

Rajasthan Tax Board, Ajmer

Appeal No. 2071/2006/Bharatpur

M/s Prem Raj Packaging
Private Ltd.
Brij Industrial Area,
Bharatpur

...Appellant

VERSUS

District Level Screening
Committee, Bharatpur
Commissioner, Commercial,
Taxes, Rajasthan, Jaipur.
Commercial Taxed Officer,
Circle- B, Bharatpur.

.....Respondents

D.B.

SHRI MADAN LAL MALVIYA, MEMBER
SHRI OMKAR SINGH ASHIYA, MEMBER

Present :
Shri D. Kumar, Advocate
Shri N.K. Baid,
Dy. Govt. Advocate

for Appellant

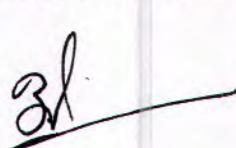
for Respondents

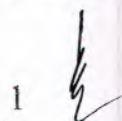
Dated: 22/01/2018

JUDGMENT

1. This appeal has been filed by the appellant dealer (hereinafter called the "appellant"), against order of the District Level Screening Committee, Bharatpur (hereinafter called the "DLSC") dated 28.07.2006, who disallowed the request of the appellant to avail benefit under the RST/CST Exemption Scheme, 1998 (hereinafter called the "Scheme of 1998" or the "Scheme") on a packaging unit purchased by it from M/s B.R. Oil Mills, Bharatpur, which was already availing the benefit under the said Scheme.

2. Brief facts leading to the present appeal are that the appellant purchased a packaging unit from M/s B.R. Oil Mills, Bharatpur, which was availing the benefits under the Scheme of 1998, and applied before the DSLC to allow it to avail the remaining benefits out of the tax benefits as granted to the packaging unit of the transferor.



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3. That M/s B.R. Oil Mills, a partnership firm had its industrial unit situated in Bharatpur and the said firm later another unit for manufacture of 'PET preforms, bottles and Jar' (hereinafter referred as the "packaging unit") with separate investment in plant & machinery. The DLSC in its meeting dated 16.02.1999 granted benefit to this new unit under the Scheme of 1998, under the category of 'diversification', as indicated in the eligibility certificate. This diversified unit was sold by M/s B.R. Oil Mills to the appellant M/s Prem Raj Packaging Private Ltd. and at the time of transfer of the said unit, the un-availed benefit of the packaging unit of M/s B.R. Oil Mills, was Rs. 36.20 lac, which the appellant requested to allow it to avail.

4. Learned advocate appearing for the appellant has submitted that under clause 3(e) of the Scheme of 1998 there is no bar on transfer of the unit and availing remaining benefits by the transferee and also submitted that shifting of a unit is also not prohibited under this Scheme. In this regard, he referred a judgment of the Hon'ble Rajasthan High Court in the matter of M/s Venkateshwara Wires (P) Ltd. And others Vs. DLSC (1992) 11 RTJS1, wherein it has been held that the industrial units running in rented premises are also entitled to benefits under the Incentive Scheme for Industries, 1987. He further submits that shifting of the unit was though not permissible under the Incentive Schemes of 1987 and 1989 but under the Scheme of 1998, there is not such bar. He referred clause 2(a)(i) of the Incentive Scheme, 1987 and 1989 and clause 2(k)(i) of the Scheme of 1998 and in light of these provisions and judicial pronouncement he requested for setting aside the order of the DLSC and allow the appellant to avail un-availed benefit of the transferred unit, as granted to that unit.

5. Per contra, the learned Deputy Government Advocate, submits that the term 'unit in whole' is an extensive term and that packaging unit was part of the M/s B.R. Oil Mills and it was not a 'unit in whole' transferred to the appellant, as stipulated under the clause 3(e), therefore, the appellant is not eligible for transfer of the remaining benefits in his favour, as available to the transferor for its diversified





unit under the Scheme of 1998. He therefore, requested to reject the appeal.

6. We have carefully gone through the arguments of both sides and perused the record. It is undisputed fact that M/s B.R. Oil Mills, Bharatpur was granted benefits under the Scheme of 1998 on its "PET preforms, bottles & Jar" manufacturing unit as a case of 'diversification', in the DLSC meeting dated 16.02.1999. Later, by way of an expansion to this diversified unit, further benefit was granted on 25.08.2001 by SLSC and the combined benefit stood at Rs. 49.33 lakh.

7. Later, M/s B.R. Oil Mills, Bharatpur by way of a sale deed dated 20.11.2004 purportedly sold its packaging unit to M/s Prem Raj Packaging Pvt. Ltd, Bharatpur. The material part of the sale deed is re-produced hereunder: -

"विक्रयनामा

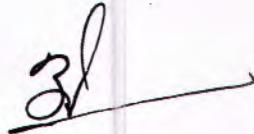
विक्रयनामा दिनांक 20.11.2004

हम कि मैसर्स बी.आर. ऑयल मिल्स, नई मण्डी, भरतपुर जो कि एक साझेदारी फर्म है। जरिये श्री प्रेमचन्द्र गोयल भागीदार जो कि आगे चलकर इस विक्रयनाम में प्रथम पक्ष से सम्बोधित होंगे।

एवं

मैसर्स प्रेमराज पैकेजिंग प्रा.लि., बृज औद्योगिक क्षेत्र, भरतपुर जरिये श्री विवेक गोयल डायरेक्टर जो आगे चलकर इस विक्रयनाम में द्वितीय पक्ष से सम्बोधित होंगे। जो कि प्रथम पक्ष बी.आर. ऑयल मिल्स, नई मण्डी, भरतपुर की एक यूनिट जो कि प्लास्टिक के प्रीफोर्म बनाने व प्लास्टिक की बोतल बनाकर विक्रय करने का कार्य कर रही है। इस यूनिट को प्रथम पक्ष अब रखना नहीं चाहते हैं और इस यूनिट को द्वितीय पक्ष अपने किसी कार्य को करने के लिये लेने के लिये सहमत हैं। इसमें मशीनरी व इसकी अन्य एसेट्स एवं राईट्स को भी प्रथम पक्ष से द्वितीय पक्ष लेने के लिये सहमत हैं। इस यूनिट में जो भी लाइवलिटी व एसेट्स व मशीनरी है उसकी सूची इस विक्रयनाम के साथ संलग्न है जो कि इस विक्रयनाम का जुज माना जावे।

1. यह कि उपरोक्त यूनिट की मशीनरी, लाइवलिटी व एसेट्स सभी को देखते हुये इसकी वैल्यू 1700000/- रूपये अंकेन सतरह लाख रूपया दोनों पक्षकारों ने लेना व देना तय पाया है।



2. यह कि प्रतिफल राशि 1700000/- रूपया का चैक नं. 990272 बैंक ऑफ बड़ौदा, नई मण्डी, भरतपुर का प्रथम पक्ष ने द्वितीय पक्ष से प्राप्त कर लिया है। और अब कोई रकम प्रथम पक्ष की द्वितीय पक्ष से लेना शेष नहीं है।
3. यह कि विक्रयनामों के साथ लगी हुई सूची के मुताबिक सभी मशीनरी द्वितीय पक्ष ने प्रथम पक्ष से संभाल लिये हैं व लेनादारी व देनदारी की जिम्मेदारी भी प्रथम पक्ष की अपने ऊपर द्वितीय पक्ष ने ले ली है जिसकी अदायगी व प्राप्त करने की जिम्मेदारी अब द्वितीय पक्ष की होगी। प्रथम पक्ष का अब मशीनरी एवं लेनदेन से कोई सरोकार नहीं रहेगा।
4. विक्रय होने वाली सभी मशीनें जिस काम में आती रही हैं उसी काम में द्वितीय पक्ष इन मशीनों को काम में लेता रहेगा।

लिहाजा यह विक्रयनामा 100/- रूपये के स्टाम्प पेपर पर दोनों पक्षकारों ने बदुरुस्ती होश हवास के लिख दिया कि सनद रहे।”

8. A list of the assets and liabilities transferred through this sale deed has also been enclosed with the sale deed. However, there is no specific mention in the sale deed if this packaging unit is sold in fully functional condition, or merely its idle plant & machinery is sold. The enclosure to the sale deed shows that apart from three creditors, the remaining items pertain to 'plant & machinery' only and no other items from assets or liability side are shown.

9. In the present case, it appears that primarily the plant & machinery of the erstwhile packaging unit was sold to the appellant and it does nowhere appear that even the 'unit as such' was transferred to the appellant. In this regard, clause 3(e) of the scheme of 1998 is worth looking into and the same is reproduced hereunder: -

"3(e) Where a manufacturer holding eligibility certificate under this Scheme transfer his unit in whole, the transferee shall be eligible for availing of the remaining benefits, if any, provided that such transferee undertakes to clear all outstanding dues payable to the State Government/RIICO/RFC and is otherwise eligible and gets eligibility certificate afresh under this Scheme."

10. Before going into the controversy at hand, it is necessary to first examine the concept of a 'unit in whole' as appearing in clause 3(e) of





the Scheme and how the same has evolved and for that we will have to navigate into the said Scheme to derive its intended meaning. For that purpose, the preamble or the opening para of the notification number F.14(8)FD/Tax Div./98 dated 7.4.1998 throws significant light on the Scheme as such, and the same is reproduced below:-

"In exercise of the powers conferred S.15 RST Act, 1994 and S. 8(5), CST Act, the State Govt.[.7.], hereby notifies the "The Rajasthan Sales Tax/ Central Sales Tax Exemption Scheme for Industries, 1998" (hereinafter referred to as the exemption scheme or this Scheme), and exempts the industrial units from payment of tax on the intra-State sales/inter-State sales of the goods and by-products manufactured by them within the state, including the waste items derived therefrom and the packaging material used therewith, in the manner, to the extent and for the period as specified in this notification"

11. As mentioned above, it is essentially an "industrial unit" which is intended to be exempted from payment of tax under the Scheme. Further, various types of industrial units have been defined in clause 2 the Scheme viz. New industrial units / Electronic industrial unit, Large scale unit, small scale unit, sick industrial unit, pioneering unit, premier unit, very prestigious unit etc., but nowhere the scheme speaks of the words like 'Diversified unit' per se.

12. In this regard, it would be useful to go through the definitions of the terms "New industrial unit", "Diversification" and "Expansion" as appearing in the Scheme, which are as follows: -

"(k)(i) "New Industrial Unit" means an industrial unit which commences commercial production during the operative period of this Scheme including a unit set up on the site of an existing industrial unit by making separately identifiable capital investment; subject however, that where an industrial unit manufacturing the same product is established on the site of an existing unit, the benefit permissible for a new unit shall be available to it only on the production in excess of 80% of the installed capacity of the existing unit".





"(c) "Diversification" means launching of a new and different product under the same company, partnership, firm, or undertaking with the help of new set of machines with the additional fixed capital investment exceeding 25% of value of the net fixed assets of the original project."

"(g) "Expansion" means the increase in the value of fixed capital investment by not less than 25% of the net fixed assets of the original project and accompanies by an increase in the production to the extent of at least 25% of the installed capacity. However, for second or subsequent expansion, the fixed capital investment in the original project together with the investment(s) upto the immediate preceding expansion, shall be considered as the basis for the purpose of the proposed expansion."

13. On perusal of these definitions, it is amply clear that the term 'unit' has been used only in 'new industrial unit' and for the term 'diversification', the words "*launching of a new and different product under the same company, partnership, firm, or undertaking with the help of new set of machines*" have been used. So, ~~the~~ any manufacturing facility acknowledged as 'diversification' cannot be considered as 'unit in whole', as mentioned in clause 3(e) of the Scheme.

14. More so, the clause 3 of the Scheme, which relates to "Applicability of the exemption scheme" further elucidate the term 'diversification' and for the sake of convenience the clause 3(a) is reproduced hereunder :-

"3. Applicability of the Exemption Scheme- (a) This Scheme shall be applicable to: -

- (i) the new industrial units*
- (ii) the industrial units for expansion*
- (iii) the industrial units launching diversification, and***
- (iv) the sick industrial units"*

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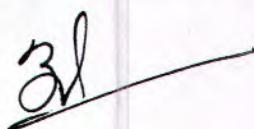
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As mentioned in item no. (iii) above, any diversification is always a part of an existing industrial unit and it is not independent of its parent unit, so diversification related plant or unit *per se* cannot be categorized as a 'unit in whole',

15. So, after going through the clause 3 and various definitions as discussed above, we arrive at a considered view that the term "diversification" is part & parcel of an industrial unit and it can't be termed as an independent unit, therefore, the diversification project of any industrial unit cannot qualify to be termed as an independent unit or a "unit in whole". Since, in the present case, only the diversification part or the packaging plant as such of M/s B.R. Oil Mills has been sold to the appellant, therefore, such sale or transfer of the packaging unit is not a transfer of "unit in whole" and resultantly, the appellant is not entitled to get the remaining benefits as available to the erstwhile packaging plant of M/s B.R. Oil Mills, Bharatpur, as granted to it as a case of diversification.

16. Learned Counsel for the appellant laid much emphasis on definition of "new industrial unit" as given in Clause 2(a)(i) of the Incentive Schemes 1987 and 1989 as well as in Clause 2(k)(i) of the Scheme of 1998. These definitions are essentially meant to determine eligibility of a new unit under these Schemes. Since the diversified unit of M/s B.R. Oil Mills had already been granted benefits, therefore, these definitions have nothing to do with the facts and circumstances of this case. The instant matter which relates to purported sale and shifting of only the existing packing material manufacturing facility out of the combined entity consisting of an Oil Mill and its diversified packaging unit and claim of the purchaser to get the benefit which were available to the transferred unit prior to its sale, would thus be governed by Clause 3(e) only, of the Scheme of 1998.

17. The case law as referred by the appellant (1982) 11 RTJS 1, relates to establishing industrial units which have set up their units in a rented accommodation, were held to be entitled to get benefits under the incentive scheme. But this is not the case here, because in instant





case the unit was already enjoying the benefit of the Scheme of 1998, and thereafter it has been purchased by the appellant and the question is as to whether the benefit of the Scheme would be available or not when 'unit in whole' is not transferred and only plant & machinery is sold, and the purchaser sets up the unit at some other place using that plant & machinery. So, the facts of the referred judgments are different from the instant case, therefore, the same can't be applied in the facts and circumstances of the present case.

18. In light of the findings as arrived at in the foregoing paras, it is held that in the instant case the sale of packaging unit of M/s B.R. Oil Mills, Bharatpur, cannot in anyway be termed as a transfer of a 'unit in whole', as stipulated under clause 3(e) of the Scheme of 1998, therefore, the appellant is not entitled to get the benefit under the Scheme of 1998 as available to the erstwhile packaging unit of M/s B.R. Oil Mills. So, the DLSC's decision is found to be just and proper.

18. Accordingly, the impugned DLSC order is confirmed and this appeal is disallowed.

19. Order pronounced.



(Omkar Singh Ashiya)
Member



(Madan Lal Malviya)
Member