

JANTA MACHINE TOOLS

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v.

STATE OF U.P. & ORS.

JANUARY 19, 1989

[K. JAGANNATHA SHETTY AND S. RANGANATHAN, JJ.]

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Uttar Pradesh Sales Tax Act, 1948: Section 4A and Notification dated September 30, 1982 issued thereunder—Exemption from sales tax—Determination of date of commencement of production—Date of purchase of raw materials, obtaining electricity connection relevant—Not trial production.

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The State Government in pursuance of Section 4A of the Act formulated and published a scheme for grant of exemption from Sales Tax, to encourage capital investment and establishment of new industrial units which were established during the period from 1.10.1982 to 31.3.1985 and producing certain categories of goods. Though the scheme referred to units established, it actually referred to the date of commencement of production.

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The appellant, a concern engaged in the business of electric motors, pump sets and their parts, applied for the exemption. The appellant claimed that the date of actual commencement of use of electricity for production was 4th December, 1982 and that was the actual date of commencement of production. The same was endorsed by the General Managers, District Industrial Centres and the Assistant Engineer concerned, while recommending the application. But the difficulty had arisen on account of a certificate attached to the application for exemption. It was given by a firm which had entered into an agreement with the appellant for supply of machines and installation. According to the certificate, trial production commenced on 4.12.1981. The Division Level Committee, before which the application was filed, rejected it, saying that the date of trial production was really the date of commencement of production and it fell prior to 1.10.1982. The appellant preferred a review claiming that trial production could not be treated as commencement of actual production. The review application was also dismissed and it was held that the unit was established before 1.10.1982 and, therefore, was not entitled to the exemption. Thereafter, the appellant filed a writ petition before the High Court. It was rejected.

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- A Claiming that it is entitled to the exemption, the appellant has preferred this appeal, by special leave.

Allowing the appeal,

- B HELD: 1.1 The appellant is entitled to the exemption, in terms of the notification dated 30.9.1982. The rejection of the application for exemption proceeds on a total misconception of facts. The conclusion that production was commenced on 4.12.1981 is not based on any evidence. It does not affect the appellant's claim even if there was any doubt about the trial production having taken place at all. Whether trial was conducted by the other firm or the appellant itself, the fact remains that only trial production took place on 4.12.1981. The mere fact that the certificate is disbelieved cannot lead to the conclusion that the appellant had produced the goods on 4.12.1981. [279A-D]

- D 1.2 To go by Section 4A of the Act to determine the date of commencement of production, the date of purchase of raw material or the date on which electricity was brought into use would be relevant. The appellant's claim that it had manufactured goods by 30.9.1984 is not denied. Production had, therefore, commenced before 31.3.1985. There is no suggestion by the Department or the Committee, and there is no material to show that the appellant had purchased raw materials sufficient to carry out normal commercial production at any time prior to 1.10.1982. It is an admitted fact that the assessee was able to obtain electricity for use for commercial production only in November 1982. This lends support to the appellant's contention that the production could not have been effected by the assessee prior to that date. In fact, this is a point on which emphasis is laid. That being so, there is no iota of evidence or material on the basis of which the appellant's claim that it had started production in December 1982 could have been rejected. On the other hand, the recommendation and endorsement of the General Manager, District Industries Centre also supports the appellant's contention that it had started production on 4.12.1982 and this report was given after verifying the actual position on the spot. [279D-G]

- G 2. As regards the amount of exemption available to the appellant, it is a matter for consideration of the authorities in respect of each of the years concerned in respect of which the claim is made for exemption. [280B]

- H CIVIL APPELLATE JURISDICTION: Civil Appeal No. 830 of 1988.

From the Judgment and Order Dated 7.12.1987 of the Allahabad High Court in Civil Misc. No. Nil 1987.

A.K. Ganguli and Sunil Kumar Jain for the Appellant.

Gopal Subramaniam and Ashok K. Srivastava for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. The petitioner is a concern engaged in the business of manufacture of electric motors, pump sets and their parts. It applied for exemption from sales tax in respect of the goods manufactured by it in terms of a notification issued by the State Government on 30.9.1982 under section 4A of the Uttar Pradesh Sales Tax Act, 1948 (hereinafter called the 'Act'). This application was rejected by a Division Level Committee by an order dated 9.2.1987 and a further review application was also dismissed on 27.10.1987. Thereupon the appellant filed a writ petition which was also rejected by the High Court by a short order dated 7.12.1987. Aggrieved by this denial of the exemption, which it claims it is entitled to, the appellant has preferred this appeal.

Section 4A of the Act reads as under:

"4-A. Exemption from sales tax of certain goods for specified period—

(1) Notwithstanding anything contained in section 3 or section 3-A, 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 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 goods by the manufacturer thereof shall, during such period not exceeding seven years from the date of starting production by such manufacturer, and subject to such conditions as may be specified, be exempt from sales tax or be liable to tax at such reduced rate as it may fix.

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the

A exemption from, or reduction in, the rate of tax shall be admissible—

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

B (b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October, 1982; or

(c) only if the manufacturer had not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year.

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Explanation—For the purposes of this section—

D (i) 'new unit' means a factory or workshop using machinery, accessories or components not already used or acquired for use in any other factory or workshop in India but does not include any factory or workshop established on the site of an existing factory or workshop manufacturing the same goods or any addition to or extension of an existing factory or workshop; and

E (ii) 'date of starting production' means the date on which any raw material required for use in the manufacture or packing of the specified goods is purchased for the first time or the date of installation of power connection, where needed, whichever is later.

F In pursuance of the above section, the State Government published a scheme for the grant of exemption from sales tax to certain industrial units in the State. The scheme, according to its introduction, had been introduced "in order to encourage capital investment and establishment of new industrial units in the State". It granted exemption to the industrial units established in certain areas of the State during the period from 1.10.1982 to 31.3.1985 and producing certain categories of goods. It is not necessary to refer in detail to the provisions of the scheme or other conditions of exemption. It is sufficient to say that this exemption was conferred only on units established on or after 1.10.1982 but before 31.3.1985. The scheme also makes it clear that though it referred to units "established" this really is a
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H reference to the date of commencement of production by the industrial

unit. This is also in accord with the terms of the statute and in particular sub-section (2) of 4A. The appellant's claim to exemption has been rejected on a very short ground, namely, that it had not commenced production after 1.10.1982.

In the application filed by the appellant for exemption the appellant had mentioned that the date of actual commencement of use of electricity for production was the 4th of December, 1982, which was also the actual date of commencement of production. The appellant also claimed that upto 30.9.1984 it had produced and sold electric motor parts for Rs.2,70,590. The General Managers of the District Industrial Centres at Deoband and Saharanpur and the Assistant Engineer of the Industrial State of Roorkee endorsed the following recommendation on the application:

"..... I have checked with the use of power and other sources that the unit started actual production from 4.12.1982 and the production made is self manufactured and is within the prescribed production capacity. I am fully satisfied with the facts produced by the Unit and I recommend that this unit is eligible to get exemption from sales tax/inter state sales tax with effect from date of production commencement for 5-6-7 years under section 4-A of the Sales Tax Act vide G.O. No. 8244-Bha/18-11-231(A) Bha/39, dated 30.9.82."

The difficulty in the appellant's way appears to have been created by a certificate which had been produced by it before the Division Level Committee along with its application. This purported to be a certificate by a firm known as Krishnna Trading Co. (in which the proprietor of the appellant was a partner). This certificate dated 4.12.1981 reads as follows:

"It is certified that the Trial Production of Kupla Bhatti was made today is 4.12.1981 expenses for which were incurred by our company by purchasing raw material for its own expenses under the agreement dated 15.5.1981 entered into. M/s Janta Machine Tools was assured by the company to supply very soon all the remaining machines and installing them and making its trial production at its own expenses."

The Division Level Committee, while rejecting the application

A dated 9.2.1987, essentially gave only one reason for the rejection. It was stated that the date of the alleged trial production was really the date of commencement of production and this fell prior to 1.10.1982.

B As stated earlier the assessee preferred a review application pointing out that the trial production could not be treated as commencement of actual production. This review application was disposed of on 27.10.1987. In its order the Committee observed:

C “On joint inquiry into the reality of your unit being conducted by the General Manager and sales tax officer of Deoband Industries Department they have reported that Shri Suresh Datt Sharma the proprietor of M/s Janta Machine Tools is partner of one third share in M/s Krishna Trading Company also. No purchase of raw material was declared by M/s Krishna Trading Company in the year 1981-82, and therefore, the certificate of trial production issued by M/s Krishna Trading Company on 4.12.1981 is baseless and untrue. In joint inquiry report it is also clear that your unit has purchased from M/s Krishna Trading Company Kupla etc. of Rs.69,000 on 21.5.81, whereas M/s Krishna Trading Company have declared sale of Rs.13,035 only in 1981-82 as per file of the Sales Tax Department. In the joint inquiry Report it is also mentioned that your unit got electricity on 21.11.1982 and on inquiry the unit informed that the trial production was done with the help of a generator. Your unit could not give any certificate for purchasing or hiring a generator and now it has declared to have hired the generator for 4-5 hours from M/s Mitra Industries Deoband. In the inquiry report it is also made clear that a unit cannot use a generator of other unit without prior permission of the electricity department.

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G On the above discussion it is concluded that the unit in question wants to (get) illegal benefit of exemption from sales tax by producing wrong facts. The trial production done by M/s. Krishna Trading Company on 4.12.1981 is proved to have been done by the unit in question itself and not by them. Thus, the unit was established before 1.10.82. The unit established before 1.10.82 is therefore not entitled to exemption from sales tax.”

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In our opinion, the rejection of the assessee's application proceeds on a total misconception of the facts. The conclusion of the Division Level Committee is that production was commenced by the appellant on 4.12.81 but this conclusion is based on no evidence. It is true that the appellant produced a certificate showing that some production was done on 4.12.1981 but the appellant's case was that this was merely a trial production. It is not quite clear whether the District Level Committee completely doubts any trial production having taken place at all, or whether its conclusion is that there was a trial production, on 4.12.1981. If its conclusion is the former one, it does not affect the appellant's claim. Assuming that the Committee has come to the conclusion that the production on 4.12.81 was conducted not by M/s Krishna Trading Company but by the appellant itself, the fact still remains that what had happened on that date was only trial production. The mere fact that a certificate by M/s Krishna Trading is disbelieved cannot lead to the conclusion that the assessee had produced goods on 4.12.81. If one is to go by the definition contained in the explanation to section 4A for determining when the production started, one has to concentrate on the date of purchase of raw materials or on the date on which the electricity was brought into use for commercial production. The appellant's claim that it had manufactured goods by 30.9.1984 is not denied. Production had, therefore, commenced before 31.3.1985. There is no suggestion by the Department or the Committee, and there is no material to show that the appellant had purchased raw materials sufficient to carry out normal commercial production at any time prior to 1.10.82. It is an admitted fact that the assessee was able to obtain electricity for use for commercial production only in November 1982. This lends support to the appellant's contention that the production could not have been effected by the assessee prior to that date. In fact, this is a point on which emphasis is laid in the order dated 27.10.1987. That being so, there is no iota of evidence or material on the basis of which the appellant's claim that it had started production in December 1982 could have been rejected. On the other hand, the recommendation and endorsement of the General Manager, District Industries Centre, which has been extracted earlier, also supports the appellant's contention that it had started production on 4.12.1982 and this report was given after verifying the actual position on the spot.

For the reasons above mentioned we are of the opinion that the denial of the exemption to the appellant under the notification dated 30.9.82 was not justified. The rejection of the appellant's application in this regard is quashed and the appellant is declared entitled to the

A exemption in terms of the notification. We should not be understood, however, to have expressed any opinion as to the amount of exemption available to the appellant under the notification. That will be a matter for consideration of the authorities in respect of each of the years concerned in respect of which the claim is made for exemption.

B The appeal stands allowed, but in the circumstances, we make no order as to costs.

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Appeal allowed.