

Replacement of old machinery with new machinery for improvement in quality/quantity results in 'Modernisation' and not diversification

The Hon'ble Supreme Court in ***AMD Industries Limited v. Commissioner of Trade Tax, Lucknow and Anr. [Civil Appeal No. 108 of 2023 dated January 9, 2023]*** upheld the order passed by the Hon'ble Allahabad High Court holding that due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, it results in expansion and/or modernization, but not in diversification, thus, the assessee will not be entitled to exemption on the payment of trade tax under the Uttar Pradesh Trade Tax Act, 1948 ("**the Trade Tax Act**").

Facts:

AMD Industries Limited ("**the Appellant**") is a manufacturer of "Spun Line Crown Cork" which is used as one of the packing materials of the glass bottles. The Appellant submitted an application for granting eligibility certificate under Section 4-A of the Trade Tax Act before the Divisional Level Committee for manufacturing of "Double Lip Dry Blend Crown" under the program of diversification, for the exemption on the payment of trade tax.

The Appellant was granted the eligibility certificate with the 'Modernisation' scheme instead of the 'Diversification' scheme and thus, was not entitled for the exemption, which was only given to a new product under the Diversification scheme.

Subsequently, the Appellant filed an appeal contending that the process of manufacture and the machineries used for both the products (existing and the new) are different and also the raw materials and the ultimate use of both the products are different. The Appeal followed by the second appeal was dismissed on the grounds that the nature of goods being produced under the modern technology is not different than the goods produced by the unit earlier, as

both the produced goods are used in packing / sealing the bottles. Therefore, the goods produced by the Appellant are not different.

Being aggrieved this appeal has been filed.

Issue:

Whether the goods manufactured by use of modern technologies can be termed as “diversification”, where manufacturing of the goods is of different nature from the goods manufactured earlier and entitle the Appellant to claim the exemption from the payment of trade tax?

Held:

The Hon’ble Supreme Court in ***Civil Appeal No. 108 of 2023*** held as under:

- Noted that, in the case of “expansion or modernization”, the exemption shall be available, if there is an additional production as a result of such modernization or expansion and the exemption provision is required to be construed literally and the person claiming the exemption must satisfy all the conditions of exemption provision.
- Further noted that, the Appellant is manufacturing new product with modern technologies but both the products are used for the same purpose.
- Stated that, due to advancement in technology, if there is a replacement of the old machinery with the new machinery for improvement in quality and quantity of a product, at the most, it can be said to be expansion and/or modernization, but it cannot be said to be “diversification”. Further, giving the literal meaning to the exemption does not entitle the Appellant to the exemption as claimed.
- Held that, the goods manufactured on “diversification” must be a “different”, “distinct” and a “separate” good in nature and the goods manufactured on use of advance and/or modern technology, cannot be said to be a different commercial activity at all.

- Further upheld the order passed by the Hon'ble Allahabad High Court stated that the Court has not committed any error in refusing to grant exemption to the Appellant.

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