IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case No.58 of 2019

Hindustan Unilever Limited
NH-45-A, Vadamangalam
Pondicherry. ... Petitioner

Vs.

The Union Territory of Puducherry
represented by its Commercial Tax Officer (IAC)
Pondicherry 605 005. ... Respondent

Prayer : Tax Revision Petition against the order of the Sales Tax Appellate Tribunal, Puducherry dated 19.02.2019 in T.A.No.2 of 2018 against the order of the Special Appellate Assistant Commissioner(CT) Pondicherry and made in Appeal No. 9/CST/05-06 dated 05.09.2007 and against the order of the Commercial Tax officer(IAC) Pondicherry and made in CST/5688/2002-2003 dated 13.09.2005 to the Assessment year 2002-2003.

For Petitioner : Mr.Inbarajan
For Respondent : Ms.N.Mala,
Special Government Pleader (Pondicherry)

O R D E R
(Order of the Court was made by DR.VINEET KOTHARI,J)

The Assessee M/s.Hindustan Unilever Limited, Pondicherry has filed this tax revision against the order of the Sales Tax Appellate Tribunal, Puducherry dated 19.02.2019, dismissing the tax appeal of the Assessee and holding that the Assessee was entitled to exemption under the Notification No.G.O.Ms.No.53/99/F2 dated 10.08.1999 only for a period of five years from the commencement of its production with effect from 25.05.1996 and it could not get the extended period of exemption from 06.11.1997 when it commenced production of another type of product viz., 'Toilet Soaps', whereas the commencement of production of 'Detergent Cakes' by the Assessee was started on 25.05.1996 itself.

2. The relevant reasons recorded by the Tribunal is in paragraph Nos.12 & 13 of the impugned order, are quoted below for ready reference.

> "12. In this case, it is an admitted fact that the Pondicherry Government has exempted payment of GST/PGST for a period of five years with effect from 19.05.1996 to the appellant company. Therefore, the company had included additional items and claimed exemptions for five years from the date of inclusion of additional items. In this context, the 1st appellate authority has pointed out that the units detergent, toilet soaps and skin cream / lotion are situated within the same boundaries and that is why the Director of Industries, Pondicherry has not issued a new / separate certificate for the toilet soaps and skin cream / lotion units whereas, the Director of Industries, Pondicherry has chosen to make endorsements on the Certificate No.836/IND/ADA/A6/99, dated 10.03.1999 and as such the tax holiday period commences for the unit situated at Vadamangalam only from 29.05.1996 and five years period expired on 28.05.2001 and not as claimed by the appellant. Thus having known these facts, the appellant had not claimed the tax holiday exemption for skin cream / lotion unit during the assessment year 2002-03.
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> 13.In this case, the appellant seeks extension of the exemption period from the date of commencement of manufacture of toilet soaps. If that is to be the intention of the notification, then the five year period commences from the grant of license on 06.11.1997 and it comes to end on 05.11.2002. Towards the end of every fourth or fifth year, if the appellant starts producing a new product and again claims exemption, it will be a never ending story and that certainly is not the intention of the notification. The Government of Puducherry also granted exemption to industry for "goods manufactured" for a period of five years. Having availed such benefit, it is only expected that the industry would pay back its gratitude to the Government by accepting to cessation of the exemption period at the end of five years. On the other hand, the appellant herein had commenced manufacturing of additional items on another day, towards the end of the five year period and claimed exemption from that date onwards which was not the intention of the notification or the original

exemption. The attempt of the appellant is only to avail the exemption permanently. The appellant cannot seek exemption beyond five years from the date of original order granted for exemption date 29.05.1996. The 1st appellate authority also elaborately discussed about the entitlement of the appellant and rightly dismissed the appeal. Therefore, as discussed above, this Court is of the opinion that there is no infirmity found on the order of the 1st appellate authority and this authority has no warrant to interfere with the order and the appeal deserves to be dismissed. This point is answered accordingly."

3. Learned counsel for the Assessee Mr.Inbarajan has urged before us that, the exemption available to the Assessee was in respect of the goods manufactured by it for a period of five years and therefore, since the Assessee commenced production of the 'Detergent Cakes' only in the year 1996, there is no dispute that it will be entitled to exemption only upto the year 2001 for 'Detergent Cakes', but in respect of 'Toilet Soaps', since a separate unit was set up by the Assessee and a different production line for 'Toilet Soaps' was commenced by it only in the year 1997, therefore, in respect of the sale of 'Toilet Soaps', the exemption for five years should end in the year 2002 and not in the year 2001 and therefore, the learned Tribunal has erred in restricting the exemption of the petitioner in respect of 'Toilet Soaps' upto the year 2001.

4. We have heard the learned counsel for the Assessee. The relevant Notification dated 10.08.1999 is quoted below for ready reference.

"Notification G.O.Ms.No.53/99/F2 dated the 10th August 1999
In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act No.74 of 1956), read with Notification No.F.2/4/71-UTL dated 9th December 1971 of the Government of India, Ministry of Home Affairs, New Delhi, the Lieutenant-Governor of Pondicherry, being satisfied that it is necessary so to do in the public interest, is pleased to grant exemption from payment of tax under the Central Sales Tax Act, 1956 by all industries, in respect of goods manufactured by them -

(i) for a period of 5 years from the date of commencement of production, for those industries located in Pondicherry and Yanam regions;

(ii) for a period of 10 years from the date of commencement of production for those industries located in Karaikal and Mahe regions.

2. This notification shall be deemed to have come into force with effect from 24.10.1994."

5. We are of the clear opinion that the Notification of exemption grants exemption to all industries in respect of goods manufactured by them for a period of 5 years if the location of the industry is in Pondicherry and Yanam regions. There is no dispute that the industry of the petitioner was set up within the Union Territory of Pondicherry and therefore that was entitled to the exemption as per the Notification, for a period of five years. However, in our opinion, it is not exemption 'commodity wise', but it is to 'all goods manufactured by the industry set up in Pondicherry' for a period of 5 years. Admittedly, the petitioner had availed exemption in respect of 'Detergent Cakes' for a period of five years from 1996 to 2001, but merely because it commenced production of 'Toilet Soaps' in the year 1997, it cannot get 5 years exemption for 'Toilet Soaps' for the next five years upto the year 2002. After 2001, the Assessee was not entitled to avail any exemption in respect of any of the goods manufactured by it.

6. Therefore, in our opinion, the learned Tribunal has rightly held that it can become a never ending story if production of different type of goods for which production was commenced by the Assessee is entitled to exemption for different periods of five years from the commencement of production of those products. The said interpretation of the Notification by the learned Tribunal is perfectly justified and does not call for any interference by this Court in the revisional jurisdiction.

7. We do not find any question of law much less a substantial question of law to be framed in this revision. The revision petition filed by the Assessee is liable to be dismissed and the same is accordingly dismissed. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

KST

To

1. The Commercial Tax Officer (IAC), Union Territory of Puducherry
Pondicherry 605 005.

2. The Sales Tax Appellate Tribunal, Puducherry.

+1 CC to Mr.N. Inbarajan, Advocate sr 101767.

T.C.No.58 of 2019

VGII(CO)
SP(03/03/2020)