

Manufacturing of goods using advanced technology having same use/utility cannot be construed as 'diversification' for claiming exemption - SC

11 January 2023



Summary

The Supreme Court (SC) has held that replacement of old machinery with new machinery for improvement in quality/quantity of product, aided by new technology, falls in the category of 'modernisation', not 'diversification'. Therefore, the SC has upheld the decision of the High Court (HC) denying exemption under Section 4A of the Uttar Pradesh Trade Tax Act, 1948 (UP Trade Tax Act) to the appellant. The SC has observed that the product manufactured post diversification shall be different in nature from the goods manufactured before diversification. However, in the instant case, the product manufactured by the appellant before and after are being used for the same purpose i.e., sealing glass bottles. Therefore, the same cannot be said to be manufacturing of different goods. Accordingly, the SC has ruled that the exemption provisions shall be construed in the literal sense and the use of different techniques cannot be said to be a different commercial activity.

Facts of the case:

- M/s AMD Industries Limited (hereinafter referred to as Appellant) manufactures 'Spun Line Crown Cork' used for packing materials of the 'glass bottles'. The appellant has acquired a modern technology for manufacturing a new product namely 'Double Lip Dry Blend Crowns'.
- The appellant applied for a grant of eligibility certificate under the 'diversification' scheme. However, it was granted eligibility certificate under 'modernisation'. Effectively, the appellant has been denied exemption under Section 4A(5) of UP Trade Tax Act.
- The appellant preferred appeals before the Tribunal stating that the process of manufacture and machineries used for both the products and major raw materials are different. The appeals was dismissed by the Tribunal stating that nature of goods produced under modern technology is not different than that produced earlier. Further, the application before the HC was also dismissed on the similar ground.
- The appellant has submitted that the process of manufacturing both products is different. Hence, it is eligible to claim an exemption under 'diversification' as the ultimate use of the product is not relevant for the purpose of exemption.
- Additionally, the appellant has submitted that an exemption is to be interpreted in the literal sense. The criteria of the use of goods is nowhere provided in the provision or notification.

SC observations and ruling (Civil Appeal No. 108 of 2013 dated 09 January 2023):

- **Different or distinct goods in nature:** The goods manufactured on 'diversification' must be a 'different', 'distinct', and 'separate' good in nature. In the present case, both the initial product namely 'Spun Line Crown Cork', and the present product namely 'Double Lip Dry Blend Crowns' is used for the same purpose i.e., sealing glass bottles. Therefore, the same cannot be said to be manufacturing of goods different from being manufactured before such diversification.
- **Meaning of 'diversification':** The SC has gone through the relevant provisions of Section 4A and has inferred that in case of 'diversification,' the new manufactured goods shall be different from goods manufactured before such diversification. The effect of diversification shall not be a product manufactured by use of modern technology but shall be a change in quality and quantity of the products resulting in goods of different nature.
- **Provisions of exemption are clear and unambiguous:** The provisions of the Act unequivocally provide that the 'diversification' can be considered only in a case where "goods of different nature" are produced, and only then the exemption shall be available. In the present case, the use of new/modern technology cannot be said to a different commercial activity. When diversification is not leading to change in the ultimate use of the product it cannot be said to be manufacture of different products for claiming exemption.

- **Exemption notification to be construed literally:** As per the settled proposition of law, the Statute and more particularly, the exemption provisions are to be read as they are and to be construed literally and should be given a literal meaning. Giving the literal meaning to the exemption provision namely, Section 4A, it cannot be said that the appellant is entitled to the exemption as claimed.
- **No error in HC findings:** The HC has not committed any error in refusing to grant exemption to the appellant. Therefore, the SC has agreed with the findings of HC and held that the appellant is not eligible for the exemption.

Our comments

This is a significant ruling wherein the SC has distinguished between the terms modernisation vis-à-vis diversification. Further, the ruling is in line with the well-settled principles that exemption notifications are to be given a literal interpretation.

Though the Trade Tax Acts are no longer valid, it is pertinent to note that the above analogy can be squarely applicable while claiming benefits/exemptions under the various State specific industrial policies.



For more information or for any queries, write to us at GTBharat@in.gt.com



Follow us [@GrantThorntonIN](https://twitter.com/GrantThorntonIN)

© 2023 Grant Thornton Bharat LLP. All rights reserved.

"Grant Thornton Bharat" means Grant Thornton Advisory Private Limited, the sole member firm of Grant Thornton International Limited (UK) in India, and those legal entities which are its related parties as defined by the Companies Act, 2013, including Grant Thornton Bharat LLP.

Grant Thornton Bharat LLP, formerly Grant Thornton India LLP, is registered with limited liability with identity number AAA-7677 and has its registered office at L-41 Connaught Circus, New Delhi, 110001.

References to Grant Thornton are to Grant Thornton International Ltd. (Grant Thornton International) or its member firms. Grant Thornton International and the member firms are not a worldwide partnership. Services are delivered independently by the member firms.



Scan the QR code to view our office addresses