COMMISSIONER OF SALES TAX,
JAMMU AND KASHMIR ETC. ETC.

v.

M/S PINE CHEMICALS LTD. AND ORS. ETC. ETC.

OCTOBER 24, 1994

[M.N. VENKATACHALIAH, CJ, S. MOHAN AND B.P. JEEVAN REDDY, JJ.]

Central Sales Tax Act—Sub-section (2A) of Section 8—J&K General Sales Tax Act—Government Order No. 159-Ind. dated March 26, 1971—Interpretation of Section 8 (2A) —Claim of benefit of sub-sec. (2A) of Section 8—Dealers assessees already granted exemption under Government Order No. 159—Whether benefit of sub-section (2A) is available even where goods are exempted with reference to industrial unit and for a specified period as granted under Government Order No. 159—Held, No—Whether an exemption of the nature granted under Government Order No. 159 is an exemption from the tax 'generally' within the meaning of Section 8 (2A) —Held, No.

These petitions were filed seeking the review of this Court's judgment and Order dated January 16, 1992 in *Pine Chemicals Ltd. and Ors. Etc. Etc.* **v.** *Assessing Authority and Ors. Etc. Etc.*,**[1992] 2 SCC 683. By this judgment, this court allowed the appeals preferred by the dealers setting aside the judgment of the High Court, while holding that the dealers - assessees were entitled to claim the benefit of the provision contained in sub-section (2A) of Section 8 of the Central Sales Tax Act in view of the exemption granted to them under Government Order No. 159-Ind. dated March 26, 1971 passed under the Jammu and Kashmir General Sales Tax Act.**

For attracting the exemption provided by the Government Order, it had to be established that the goods, the sale or purchase of which was claimed to be exempt from tax, were manufactured by a large or medium scale Industry and that the said goods were manufactured and sold within five years from the date the said industrial unit had gone into production.

The question for consideration is whether the Bench which decided *Pine Chemicals* **was right in holding that the benefit of the said sub-section was available even where the goods were exempted with**

A reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question was whether an exemption of the nature granted under Government Order No. 159 was an exemption available "only in specified circumstances or under specified conditions" within the meaning of the explanation to Section 8 (2A), as contended by the State
B or was it a case where the goods were exempted from the tax "generally" within the meaning of Section 8 (2A), as contended by the dealers.

Allowing the review petition, this Court

C HELD : 1.1. The idea behind sub-section (2A) of Section 8 of the Central Sales Tax Act, is to exempt the sale/purchase of goods from the Central Sales Tax where the sale or purchase of such goods is exempt generally under the State Sales Tax Law. Sub-section (2A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified
D conditions. *The exemption under the Government Order No. 159 dated March 26, 1971, is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period.* For the purposes of the Government Order, the nature, class or category of goods is irrelevant; it may be any goods. It is concerned only with the industrial unit
E producing them and the period within which they are manufactured and sold. In such a case it is not an instance where the sale is of goods, *the sale* or purchase of which is under *Sales Tax Law of the appropriate State, exempt from tax generally.* Exemption provided by Government Order No. 159 is not with reference to goods but with reference to the industrial unit. The exemption granted under the Government Order
F does not satisfy the requirements of Section 8 (2A). (129-B-F, 130-A)

Indian Aluminium Cables Ltd. v. *State of Haryana,* [1976] 4 SCC 27 and *International Cotton Corporation (P) Ltd. Etc. Etc.* v. *Commercial Tax Officers and Ors.,* [1975] 3 SCC 585, relied on.

G 1.2. The Bench in the judgment under review agreed that the existence or otherwise of the three limitations under the explanation referred to on claiming exemption under Section 8 (2-A) of the Central Sales Tax Act will therefore, have to be tested with reference to the transaction of sale or purchase as the case may be, "but then qualified
H the words sale or purchase, as the case may be", by adding "of the

dealer who claims the exemption in respect of his intrastate sale or purchase of the same goods". It was further added: 'thus the specified circumstances and the specified conditions referred to in the explanation should *with reference to the local turnover of the same dealer* who claims exemption under Section 8 (2A) of the Central Sales Tax Act." It is not possible to agree Sub-section (2A) speaks of sale or purchase of goods being exempt generally under the State Sales Tax enactment; it does not speak of exemption qua the dealer, much less qua the unit manufacturing such goods. In the Judgment under review, it has been further observed that "the facts which the dealer has to prove to get the benefit of the Government Orders are intended only to identify the dealers and the goods in respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted from payment of tax within the meaning of those provisions. The specified circumstances and the specified conditions referred to in the explanation should relate to the transaction of sale of the commodity and not identification of the dealer or the commodity in respect of which the exemption is claimed." The above reasoning is at variance with the clear and simple language employed in Section 8 (2-A). The language of the sub-section does not bear or admit the construction placed upon it in the judgment under review. The judgment under review suffered from a manifest error of law, an error apparent on the face of the record, and, therefore, liable to be reviewed. In the interest of law, it is necessary that the said error is rectified. (131-E-H, 132-A-C)

CIVIL APPELLATE JURISDICTION : Review Petition (C) Nos. 1372-73 of 1993 etc.

(Under Article 137 of the Constitution of India.)

IN

Civil Appeal Nos. 2309-10 of 1989 etc. etc.

From the Judgment and Order dated 23.9.88 of the Jammu and Kashmir in W.P. No. 87 of 1981 and in C.M.P. No. 2519 of 1988.

M.L. Verma, G. Viswantha Iyer, Ashok H. Desai, Ashok Mathur, M.A. Firoz, Kishan Mahajan, P.H. Parekh, S. Fazl and Ms. Smitha for the Petitioner/Appellants.

A K.K. Venugopal, A.S. Nambiar, Raja Ram Aggrawal, B.V. Desai, Shobhan Thakore, Smt. Shanta Vasudevan, P.K. Manohar, B.V. Desai and E.C. Agrawala for the Respondents.

The Judgment of the Court was delivered by

B **B.P. JEEVAN REDDY, J.** These petitions are filed by the Commissioner of Sales Tax, Jammu and Kashmir and others seeking the review of this Court's judgment and order dated January 16, 1992 reported in [1992] 2 S.C.C. 683 (*Pine Chemicals Ltd. and Ors. etc. etc.* v. *Assessing Authority and Ors. etc. etc.*). The matter arose under the Jammu and Kashmir General Sales Tax Act and the Central Sales Tax Act. By the C aforesaid judgment, this Court allowed the appeals preferred by the dealers setting aside the judgment of the Jammu and Kashmir High Court.

The judgment under review dealt with and pronounced upon four submissions. It held:

D (1) Notwithstanding the fact that the Government Order No. 159-Ind. dated March 26, 1971 does not invoke or refer to Section 5 of the Jammu and Kashmir General Sales Tax Act, and notwithstanding the defect, if any, in the form, it is and must be understood as an order granting exemption under and with reference to Section 5 of the said Act.

E (2) That the said Government Order is effective by itself. It did not require any other or further order to make it effective and enforceable.

(3) SRO No. 448 dated October 22, 1982 did not have the effect of superseding the aforesaid exemption notification.

F (4) The dealers-assessees are entitled to claim the benefit of the provision contained in sub-section (2A) of Section 8 of the Central Sales Tax Act in view of the exemption granted to them under Government Order No. 159.

Though the learned counsel for the review petitioners sought to impugn G the correctness of all the four findings in the judgment, we did not allow him to do so and restricted him only to the fourth submission. This we did for the reasons to be recorded hereinafter. We shall, therefore, confine our discussion only to the said aspect.

Section 8 of the Central Sales Tax Act deals with the rate of tax. Sub-H section (2A), relevant for our purposes, reads thus:

"8. (2-A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or in sub-section (1) of this section, tax payable under this Act by a dealer on his turnover insofar as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four percent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation:— For the purpose of this sub-section a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods."

A reading of the sub-section yields the following features :

(a) The sub-section opens with a *non-obstante* clause which gives an over-riding effect to the rule contained therein over the provisions contained in sub-section (1A) of Section 6 and in sub-section (1) of Section 8 itself;

(b) where the turnover (or any part thereof) of a dealer relates to the sale of any goods, the sale or purchase of which is under the sales tax law of the appropriate State exempt from tax generally or is taxable at a rate lower than four percent;

(c) the Central sales tax shall equally be exempt or shall be charged at such lower rate, as the case may be;

(d) the explanation which defines the expression "generally" occurring in the sub-section clarifies that a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the State sales tax law if under such law (i) the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or (ii) the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turnover of the goods.

A We may at this stage set out the relevant portion of Government Order No. 159, which provides for exemption. It reads :

> "Sanction is accorded to the grant of the following incentives and facilities to Large and Medium Scale Industries in the State of Jammu and Kashmir :.....
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> B
>
> (2) Grant of exemption from the State Sales Tax both on raw materials and finished products for a period of five years from the date the unit goes into production."

By a subsequent Government Order dated August 25, 1971 the clause C (2) was substituted. The substituted clause (2) reads thus:

> "2. Grant of exemption from the sales tax both on raw materials and finished products.
>
> The State Sales Tax paid by Large and Medium Scale D Industries on the raw materials procured by them for the initial 5 years of the production would be refunded to such industries. Similarly such industries will be granted exemption from the payment of any State sales tax on their finished products for a period of five years from the date the unit goes into production."

E

For attracting the exemption provided by the government order, it has to be established that (i) the goods, the sale or purchase of which is claimed to be exempt from tax, are manufactured by a large or medium scale industry and (ii) that the said goods are manufactured and sold within five years from the date the said industrial unit has gone into production.

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The simple question before us is whether the Bench which decided *Pine Chemicals* is right in holding that the benefit of the said sub-section is available even where the goods are exempted with reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question is whether G an exemption of the nature granted under Government Order No. 159 dated March 26, 1971 is an exemption available "only in specified circumstances or under specified conditions" within the meaning of the explanation to Section 8 (2-A), as contended by the State or is it a case where the goods are exempt from the tax "generally" within the meaning of Section 8 (2-A), H as contended by the respondents-dealers? We are of the opinion that the

respondents-dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub-section. A

The idea behind sub-section (2-A) of Section 8 of the Central Sales Tax Act, which we have analysed hereinbefore, is to exempt the sale/purchase of goods from the Central Sales Tax where the sale or purchase of such goods is exempt generally under the State sales tax law. We must give due regard and attach due meaning to the expression "generally" which occurs in the sub-section and which expression has been defined in the explanation. If the said expression had not been there, it could probably have been possible to argue that inasmuch as the goods sold by a particular manufacturer-dealer are exempt from the State tax in his hands, they must equally be exempt under the Central Act. But sub-section (2A) requires specifically that such exemption must be a general exemption and not an exemption operative in specified circumstances or under specified conditions. Can it be said that the goods sold by the dealers in this case are exempt from tax generally under the State sales tax enactment? The answer can only be in the negative. Such goods are exempt from tax only when they are manufactured in a large or medium industrial unit within five years of its commencement of production and sold within the said period, i.e., in certain specified circumstances alone. The exemption is not a general one but a conditional one. *The exemption under the Government Order No. 159 is not with reference to goods or a class or category of goods but with reference to the industrial unit producing them and their manufacture and sale within a particular period.* For the purposes of the government order, the nature, class or category of goods is irrelevant; it may be any goods. It is concerned only with the industrial unit producing them and the period within which they are manufactured and sold. Can it be said in such a case that it is an instance where the sale is of goods, *the sale or purchase of which is under sales tax law of the appropriate State, exempt from tax generally*? Certainly not. Exemption provided by Government Order No. 159, to repeat, is not with reference to goods but with reference to the industrial unit. So long as it is (i) a large or medium scale industry and (ii) it manufactures and sells goods within the five years of its going into production, the sale of such goods is exempt irrespective of the nature or classification of goods. Similar goods may be manufactured by another unit but if it does not satisfy the above two requirements, the goods manufactured and sold by it would not be entitled to exemption from tax. Indeed, the goods manufactured by that very unit would not be eligible for exemption if they are manufactured after the expiry of five years from the date it goes into production and/or sells them beyond the said period. The period of exemption may also vary from unit to unit depending on the date B C D E F G H

A of commencement of production in each unit. For the above reasons, we are of the opinion that the exemption granted under the aforesaid government order does not satisfy the requirements of Section 8 (2-A).

We may point out that this was also the view taken by this court in two earlier cases. In *Indian Aluminium Cables Ltd.* v. *State of Haryana,* [1976] B 4 S.C.C. 27, the question was whether the poles and cables sold by the appellant therein to Delhi Electric Supply Undertaking were exempt from central sales tax by virtue of the fact that Section 5 (2) (a) (iv) of the Punjab Sales Tax Act exempted "sales to any undertaking supplying electrical energy to the public under a licence or sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it C in the generation or distribution of such energy" from the State tax. The claim of the appellant was negatived by Ray, C.J., speaking for himself and Beg and Jaswant Singh, JJ., holding that the exemption granted under Section 5 (2) (a) (iv) of the State Act was not a general exemption but an exemption operative only in specified circumstances and under specified conditions. It was pointed out that the specified circumstance in that case D was that the sale must be to an undertaking engaged in supplying electrical energy to the public under a licence and the specified condition was that the goods purchased by the undertaking must be used for generation or distribution of electrical energy. If any of these circumstances are not satisfied, it was pointed out, the sale of such goods was not exempt from tax. It was emphasised that "*general exemption means that the goods* E *should be totally exempt from tax before similar exemption from the levy of Central sales tax can become available. Where the exemption from taxation is conferred by conditions or in certain circumstances there is no exemption from tax generally*". (emphasis added). In our respectful opinion, the ratio of this decision clearly concluded the question arising in *Pine Chemicals* F against the assessees inasmuch as it was not a case where goods were "totally exempt from tax." It was a case where the exemption operated or was attracted only if it was established that such goods were manufactured in a large or medium industrial unit within five years of its going into production and were sold within that period. As pointed out hereinbefore, the exemption was not with reference to goods but with reference to the G unit manufacturing the goods.

In *International Cotton Corporation (P) Ltd. Etc. Etc.* v. *Commercial Tax Officer, Hubli and Ors.,* [1975] 3 S.C.C. 585, Bench of this court comprising four learned Judges observed that "the object of sub-section (2A) of Section 8 is to exempt transaction of sale of any goods if they are H wholly exempt from tax under the sales tax law of the appropriate State and

make the said sales chargeable at lower rates where under the Sales Tax Act of the State the sale transactions are chargeable to tax at a lower rate....", though it is true, the point raised and determined in that case was a different one. In our respectful opinion, the decision in *Indian Aluminium* which was a decision rendered by a Bench of three learned Judges was binding upon the Bench which decided the *Pine Chemicals*. (This Bench too comprised three learned Judges.) It is, however, interesting to notice that when the above two decisions were brought to the notice of the Bench, it referred to the ratio of the said decisions but neither followed it nor made any attempt to distinguish it but proceeded to make it a basis for their decision notwithstanding the fact that the said ratio ran exactly counter to the one adopted by the Bench. The two decisions did not certainly support the interpretation adopted in the judgment under review. On the contrary, they, and in particular the decision in *Indian Aluminium*, militated against the said interpretation. It is for this reason, coupled with the fact that the interpretation placed in the judgment under review on Section 8 (2-A) may affect a large number of cases all over the country, that we agreed to re-examine the issue, which we would not have agreed to ordinarily.

We may now refer to and examine the basis on which the judgment under review holds that the exemption granted by Jammu and Kashmir Government Order No. 159 is a general exemption within the meaning of Section 8 (2-A) of the Central Sales Tax Act. The Bench agreed that "the existence or otherwise of the three limitations under the explanation above referred to on claiming exemption under Section 8 (2-A) of the Central Sales Tax Act will therefore, have to be tested with reference to the transaction of sale or purchase as the case may be" but then qualified the words "sale or purchase, as the case may be", by adding "of the dealer who claims the exemption in respect of his intrastate sale or purchase of the same goods." It was further added: "thus the specified circumstances and the specified conditions referred to in the explanation should be *with reference to the local turnover of the same dealer* who claims exemption under Section 8 (2-A) of the Central Sales Tax Act". In our respectful opinion, however, sub-section (2-A) speaks of sale or purchase of goods being exempt generally under the State Sales Tax enactment; it does not speak of exemption qua the dealer, much less qua the unit manufacturing such goods. The exemption notification issued by the Jammu and Kashmir Government granted the exemption qua the industrial unit manufacturing the goods and the period within which they manufactured and sold and not qua the goods. In the judgment under review, it has been further observed that "the facts which the dealer has to prove to get the benefit of the government orders are intended only to identify the dealer and the goods in

A respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted from payment of tax within the meaning of those provisions. The specified circumstances and the specified conditions referred to in the explanation should relate to the transaction of sale of the commodity and not identification of the dealer or the commodity in respect of which the B exemption is claimed." With respect, we are unable to appreciate the above reasoning which is at variance with the clear and simple language employed in Section 8 (2-A). The language of the sub-section does not bear or admit the construction placed upon it in the judgment under review. We are therefore, of the opinion that the judgment under review suffers from a manifest error of law, an error apparent on the face of the record, and, C therefore, liable to be reviewed. We are also of the opinion that in the interest of law, it is necessary that the said error is rectified.

Sri Raja Ram Aggarwal, learned counsel for one of the respondents-assessees submitted that the object behind Section 8 (2-A) was to bring about uniformity in the matter of incidence and rate of tax between the D State sales tax enactment and Central sales tax enactment. He submitted that where a particular sale or purchase is exempt from tax under the State sales tax enactment, it should equally be exempt under the Central enactment. While the broad objective underlying Section 8 (2-A) is certainly the one pointed out by the learned counsel, it is not possible or permissible to ignore the clear and unambiguous language employed in Section 8 (2-A). E The sub-section does not say that wherever a particular sale or purchase of goods is exempt from tax under the State enactment, it would equally be exempt from tax under the Central enactment. It imposes a further and a very important requirement, viz., that the sale or purchase of goods, in respect of which exemption is claimed under the Central Act, should be F exempt from tax generally under the State enactment. Not stopping with that, the sub-section proceeds to explain and define what do the words "exempt from tax generally under the sales tax law of the appropriate State" mean? In this view of the matter, acceptance of the contention urged by Sri Aggarwal would be a case of over-simplification and violative of the express language employed in the sub-section.

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Sri K.K. Venugopal urged strongly that the error, if any, in the judgment under review is not an error apparent on the face of the record, that it is also a possible view and that, in any event, it cannot be said that the view taken in the judgment under review is a view which could not have been possibly taken. Learned counsel pointed out that a large number H of High Courts have taken the same view and hence, the error, if any, in the

judgment under review is not an error apparent on the face of the record. With respect, we cannot agree. To us, the language employed in the sub-section looks quite clear and unambiguous. It does not admit of any other interpretation than the one placed by us. More important, it was already construed by a Bench of co-ordinate jurisdiction in *Indian Aluminium* earlier. Another Bench of four learned Judges had also understood the purport of the said sub-section in the same manner - vide *International Cotton Corporation*. In the light of the said binding decisions, it was not open, with great respect, to the Bench deciding *Pine Chemicals* to place the interpretation it did on the sub-section.

We may reiterate that we have not allowed the learned counsel for the review petitioners to question the correctness of the first three points decided in the judgment under review. We are told that Section 8 (B) of the Jammu and Kashmir General Sales Tax Act permits refund of sales tax only in cases where the dealer has not collected the same and that the question whether the dealers herein did or did not collect the tax in respect of transactions concerned herein has been left open by this court though a finding against the dealer was recorded by the High Court. We are also told that proceedings for refund are now pending where the State has taken the defence based on Section 8 (B) of the State enactment. We need express no opinion in that behalf.

So far as Review Petition Nos. 1374-76 of 1993 in Civil Appeal Nos. 3148-50 of 1989 (pertaining to *M/s. K.C. Vanaspati*) are concerned, we are told that the said case did not involve the interpretation of Section 8 (2-A) of the Central Sales Tax Act. These review petitions, therefore, stand on a different footing altogether.

For the above reasons, Review Petitions (C) No. 1372-73 of 1993 in Civil Appeals No. 2309-10 of 1989, Review Petition (C) No. 1381 of 1993 in Civil Appeal No. 3151 of 1989, Review Petition No. (C) 1377 of 1993 in Civil Appeal No. 3151 of 1989 are allowed and the civil appeals preferred by the dealers dismissed to the extent indicated above. Review Petitions (C) No. 1374-76 of 1993 in Civil Appeals No. 3148-50 of 1989 are dismissed. No costs.

Review Petitions (C) No. 1753-55 of 1993 in Civil Appeals No. 5073-75 of 1985.

Civil Appeals No. 5073-75 of 1985 were disposed of by a Bench comprising one of us (B.P. Jeevan Reddy, J.) and N. Venkatachala, J. following the judgment in *Pine Chemicals*, at the same time pointing out

A the error in the reasoning relating to the meaning of Section 8 (2-A) of the Central Sales Tax Act adopted in *Pine Chemicals. Pine Chemicals* was decided by a Bench of three learned Judges and was thus binding upon a Bench of two-Judges. Inasmuch as the judgment in *Pine Chemicals* is now being set aside insofar as the interpretation of Section 8 (2-A) is concerned and because the only issue involved in Civil Appeals No. 5073-75 of 1985
B was the one relating to the meaning and applicability of the said sub-section, these review petitions are liable to be allowed for the very same reasons as are recorded in Review Petitions No. 1372-73 of 1993 and are accordingly allowed herewith. The judgment under review is set aside and Civil Appeals No. 5073-75 of 1985 preferred by the dealers-assessees are dismissed. No costs.

C

A.G. Review petitions allowed.