitled to the benefit of exemption as its capital investment exceeded Rs. C 3 lakhs from such date.

7. According to learned counsel for the appellant, the provisions of an exemption clause should be strictly construed and if the conditions under which exemption was granted stood changed on account of subsequent even, the exemption would not operate. In support of his conten- D tion that provision for exemption from payment of tax should be strictly construed, reliance is placed upon the judgment of this Court in *State Level Committee and Another* v. *Morgardshammar India Ltd.,* [1996] 1 S.C.C. 108. A Bench of two Judges of this Court relied upon an earlier decision of Three Judge Bench in *Novopan India Ltd.* v. *Collector of Central Excise and Customs,* [1994] Supp. 3 S.C.C. 606 and held that an exception or an E exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in Section 4-A of the Act and extend the exemption. Though the decision pertains to exemption under Section 4-A of the Act, the facts of the case are entirely different and the ruling has to be understood in the context thereof.

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8. Our attention has also been drawn to another case under Section 4-A which came up before this Court in *Pappu Sweets and Biscuits and Another* v. *Commissioner of Trade Tax, U.P. Lucknow,* [1998] 7 S.C.C. 228. Far from helping the appellant, the ruling can be used against the appellant G as it is held that the object of the relevant Exemption Notification and the intention of the State Government in granting exemption are to be taken into account for interpreting the word "sweetmeat" and the words "conditions of like nature".

9. Learned counsel for the appellant relied upon the decision of this H Court in *Divisional Level Committee and Another* v. *Sahu Stone Crushing*

Industries, [1998] 8 S.C.C. 435. In that case, it is held that the provision in Section 4-A(5) © requiring registration of the unit under the Factories Act if the capital investment exceeds Rs. 3 lakhs is mandatory. The Bench reversed the judgment of the High Court reported in *M/s. Sahu Stone Crushing Industries* v. *Divisional Level Committee, Jhansi,* (1994) U.P.T.C.1. which took the view that the expression "shall" in the Section could be read as "may". The ruling has no relevance in the present case as the industrial unit in that case was established in November, 1986 and the date of first sale was 3.12.1986. The Court had to consider Section 4-A after it was amended w.e.f. 13.9.1985 under U.P. Act No. 28 of 1991. The said amendment Act inserted sub-s. (5)©. We are in this case concerned with the Section as it stood on 9.8.1985 before the said amendment.

10. Learned counsel for the appellant argues that the subsequent legislation could be taken for the purpose of guidance for interpreting the provisions in the Act as it stood earlier. We are unable to accept this contention. It is pointed out by the Court of Appeal in England in *Attorney General* v. *Clarkson,* (1900) 1 QB 156 that subsequent Legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. Lindley M.R. said, "*Our duty is to interpret the meaning of the Legislature, and if the Legislature in one Act have used language which is admittedly ambiguous, and in a subsequent Act have used language which proceeds upon the hypothesis that a particular interpretation is to be placed upon the earlier Act. I think the judges have no choice but to read the two Acts together, and say that the Legislature have acted as their own interpreters of the earlier Act.*" There is no such situation here. The subsequent Act relied on by learned councel is one of amendment and it may be remedial. Moreover, in this case, there is no ambiguity in the provisions of the Act as it stood at the relevant time warranting an interpretation by the Legislature. Hence the subsequent Legislation introduced in 1991 with effect from 13.9.85 will not help the appellant.

11. In *Commissioner of Income-tax, Amritsar* v. *Straw Board Manufacturing Co. Ltd.,* [1989] Supp. 2 S.C.C. 523, this Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in *Bajaj Tempo Ltd. Bombay* v. *Commissioner of Income-tax, Bombay City-III, Bombay,* [1992] 3 S.C.C. 78, 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

A 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 B goods and promoting the development of industry in the State. If the test laid down in *Bajaj Tempo Ltd.* case (supra) is applied, there is no doubt whatever that the exemption granted to the respondent from 9.8.85 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 C of the respondent becoming the owner of land and building to which the unit was shifted. If the construction sought to be placed by the appellant is accepted, the very purpose and object of the grant of exemption will be defeated. After all, the respondent had only shifted the unit to its own premises which made it much more convenient and easier for the respondent to carry on the production of the goods undisturbed by the vagaries D of the lessor and without any necessity to spend a part of its income on rent. It is not the case of the appellant that there was any *mala fides* on the part of the respondent in obtaining exemption in the first instance as a unit with a capital investment below Rs. 3 lakhs and increasing the capital investment subsequently to an amount exceeding Rs. 3 lakhs with a view E to defeat the provisions of any of the relevant statutes. The *bona fides* of the respondent have never been questioned by the appellant.

13. In the circumstances, we have no hesitation in agreeing with the view expressed by the High Court. The appeal fails and is dismissed. There will be no order as to costs.

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V.S.S. Appeal dismissed.