

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 24643 OF 2012)

COMMISSIONER OF TRADE TAX, U.P. & ORS.

Appellant(s)

VERSUS

SANTOSH KUMAR KUSHWAHA

Respondent(s)

WITH

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 25543 OF 2012)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 20820 OF 2014)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 20819 OF 2014)

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 21275 OF 2014)

AND

CIVIL APPEAL NO. OF 2022
(ARISING OUT OF SLP (C) NO. 26967 OF 2015)

O R D E R

SLP(C) No. 21275/2014 and SLP(C) No. 26967/2015

Delay condoned.

Leave granted.

Heard the learned counsel for the parties at some length.

As the issue raised in this appeal relates to
interpretation of Section 3-H of the U. P. Trade Tax Act, 1948,

inserted w.e.f. 01.05.2005, we deem it appropriate to reproduce Sub-Sections (1) and (3) of Section 3-H, which read:

"3-H. State Development Tax- (1) There shall be levied a State Development Tax at the rate not exceeding one per cent of the taxable turnover as the State Government may by notification specify on the dealers whose aggregate turnover as referred to in sub-section (2) of Section 3, exceeds fifty lakh rupees. The State Development Tax shall be realised in addition to the tax payable under any other provision of this Act. This tax shall cease to be levied after a period of five years from the date of publication of the notification issued by the State Government under this section.

(2) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

(3) The State Development Tax shall be adjustable in the monetary limit specified in the eligibility certificate issued under Section 4-A.

(4) xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

Section 3-H applicable from 01.05.2005 levies a new tax, namely the State Development Tax, payable as may be specified by the State Government in a notification at the rate not exceeding one per cent of the taxable turnover by the dealers whose aggregate turnover exceeds Rs. 50 lakhs. The State Development Tax is in addition to the tax payable under any other provision of the said Act. The tax imposed would cease to apply after five years from the date of publication of the notification issued by the State Government under Section 3-H.

Sub-section (3) of Section 3-H states that the assessee is entitled to adjustment of the State Development Tax within the

monetary limits specified in the exemption certificate issued under Section 4-A of the 1948 Act. We would, therefore, like to reproduce the relevant portion of sub-section (1) to Section 4-A of the U.P. Trade Tax Act, 1948, which reads:

"Section 4-A. Exemption from trade tax in certain cases. - (1) Notwithstanding anything contained in any other provisions except the provisions of Section 3-H of this Act, 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 any industry in the State generally or in any district or parts of district in particular, it may on application or otherwise, in any particular cases or generally, by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding fifteen years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may be the date of the notification or a date prior or subsequent to the date of such notification, and where no date is so specified 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 trade tax on sale of goods whether wholly or partly or be liable to tax at such reduced rate as it may fix:

Provided that in respect of goods manufactured in a new unit having a fixed capital investment of five crore rupees or more in an existing unit which may make fixed capital investment of five crore rupees or more in expansion, diversification, modernisation and backward integration or in any one of them, within such period not exceeding five years as may be specified in the notification, the exemption from or

reduction in the rate of tax may be granted."
XX XX XX

The words "*Notwithstanding anything contained in any other provisions except the provisions of Section 3-H of this Act*" in Section 4-A were substituted for the words "*Notwithstanding anything contained in this Act*" by the U.P. Act No. 9 of 2005 dated 24.03.2005 with effect from 01.05.2005, which is also noted as the date from which the State Development Tax could be levied.

The respondent assessees were issued eligibility certificates under Section 4-A of the U. P. Trade Tax Act, 1948 before the enforcement of the State Development Tax vide insertion of Section 3-H. The eligibility certificates issued under Section 4-A mention the date of start of production, the date of the first sale, and the period during which exemption would be available. The maximum exemption limit is specified. The eligibility certificate states that the exemption would not apply after the specified period or the exemption limit, whichever expires earlier.

The State of U.P. through the Governor, in exercise and to effectuate the exemption under Section 4-A, had issued a Notification No. TT-2-780/XI-9(226)/94-U.P.Act-15/48-Order-95, dated 31.03.1995. Annexure-1 of the said notification is a table which vide different columns specify and stipulate as per the location of the unit the exemption from or reduction in the rate of tax in Column 4 and the monetary limit up to which the benefit of exemption/reduction can be granted in Column 5. For

convenience and understanding, we reproduce the headings of the different columns:

Column 1	Column 2	Column 3	Column 4			Column 5
Sl.No.	Location of Unit	Total period of exemption /reduction in the rate of tax	Exemption from or reduction in the rate of tax (denoted as percentage of the rate of tax normally applicable under the U.P. Act to the goods concerned) which, on any transaction of sale, shall not exceed five percent of the sale price			Monetary limit upto which the benefit of exemption from or reduction in the rate of tax under the Act together with the benefit of exemption from or reduction in the rate of tax under the Central Sales Tax Act, 1956 is admissible
			Year	In case of units with a fixed capital investment exceeding 50 crores	In case of other units	

This Court in '*State of Uttar Pradesh & Ors. v. M/s Systematic Conscom Limited*, (2014) 13 SCC 627' had examined the contours of the State Development Tax under Section 3-H imposed w.e.f. 01.05.2005 and held that the provision imposes altogether a new tax on certain dealers whose turnover exceeds the prescribed limit. Section 3-H is a charging Section, which also prescribes the taxable event, the person on whom the tax is imposed and is obliged to pay the tax, the rate of tax and the measure or value to which the rate will apply for computing the tax in liability. Accordingly, the State Development Tax differs from the tax imposed under Section 3 ('Liability to tax under the Act') of the U.P. Trade Tax Act, 1948.

The Commissioner, Trade Tax, Uttar Pradesh vide circular no. 723 dated 03.05.2005 had *inter alia* specified that the adjustment under sub-section (3) of Section 3-H shall be accepted in the same manner, as the adjustment of normal amount of trade tax in eligibility certificate under Section 4-A. The interpretative consequence of the circular was read by the assessing authorities to mean that the adjustment in State Development Tax was to be made on proportional basis, rather than including it in the monetary limit specified in Column 5 of Annexure-1 and the limit in the eligibility certificate.

In our opinion, the High Court was correct in holding that the respondent assessee would be entitled to the benefit of sub-section (3) to Section 3-H by seeking adjustment of the State Development Tax within the monetary limit specified in the eligibility certificate issued under Section 4-A. The monetary limit specified in the certificate issued under Section 4-A would refer to the monetary limits quantified in the eligibility certificate itself as well as the monetary limit set in Column 5 of Annexure-1. Sub-section (3) to Section 3-H does not prescribe that Column 4 in Annexure-1, which relates to *exemption from or reduction in the rate of tax (denoted as percentage of the rate of tax normally applicable under the U.P. Act to the goods concerned)*, would be applicable in determining the 'monetary limit'. Sub-section (3) to Section 3-H does not refer to the 'rate of tax', which is the subject matter of Column 4 of Annexure-1.

The legislature, while enacting sub-section (3) to Section

3-H (w.e.f. 01.05.2005), was conscious and aware of the different contours of the exemption/reduction in terms of Annexure-1 (published in U.P. Gazette dated 31.03.1995). However, while legislating, they had specified that the adjustment would be up to the monetary limits set in the eligibility certificate issued under Section 4-A which will include the last column of Annexure-1 viz., *"Monetary limit upto which the benefit of exemption from or reduction in the rate of tax under the Act together with the benefit of exemption from or reduction in the rate of tax under the Central Sales Tax Act, 1956 is admissible."* Sub-section (3) to Section 3-H does not stipulate that the assesseees would be only entitled to an adjustment/reduction to the extent specified in Column 4. This is clear from the corresponding amendment, which was made to Section 4-A (1) by inserting the words *"notwithstanding anything contained in any other provisions except the provisions of Section 3-H of this Act."*¹ The legislature, therefore, wanted to insulate and protect the assesseees from the effect of the notification or exemption under Section 4-A except to the extent stated in sub-section (3) to Section 3-H while imposing State Development Tax. Benefit under sub-section (3) to Section 3-H by adjustment is to be within the monetary limits. No other clause or stipulation under the notification issued vide Section 4-A would apply. Section 3-H(3) prevails over Section 4-A to the extent not saved by sub-section (3) to Section 3-H of the

¹ Substituted by U.P. Act No. 9 of 2005, for the words "Notwithstanding anything contained in this Act", dated 24.03.2005 (w.e.f. 01.05.2005)

U.P. Trade Tax Act, 1948.

It is a general rule of interpretation of taxing statutes that there is no room for any intendment and they are to be read in the light of what is clearly expressed and enforced literally or ad verbum. There are no equitable considerations or implications or assumptions or presumptions as to import provisions to supply any assumed deficiency in taxing statutes.²

However, we clarify that in case any of the respondent assessee or other assessee has availed the benefit of one-time settlement schemes, the Trade Tax Department would not be liable to refund any amount payable as the said assessee would be bound by the declarations made and benefit granted under the said settlement scheme.

In view of the aforesaid discussion, there is no merit in the present appeals, and hence, the same are dismissed.

There would be no order as to costs.

Pending application(s) stands disposed of.

SLP(C) No. 24643/2012, SLP(C) No. 25543/2012, SLP(C) No. 20820/2014 AND SLP(C) No. 20819/2014

Delay condoned.

Leave granted.

The issues raised in these appeals are covered by the decision of this Court in '*State of Uttar Pradesh & Ors. v. M/s Systematic Conscom Limited, (2014) 13 SCC 627*'. Consequently, it is held that the State Development Tax levied under Section

² Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company and others, (2018) 9 SCC 1.

3-H of the U.P. Trade Tax Act, 1948 is an independent tax to which the composition scheme under Section 7-D of the aforesaid Act would not apply. However, the respondent assesses would be liable to pay the State Development Tax under Section 3-H, even if they were availing the benefits of the composition scheme for other taxes.

The appeals are partly allowed and disposed of with the aforesaid directions without any order as to costs.

Pending application(s), if any, shall stand disposed of.

. J.
(SANJIV KHANNA)

. J.
(BELA M. TRIVEDI)

NEW DELHI;
MARCH 02, 2022

ITEM NO.7

COURT NO.14

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 21273/2014

(Arising out of impugned final judgment and order dated 08-05-2013 in WT No. 1740/2007 passed by the High Court of Judicature at Allahabad)

STATE OF UP & ORS.

Petitioner(s)

VERSUS

M/S NIL KAMAL LTD (EARLIER KNOWN AS
NIL KAMAL PLASTIC LIMITED)

Respondent(s)

(IA No. 1/2014 - CONDONATION OF DELAY IN FILING)

WITH

SLP(C) No. 24643/2012 (XI)

SLP(C) No. 25543/2012 (XI)

SLP(C) No. 20820/2014 (XI)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2012
IA No. 1/2012 - CONDONATION OF DELAY IN FILING)

SLP(C) No. 20819/2014 (XI)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2012
IA No. 1/2012 - CONDONATION OF DELAY IN FILING)

SLP(C) No. 21275/2014 (XI)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2014
IA No. 1/2014 - CONDONATION OF DELAY IN FILING)

SLP(C) No. 21278/2014 (XI)

(FOR CONDONATION OF DELAY IN FILING ON IA 1/2014
IA No. 1/2014 - CONDONATION OF DELAY IN FILING)

(SLP(C) No. 26967/2015 (XI)

(IA No. 1/2015 - CONDONATION OF DELAY IN FILING)

Date : 02-03-2022 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s)

Mr. R. K. Raizada, Sr. Adv.

Mr. Bhakti Vardhan Singh, AOR

For Respondent(s) Mr. Anish Kumar Gupta, AOR
 Mr. Archana Preeti Gupta, Adv.
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 Mr. Venugopal Abhay, Adv.
 Ms. Deepshikha Bharati, Adv.

 Mr. Dhruv Agrawal, Sr. Adv.
 Mr. Nishit Agrawal, AOR
 Mr. Harsh Mishra, Adv.

 Mr. Jay Savla, Sr. Adv.
 Mr. Akshay Sharma, Adv.
 Mr. Rahul Gupta, AOR
 Mr. Jasdeep Singh Dhillon, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP (C) Nos. 21273 and 21278 of 2014

List on 03.03.2022.

SLP(C) No. 21275/2014 and 26967/2015

Leave granted.

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

SLP(C) No. 24643/2012, SLP(C) No. 25543/2012, SLP(C) No. 20820/2014 AND SLP(C) No. 20819/2014

Leave granted.

The appeals are partly allowed and disposed of in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(BABITA PANDEY)
COURT MASTER (SH)

(DIPTI KHURANA)
COURT MASTER (NSH)

(Signed order is placed on the file)