

**THE SUPREME COURT OF INDIA, BHAI JASPAL SINGH AND ANR Vs  
ASSISTANT COMMISSIONER OF COMMERCIAL TAXES AND ORS**

**SC-WB Sales Tax Act -Depreciation not to be reduced for calculating 'Investment'-  
Exemption Notification - liberal construction not required when notification is not  
applicable- Interest liable to be paid on default of tax**

The assessee is M/s Tulip Products Co., a partnership firm having a fruit processing unit at 37, Imjad Ali Lane, Calcutta. It is a small scale industrial unit. The Unit is engaged in manufacturing juice, jelly, jam etc. The unit was registered as a dealer under the West Bengal Sales Tax Act.

The assessee claimed exemption from payment of sales tax mainly relying on the exemption notification issued by the State Government bearing No. 1428-F.T. dated 26.05.1994 and Rule 41 of West Bengal Sales Tax Rules, 1995 ("the 1995 Rules"). According to the assessee, its investment in plant and machinery in its unit during the period from 01.04.1995 to 30.04.1995 and from 01.05.1995 to 31.03.1996 was less than Rs. 5 lakhs and accordingly, it was entitled to get the tax exemption.

The Asst. Commissioner of Commercial Taxes passed an order of assessment disallowing the assessee's claim for exemption from payment of sales tax and also levied interest. In the view of the Tax Officer, the benefit of exemption from payment of sales tax cannot be granted since the assessee does not fulfill all the conditions prescribed in the notification granting exemption from payment of sales tax and also the conditions specified in Rule 41 of the 1995 Rules.

In appeal, the assessment order passed by the Tax Officer was confirmed by the Deputy Commissioner, Commercial Taxes. The assessee filed Second Appeal before the West Bengal Sales Tax Tribunal. The Tribunal has confirmed the order passed by the First Appellate Authority. In the writ petition filed, the High Court of Calcutta confirmed the order passed by the Tribunal in exercise of its writ jurisdiction.

**And so the matter is before the Supreme Court on following issues :**

- 1. the meaning of the expression 'Investment' for the purpose of notification issued by the State of West Bengal under West Bengal Sales Tax Act and the corresponding Rules;*
- 2. the construction and interpretation of an exemption notification;*
- 3. and whether the interest is payable on tax only on quantification of tax by way of assessment under the Act or for any period prior to that.*

### **The Supreme Court observed,**

In the Notification issued by the State Government and the Rules framed, the requirement is that the investment made by the dealer in plant and machinery in the Small Scale Industrial Unit should be less than Rs. 5 lakhs. It is obvious that money spent on upgrading or replacing machinery is investment that would increase the productivity of the machinery and consequently generate further income. It would thus be equivalent to acquiring of commodities that generate further income. Furthermore, there is no question of reducing depreciation value, as the determination is of the total money spent or "invested" in plant or machinery.

In computing the valuation of plant and machinery, only the cost price/purchase price of the equipment invested by the assessee will have to be taken into account. The expression "investment" in plant and machinery is not subject to the impact of depreciation in the value of plant and machinery. Since the assessee's investment is more than 5 lakhs before the periods in question and since the investment continues to remain unchanged, the assessee is not entitled to exemption from payment of sales tax either under the Rules or under the notification.

The second contention is that the Notification providing exemption should be liberally construed having regard to the purpose and object it seeks to achieve.

The Supreme Court observed, "The conditions for availing exemptions are generally laid down in the notifications granting exemptions. Sometimes, exemptions are grafted in the Rules framed in this behalf.

The principle to be kept in view while interpreting exemption notification is that the meaning of the words given in the exemption notification is to be gathered from the language employed in the notification.

The preamble of the Notification in this case states that "whereas the Governor is of opinion that industrial unit is manufacturing certain goods in West Bengal which are in need of financial assistance and accordingly it is necessary to formulate a scheme of industrial promotion to assist such unit for the purposes mentioned hereinabove". Clearly, the purpose of this notification is to promote industrial activity and development in the State of West Bengal. However, it is a necessary pre-condition that first the assessee should fall within the clear wording of the notification. The assessee in this matter falls outside the parameters of this Notification, since his investment is over 5 lakhs, therefore, there is no question of the Notification applying to him. Thus, there is no requirement of liberal construction as the notification does not apply to the assessee in the first place."

The third contention is regarding interest. The assessee contended that interest on tax can be charged only after quantification of tax liability by the Assessing Officer. Therefore,

respondent was not justified in issuing the demand notice for payment of tax by including interest element.

The Supreme Court observed that there has been a legislative amendment incorporating statutory provision for payment of interest even before quantification of tax liability and service of demand notice pursuant to such quantification.

Interest is compensatory in character and is imposed on an assessee who has withheld payment of any tax as and when it is due and payable. The interest is levied on the actual amount of tax withheld and the extent of delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty which is penal in character [See *Pratibha Processors and Ors. v. Union of India and Ors.*]. In the instant case, it is not in dispute that the amount of tax due on the basis of the return furnished by the assessee has not been paid before the expiry of the last date of filing of such return required by Section 10A of the Act, 1941 and Section 31 of the Act, 1994.

In the present case, it is the admitted position that tax due on the basis of quarterly return was not paid as required by sub-section (3) and the appellant was, therefore, liable to pay interest on the amount of tax in respect of which default was committed at the rate prescribed in sub-section (2) from the last date prescribed for filing quarterly return under the Act upto the date of payment