

(1998) 06 AP CK 0007

Andhra Pradesh High Court

Case No: Writ Petition No. 7496 of 1998

Sri Vasavi Cold Retreads Pvt. Ltd.

APPELLANT

Vs

Commercial Tax Officer and
Others

RESPONDENT

Date of Decision: June 16, 1998

Citation: (1998) 111 STC 208

Hon'ble Judges: Umesh Chandra Banerjee, C.J; Bilal Nazki, J

Bench: Division Bench

Advocate: K. Raji Reddy, for the Appellant; The Special Government Pleader for Taxes and Government Pleader for Industries, for the Respondent

Final Decision: Allowed

Judgement

Umesh Chandra Banerjee, C.J.

This writ petition is directed against withdrawal of exemption of sales tax holiday as declared by the State Government.

2. Be it noted that the petitioners' industry is a retreading industry and started operation from October 1, 1992. The respondent-authorities, however, refused, while granting other incentives as is allowable under the present law, to grant tax holiday by reason of a notification dated April 25, 1991 as has been contended by the learned Advocate appearing for the State-respondents. The learned Advocate also contended that the notification is categorical as regards the nonavailability of exemption in terms of the notification dated April 25, 1991 read with G.O. Ms. No. 498, dated October 16, 1989.

3. Be it placed on record that admittedly similar retreading units are having the tax-holiday whereas the petitioner-unit has not been able to obtain such a benefit and it is by reason of such a deprivation that this writ petition has been moved before this Court under Article 226 of the Constitution.

4. For a correct appreciation of the matter in issue, we deem it fit to record the relevant extracts of the notification dated April 25, 1991, as follows :

"(3).....The Government after careful examination of the proposal and in partial modification of the order 3rd cited hereby accept the suggestion of Commissioner of Industries and order for revision of the list of ineligible industries as per annexure to this order with immediate effect....."

The annexure, as noted above, significantly, however, reads as follows :

"61. Servicing and/or repairing units except retreading, auto servicing, industrial materials testing labs, general engineering machining workshops, common effluent treatment plants CAD and/or C.M., cold storage/heat treatment, electroplating, galvanising, seed processing, xerox (set up with institutional finance only) servicing and or repairing units will not be eligible for sales tax incentives."

5. It, therefore, appears that the Government of Andhra Pradesh have themselves made an exception so far as retreading is concerned. The exception has not been noted by the concerned authorities and by reason of misappreciation of the notification such a benefit has been refused to the petitioner. We do feel it expedient to record that the Governmental action must be fair and reasonable and in the event of such a reading of the notification the same cannot but be attributed to be not fair and arbitrary exercise of power not supported by any law.

6. The notification is clear and categorical that retreading industries do not come within the ambit of the notification dated April 25, 1991 and in the wake of such a clarity in the notification itself, we do find some justification in the criticism of the action of the respondents as advanced by the learned Advocate appearing in support of the writ petitioner. The writ petition, therefore, succeeds. There shall be a writ in the nature of mandamus directing the second respondent to extend the sales tax benefit or holiday in respect of the tyre retreading business carried on by the petitioner in terms of G.O. Ms, No. 498 dated October 16, 1989 or any other relevant provisions of law as is available as on date. G.O. Ms. No. 146 dated April 25, 1991 is not applicable to the petitioner. No order as to costs.