

(1990) 03 CAL CK 0039

Calcutta High Court

Case No: F. M. A. No. 256 of 1987

Commercial Tax Officer, Suri and
Others

APPELLANT

Vs

Anadi Nath Halder

RESPONDENT

Date of Decision: March 16, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 13(3)(iv), 81(i)(c)

Citation: 94 CWN 1034

Hon'ble Judges: Sachi Kanta Hazari, J; G.N. Ray, J

Bench: Division Bench

Advocate: S.N. Dutta, for the Appellant; R.N. Bajoria and Sunit Krishna Chakraborty, for the Respondent

Judgement

G.N. Ray, J.

This appeal is directed against the judgment dated August 6, 1986 passed by the learned trial Judge in Civil Rule 1321(W) of 1985. By the aforesaid judgment the writ petition made by the respondent Sri Anadi Nath Haider carrying on business under the trade name of Coconut Oil Industries was allowed by the learned trial Judge and it has been held that the writ petitioner respondent clearly comes within the purview of Rule 3(66) (IV) of Bengal Sales Tax Rules and the Writ petitioner is, therefore, entitled to get eligibility certificate for exemption of Sales Tax. It appears that the writ petitioner is a registered dealer under the Bengal (Finance) Sales Tax Act, 1941 with effect from May 20, 1983. The said dealer made an application for an eligibility certificate under Rule 3(66) of the Bengal Sales Tax Rules, 1941. The Assistant Commissioner, Asansol Circle rejected such application on a number of grounds and it was held by the said Assistant Commissioner that the production of Coconut Oil commenced only on March 24, 1983. But the statutory requirement for getting such exemption under Rule 3(66) is that such production must commence between 31st March, 1978 and March 14, 1983. It was held by the said Assistant Commissioner

that the petitioner's application for grant of eligibility certificate was made on June 8, 1983, but the last date for such application was April 14, 1983 and the said Commissioner further held that two sets of Sales Memos one for the Coconut Oil and other for Oil Cake with identical Serial numbers were used, but such separate serial numbers for separate commodities were not required to be maintained. The dealer thereafter made a revision application before the Additional Commissioner, Commercial Taxes and the said Additional Commissioner Commercial Taxes held that the petitioners unit started production on March 13, 1983 and such production was within the statutory period between March 31, 1978 and March 14, 1984. The Revision application, however, was not allowed by the Additional Commissioner on the ground that the application or issue of eligibility certificate was made on June 8, 1983, which was beyond the statutory period, the last date of which was April 14, 1983. Being aggrieved by such rejection of the application for Eligibility certificate, the writ petition was moved by the said dealer and it was contended by the dealer that as he was a registered dealer no time limit was prescribed for making an application for eligibility certificate in view of the amendment of sub-clause (4) of Rule 3(66). But such amendment was effected on April 1, 1983 and a proviso was added by which a registered dealer was permitted to make an application for Eligibility certificate even after April 14, 1983, because no outer limit, for making such application was mentioned in the said proviso. It was contended by the said dealer in the writ preceding before the learned Trial Judge that the very purpose of Rule 3(66) was to encourage setting up of certain type of industries and the concerned authorities provided for tax holiday or exemption of Sales Tax if such industries are set up on fulfilling the conditions indicated in various clauses of Rule 3(66). When all such conditions were fulfilled, the dealer was entitled to get eligibility certificate provided, however, he should make an application within the time as indicated in sub-clause 94) of Rule 3(66). Since by amending the said sub-clause (4) a proviso was added and for a registered dealer no time limit was fixed for making such application for eligibility certificate, the writ petitioner being a registered dealer had made an application shortly after he was registered and as the dealer having fulfilled all the conditions to get exemption, his application could not be rejected on the ground of limitation. The learned Trial Judge accepted the said contention and came to the finding that as the dealer fulfilled all other conditions for getting the eligibility certificate and as he made such application for the eligibility certificate in accordance with the provisions of sub-clause (iv) as amended, there was no reason to reject the said application. Being aggrieved by such judgment made in the writ proceeding by the learned Trial Judge, the instant appeal has been preferred by the Commercial Tax Officer, Suri and other Officers of the Commercial Tax Directorate of West Bengal. For proper appreciation of the import of Rule 3(66)(iv) as amended by adding a proviso on 1/4/1983, sub-clause (iv) of Rule 3(66) is set out hereunder :

(iv) A dealer shall apply for a certificate of eligibility on or before the 14th April, 1983 or for renewal thereof ordinarily within a month from the date from which such certificate is required to be renewed for the purpose of this Rule. Provided that only a registered dealer may apply for a certificate of eligibility on or after 1st April, 1983.

Mr. Dutt, the learned counsel appearing for the appellants, has contended that in order to get eligibility certificate, all the provisions of Rule 3(66) must be strictly complied with. He has submitted that since a concession is being given by the Tax authorities to a dealer such dealer cannot get such exemption if he fails to fulfill all the conditions strictly. Mr. Dutt has contended that initially an application for eligibility certificate was required to be made by the dealer fulfilling all other conditions for getting an exemption of sales tax by 14th April, 1983. The provision of making such application, however underwent a change because of an amendment effected on April 1, 1983. By such amendment, a proviso under sub-clause(4) of Rule 3(66) was added and if the proviso is properly considered it will only reveal that initially the unregistered dealer could make an application as in The case of registered dealer for eligibility certificate by April 14, 1983. But because of the amendment proviso, the unregistered dealer could make such an application by 31st March, 1983, but in case of registered dealer the time limit for making such application such application upto April 14, 1983.

2. Mr. Dutta has contended that it is an accepted principle for interpretation of amendment of statute that by a proviso the right given in the parent section or the Rule can be either extended or abridged. In the instant case, the proviso has abridged the time limit to make such an application so far as unregistered dealers are concerned, In the absence of such proviso, both registered and unregistered dealers could make an application upto April 14, 1983. But in the case of registered dealers, they can make an application on or after the 1st April, 1983. Therefore, the only reasonable interpretation of the said proviso will be that an unregistered dealer cannot make an application after 31st March, 1983. Mr. Dutta has contended that even for a registered dealer, the outer limit to make such an application is controlled by the parent sub-clause (iv), and simply because in the proviso no outer limit has been indicated, it cannot be contended that such an application may be made even after 14th April, 1983 by a registered dealer. Mr. Dutta has contended that unfortunately the learned trial Judge has failed to consider the true import of the said proviso by which the outer limit to make such an application by a registered dealer has been fixed and on an erroneous reading of clause (iv) of Rule 3(66) read with proviso, the learned trial Judge has proceeded on the footing that the writ petitioner being a registered dealer and no time limit having been prescribed for a registered dealer to make an application for an eligibility certificate. the dealer's application could not be rejected in limine on the ground of limitation. Mr. Dutta has also contended that admittedly in the instant case, the dealer became registered with effect from 25th May, 1983. Hence either on 31st March, 1983 or on 1st April, or on 14th April, 1983 the dealer was not a registered dealer. He was. therefore,

entitled to make an application on or before 14th April, 1983 as an unregistered dealer in any event even if it is assumed that by the proviso, unregistered dealer was not affected. Such an application not having been made by 14th April 1983 by the dealer who was then an unregistered dealer, the application for eligibility certificate could not have been made by him at a later date simply because he became registered a later date. Mr. Dutta has contended that even if it is assumed that a registered dealer could make an application for eligibility certificate even beyond 14th April, 1983, because no outer limit was mentioned in the proviso added to sub-rule (iv), the said proviso would not have been availed of by the dealer because he was not registered upto 14th April, 1983, and his case should be governed by the provisions for an unregistered dealer.

3. Mr. Dutta has next contended that the implication of Rule 3(66a) has not been taken into consideration by the learned trial Judge. In his fairness, Mr. Dutta has submitted that such contention was not raised in the trial court. But since the import of the Rule 3(66a) has a great bearing on the adjudication of the dispute involved in this writ proceeding and no facts other than the facts already pleaded in the writ proceeding are required to be considered for appreciating the import of Rule 3(66a), the court of appeal should also take in to consideration the import of Rule 3(66a). Mr. Dutta has submitted that Rule 3(66a), has specifically provided that manufacturer of coconut oil is not entitled to get exemption. As the writ petitioner is admittedly manufacturing coconut oil, in view of Rule 3(66a) he is debarred from getting any exemption and his application for eligibility certificate is bound to fail on that ground also. Mr. Dutta contended that Rule 3(66a) has come in to operation with effect from 1st April, 1983 and as the dealer did not make any application before 1st April, 1983 for exemption of tax, it cannot be contended by the dealer that his case should be governed with reference to the provisions which was prevailing before 1st April, 1983. Mr. Dutta has, therefore, contended that the dealer not being entitled to get exemption, the said application for eligibility certificate was bound to fail in any event and no interference with the order of rejection of the said application is called for. The appeal should, therefore, be allowed and the order passed by the learned trial Judge should be set aside and the order rejecting the application for eligibility should be upheld by this Court.

4. Mr. Bajoria learned counsel appearing for the writ petitioner respondent has contended that clause (1) of Rule 3(66) lays down the conditions for entitling a dealer to get exemption. There is no dispute in the instant case that the dealer has not fulfilled all such conditions. The Commercial Tax Officer held that the production had not started within the prescribed period, but such finding was not accepted by the appellate authority and it has been held that the production commenced within the prescribed period. It is, therefore, evident that the dealer has fulfilled all the conditions which entitle a dealer to get exemption certificate under Rule 3(66). Mr. Bajoria has contended that although a dealer may fulfill all the conditions to get exemption to tax under the said Rule 3(66) such dealer is also enquired to make an

application in accordance with sub-rule (iv) of Rule 3(66). In the instant case, the dealer has made such an application within the time limit as provided in view of the amendment of sub-rule (iv) by adding the proviso. Mr. Bajoria has submitted that the interpretation of the "proviso" as sought to be given by Mr. Dutta cannot be accepted because the same would lead to an absurd position. The proviso on the face of it indicates that the general provision applicable to both the registered and unregistered dealer has been modified and so far as registered dealer is concerned, a further privilege has been given to the registered dealer to make application on or after 1st April, 1983 without specifying any outer limit for making such an application. It is quite evident that the concerned authorities intended that the registered dealer could make such an application at any time and the time limit mentioned in the parent sub-clause(iv) is extended by the proviso and one of the reasonable interpretations of the proviso is that the proviso may enlarge the scope and ambit of the provisions of the parent section, Rule or sub-Rule. Mr. Bajoria has contended that it is only reasonable that no time limit has been fixed for making such an application by a registered dealer. Once a dealer is registered as a bona fide dealer, the concerned authorities have very reasonably provided by amending sub-rule(iv) that such bona fide dealer who has been registered, may make an application even beyond 14th April, provided he otherwise fulfills all the conditions to get exemption certificate. Mr. Bajoria has also submitted that the very purpose of Rule 3(66) is to give exemption of tax to encourage setting up of small-scale industries. Such purpose will be frustrated to a great extent if the provisions are given a very strict or narrow interpretation and/or a narrow conception. In this connection, Mr. Bajoria has referred to two decisions of the Supreme Court reported in [Commissioner of Income Tax Vs. South Arcot District Co-operative Marketing Society Ltd.,](#) and [Broach Distt. Co-operative Cotton Sales Ginning and Pressing Society Limited Vs. Commissioner of Income Tax, Ahmedabad,](#) . In the first; case, exemption of income tax u/s 13(3)(iv) before amendment was taken in to consideration by the Supreme Court and in the second case the exemption of income tax u/s 81(i)(c) of the income tax Act was considered. The Supreme Court has specifically held in both the decisions that when the said, provisions were made with a view to encourage certain type of establishments, the provisions must-be liberally construed so that the real object for such encouragement is not frustrated. Mr. Bajoria has submitted that in the instant case there is no difficulty in interpreting the import of the proviso to Sub-rule (iv) of Rule 3(66) and the same clearly reveals that by such proviso, in the case of a registered dealer, no time limit was fixed for making an application for eligibility certificate. But even if it is assumed that the said proviso is capable of two interpretations, the liberal interpretation which will not defeat the purpose for getting tax exemption by obtaining an eligibility certificate should be adhered to. Mr. Bajoria has contended that it is immaterial whether the dealer got registered on 25th May, 1983. The dealer had fulfilled all the conditions by setting up an industry and starting production in the manner indicated in various clauses of Rule 3(66). If a registered dealer has been allowed to make an

application on any day even after 14th April, 1983, and if the registered dealer after being registered makes such an application, his application can: be rejected on the ground of limitation and the date when he was registered is not at all germane. The question is to be decided with reference to the date on which such application is made, but not with reference to the date when the dealer became registered. Referring to the contentions of Mr. Dutta that in view of introduction of Rule 3(66a), the dealer is not entitled to eligibility certificate because he is manufacturing coconut oil, Mr. Bajoria has contended that Rule 3(66a) has not taken away the right to get eligibility certificate under Rule 3(66). On the contrary, Rule 3(66) and Rule 3(66a) both are operative in full force and if amendment of various sub-clauses of Rule 3(66) are referred to, it will be quite evident that on 1st April, 1983 when for the first time the Rule 3(66a) is incorporated, such amendment to various sub-clauses of Rule 3(66) including sub-clause(iv) of Rule 3(66) was simultaneously effected. He has also drawn the attention of the court to the explanation to sub-clause (vii) of Rule 3(66a). The said explanation indicates that if exemption under Rule 3(66) has been availed of, eligibility certificate will be made available under Rule 3(66a), even if the dealer fulfills all the conditions under Rule 3(66a).

5. Mr. Bajoria has, therefore, submitted that the learned trial Judge has rightly considered the scope of Rule 3(66) and has correctly held that the writ petitioner being a registered dealer made the application in accordance with sub-rule(iv), as amended, and there was no occasion to reject the said application on the ground that such application was made beyond the prescribed period. It has been held by the appellate authority that in all other respects the dealer had fulfilled the conditions for getting eligibility certificate under Rule 3(66). Therefore, the application for such eligibility certificate could not have been rejected on an erroneous finding that such application was made beyond the prescribed period. Mr. Bajoria has submitted that in the aforesaid facts, this appeal must fail and the order passed by the learned trial Judge should be upheld.

6. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that to get an eligibility certificate, a dealer must fulfill all the conditions laid down in Rule 3(66) of the Bengal Sales Tax Rules. The industry set up by such dealer will not only conform to the various norms laid down in the Said Rule but the dealer must also be registered with the Small-sale Industries before 14th March, 1983 and he should also make an application within the prescribed time as mentioned in sub-rule(iv) of Rule 3(66). Unless such an application is made within the prescribed time, a dealer, though otherwise entitled to get an eligibility certificate will be deprived of getting such certificate because his application for an eligibility certificate will not be taken into consideration. In our view, Mr. Dutta is justified in his contention that for getting the privilege of tax exemption the provision for such exemption must be strictly complied with. It, however appears to us that by the proviso added to sub-rule (iv) of Rule 3(66) on 1st April, 1983, the registered dealer was allowed to make application even after 14th

April, 1983. In our view, the interpretation sought to be given by Mr. Dutta cannot be accepted because the same will lead to an absurdity and the principle of interpretation of statute also does not warrant such interpretation. It will be very difficult to hold that although in the proviso, the unregistered dealer has not been mentioned, by necessary implication an unregistered dealer will have to make an application by 31st March, 1983 only because in the proviso a registered dealer has been allowed to make an application on or after 1st April, 1983. If the interpretation of the import of proviso added to sub-clause (iv) of Rule 3(66) as sought to be given by Mr. Dutta is accepted, it will mean that an unregistered dealer though entitled to make an application for eligibility certificate upto 14th April, 1983 and as such has not made such an application upto 31st March, 1983 will suddenly find that he can no longer make an application for eligibility certificate and his right to make such an application upto 14th April, has suddenly been taken away without any notice whatsoever to his great prejudice because by the proviso added on 1/1/1983 only registered dealer can make application on or after April 1, 1983 and by necessary make such application on or after 1/4/1983. It appears to us that the general provision in the parent sub-clause (iv) which was available to both the registered and unregistered dealer in the matter of making application for eligibility certificate has been modified by the proviso added on 1/4/1983 and the proviso has only indicated that in case of the registered dealer such an application is not limited upto 14th April as in the case of unregistered dealer, but a registered dealer can make such an application even after 14th April, 1983. It cannot be reasonably held that without any notice the right of an unregistered dealer to make application upto 14th April was suddenly taken away for no fault on his part. Such interpretation of the import of the proviso is wholly irrational and unconstitutional being discriminatory without any rational nexus with the object and plain reading of the proviso also does not warrant such an interpretation. In our view, the right of an unregistered dealer to make application upto 14th April, 1983 has not been affected but the proviso, on the other hand, has extended the time limit of making such application by a registered dealer and interpretation sought to be given by Mr. Dutta that the proviso has only reduced the time limit of an unregistered dealer but has not given any benefit to the registered dealer and the limit for a registered dealer remains unaffected appears to be wholly irrational and cannot be accepted. In our view, for a registered dealer by the proviso the time limit has been extended and such registered dealer can make an application even on a later date. It appears to us that because of the proviso added to sub-rule (iv), a registered dealer can make such application even beyond 14th April, 1983 which is the outer limit for an unregistered dealer. So far as the unregistered dealer are concerned, the production of the dealer must commence by 14th March, 1983 and under sub-clause (iv) an unregistered dealer is required to make an application by 14th April, 1983. Such unregistered dealer, therefore, gets one month's time even if the production commences on the last date fixed for such production. But there may be difficulty for the dealer who has applied to get registered, to make such application in the capacity of a

registered dealer unless he is registered. It appears that the benefit of extended time to make an application for eligibility certificate is confined to only registered dealer. Only such bonafide dealer who intends to get himself registered or has applied to be registered dealer can wait beyond April 14, 1983 at the risk that if he does not get himself registered, his chance to make application for eligibility certificate upto 14/4/1983 as an unregistered dealer will be lost. In the instant case, the dealer was registered on 6th June, 1983, but such registration has been given effect to from 25th May, 1983. Hence a bonafide dealer awaiting for registration and ultimately succeeding in getting registered, is entitled to make the application after 14th April, 1983 as a registered dealer.

7. We are also unable to accept the contention of Mr. Dutta that because of the incorporation of Rule 3(66a) the dealer was not entitled to claim exemption although he had fulfilled all the conditions for getting such exemption under Rule 3(66). It does not stand to reason that a registered dealer making an application by 14th April, gets the exemption under Rule 3(66) although he is manufacturing coconut oil, but another registered dealer fulfilling all the conditions of Rule 3(66) will not get such exemption only because he has not made an application after 14th April, 1983. Rule 3(66a) has become operative. As a matter of fact, Rule 3(66a) became operative from 1st April, 1983. Hence, the argument of Mr. Dutta that a registered dealer could get an exemption under Rule 3(66) if such an application had been made by him by 14th April, 1983 appears to be wholly irrational because any application made for exemption under Rule 3(66) on or after 1st April, 1983 will be hit by the provisions of Rule 3(66a) coming in to operation from 1st April, 1983. In our view, Mr. Bajoria is justified in his contention that the incorporation of Rule 3(66a) does not take away the operation of Rule 3(66). It may be noted here that for the purpose of getting exemption under Rule 3(66) the industry must be registered as small scale industry by 14th March, 1983. But for Rule 3(66a) such industry may be registered even thereafter because Rule 3(66a) itself has been incorporated only on 1st April, 1983. It also appears to us that the purpose of Rule 3(66) is to encourage setting up of industries fulfilling certain conditions mentioned in Rule 3(66). Such purpose will be frustrated to a great extent if a very strict and narrow interpretation is given to that provision. The Supreme Court has indicated in the decisions referred to hereinbefore that where provisions of tax were incorporated for the purpose of giving encouragement to certain types of industry, such provisions should get a liberal construction. In our view, the learned Judge has rightly decided that since no outer limit was fixed for making an application by a registered dealer who has otherwise fulfilled all the conditions for making an application under Rule 3(66), an application made by such registered dealer after 14th April, 1983 cannot be rejected on the ground that such an application has not been made within the prescribed time. The dealer in the instant case has fulfilled all the conditions to get eligibility certificate under Rule 3(66) because it has not been found by the concerned authorities that he is not eligible otherwise to get such eligibility certificate but his

application has been rejected only on the score of limitation. In the aforesaid circumstances, no interference is called for in the instant appeal. The appeal, therefore, fails and is dismissed. But in the facts of the case, we make no order as to costs.

8. After the judgment was delivered, the learned counsel for the appellant has prayed for leave to make an application before the Hon"ble Supreme Court. In the facts of the case, we do not find that such leave should be granted as we do not think that any important question of law which requires an authoritative pronouncement by the Hon"ble Supreme Court is involved. The prayer is, therefore, refused. A prayer for stay of the operation of the judgment has been made. Such prayer has been opposed by the learned counsel for the respondent. We however, grant a stay of operation of this judgment for a period of four weeks from today on condition that the appellants and/or their officers will not raise any demand from the writ petitioner respondent on the footing that no eligibility certificate has been issued.

Let the certified copy of this judgment be given expeditiously, if application for such copy is made.

Sachi Kanta Hazari, J.

I agree.