



REPORTABLE

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Sales Tax Revision / Reference No. 18/2019

CNR: RJHC010254232019 | URN: STR / 92U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

-----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro
Food Park, Phase - Ii, Riico, Sri Ganganagar.

-----Respondent

Connected With

D.B. Sales Tax Revision / Reference No. 20/2019

CNR: RJHC010254212019 | URN: STR / 94U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

-----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro
Food Park, Phase-II, Riico, Sri Ganganagar.

-----Respondent

D.B. Sales Tax Revision / Reference No. 21/2019

CNR: RJHC010254192019 | URN: STR / 95U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

-----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro
Food Park, Phase - II, Riico, Sri Ganganagar.

-----Respondent

D.B. Sales Tax Revision / Reference No. 23/2019

CNR: RJHC010254252019 | URN: STR / 97U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

-----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro



Food Park, Phase - Ii, Riico, Sri Ganganagar.

----Respondent

D.B. Sales Tax Revision / Reference No. 24/2019

CNR: RJHC010254272019 | URN: STR / 98U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro
Food Park, Phase-II, Riico, Sri Ganganagar.

----Respondent

D.B. Sales Tax Revision / Reference No. 25/2019

CNR: RJHC010254172019 | URN: STR / 99U / 2019

Assistant Commissioner (Anti Evasion) Commercial Taxes
Department, Sri Ganganagar, Sri Ganganagar

----Petitioner

Versus

M/s Khandeliya Udhyog Pvt. Ltd., Sriganganagar, C-375, Agro
Food Park, Phase-II, Riico, Sri Ganganagar

----Respondent

For Petitioner(s)	:	Mr. Mahaveer Bishnoi, AAG with Mr. Harvardhan Singh Chundawat & Mr. Daksh Sharma
For Respondent(s)	:	Mr. Sanjeev Johari, Sr Adv Mr. Shubhankar Johari, Mr. Gaurav Vatwani, Mr. Shekhar Nehra

Division Bench

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE BALJINDER SINGH SANDHU

Judgment

07/10/2026

Sanjay K. Agrawal, C.J.

1. The Revenue has preferred these six Sales Tax Revisions
invoking Section 84 of the Rajasthan Value Added Tax Act,





2003 (*hereinafter referred to as 'Act of 2003'*) calling in question the legality, validity and correctness of a common judgment dated 09.08.2018 passed by the Rajasthan Tax Board, Ajmer, by which the appeals preferred by M/s Khandeliya Udhyog Pvt. Ltd (for short, 'assessee') have been allowed, whereas the appeals preferred by the Revenue have been dismissed.

2. The instant revisions preferred by the Revenue were admitted by this Court vide order dated 11.01.2021, on the following common question of law:

"In the circumstances of the case, whether it can be said that the factory/industry set up by the respondent – assessee at Alwar, would be a different enterprise so as not to club the investment made in the plant & machinery for the purpose of its status as Micro and Small Enterprise?"

3. In order to answer the aforesaid substantial question of law, the following essential facts are required to be noticed.
4. The Government of Rajasthan, Commercial Taxes Department issued a notification dated 14.02.2008 under Section 8(5) of the Central Sales Tax Act, 1956 (*hereinafter referred to 'Act of 1956'*) fixing the concessional rate of tax at the rate 0.25% to the 'registered dealer' on the inter-State sales. The State Government directed that the 'registered dealer', who is defined in micro and small enterprises in respect of the sales of goods manufactured by him from his place of business in the State; in the course of inter-State trade or commerce, tax payable under the Act of 1956 shall be calculated at the concessional rate of 0.25%. However, vide amendment notification dated 21.02.2008 issued by the State



Government, the expression "*registered dealer*" stood substituted by the expression "*registered dealer who commences purchase of plant and machinery on or after 14.02.2008 for setting up of enterprise*". The concessional rate of 0.25% was enhanced to 1% on 14.07.2014.

5. The assessee herein established an industrial unit, namely, M/s. Khandeliya Udhyog Pvt. Ltd. at Sri Ganganagar in February, 2009 and the same was registered under the Micro, Small and Medium Enterprises Development Act, 2006 (*hereinafter referred to as 'MSMED Act of 2006'*) as small enterprise as defined under Section 7(1)(a)(ii) of the said Act, as its investment in plant and machinery (computed under this Act) was below Rs.5 crores.
6. Merely after three years, the assessee established another industrial unit, namely, M/s. Khandeliya Udhyog Pvt. Ltd, at Alwar in the year 2012 and the same was also registered as small enterprises under Section 7(1)(a)(ii) of the MSMED Act of 2006 as the said investment in plant and machinery was also below Rs.5 crores. The case of the assessee is that the geographical distance between the two enterprises at Sri Ganganagar and Alwar is more than 500 kms.
7. The assessing authority, vide assessment order dated 26.06.2015 for the assessment years 2012-2013, 2013-2014 and 2014-2015, concluded that the total investment in plant and machinery of Sri Ganganagar and Alwar units, which were established at different times, exceeds Rs.5 crores. Therefore, the assessee is not entitled for concessional rate of tax under notification dated 14.02.2008. Consequently, tax



difference, interests and penalties were imposed for all three assessment years vide order dated 26.06.2015.

8. The assessee, feeling aggrieved and dissatisfied by the assessment order dated 26.06.2015, preferred appeals before the Appellate Authority, Commercial Taxes, Bikaner. The said first appellate authority, vide order dated 16.10.2015, though upheld the imposition of tax and interest, however, set aside the penalty imposed upon the assessee as indicated in the assessment order, leading to filing of the three appeals by the assessee before the Rajasthan Tax Board; the Revenue also preferred three appeals before the said Board against the part of the order passed by the first appellate authority, whereby the order imposing penalty has been set aside.
9. The Rajasthan Tax Board, Ajmer, vide the common order dated 09.08.2018 impugned herein, allowed the appeals preferred by the assessee, holding that both the enterprises owned by the assessee and located at two different places cannot be clubbed together, for the purpose of assessment of investment, in view of the explanation added, vide notification dated 08.03.2017, to the notification dated 14.02.2008. However, vide the said common order 09.08.2018 itself, the appeals preferred by the Revenue were dismissed. Thus being aggrieved leading to filing of the six revision petitions by the Revenue under Section 84 of the Act of 2003 before this Court. Details of revision petitions alongwith the assessment years, to which they relate, are as under:-



Instant Revision Petition No(s).	Assessment Year(s)
18/2019	2012-13
20/2019	2012-13
23/2019	2013-14
24/2019	2013-14
21/2019	2014-15
25/2019	2014-15



9.1. These revision petitions have already been admitted as stated hereinabove, while formulating the common question of law as catalogued in the opening paragraph of this judgment.

10. Mr. Mahaveer Bishnoi, learned Additional Advocate General appearing on behalf of the Revenue, vehemently submits that the Rajasthan Tax Board was absolutely unjustified in allowing the appeals preferred by the assessee and dismissing the appeals preferred by the Revenue, by recording a finding perverse to the material available on record before it.

10.1. He would further submit that the notification dated 14.02.2008 as amended vide notification dated 08.03.2017, would not be applicable in the case of the assessee herein, as it relates to assessment years 2012-2013 and 2014-2015, and as such, the clubbing of the investment made in both the enterprises, owned by the assessee, is justified and could not have been set aside by the Rajasthan Tax Board. Thus, the impugned common order dated 09.08.2018 passed by the said Board is absolutely illegal and contrary to the facts available on record and the law applicable to the case. To buttress his submission, learned Additional Advocate General



relied upon the judgment rendered by the Orissa High Court in the case of **M/s. JSW Steel Ltd. vs. Micro and Small Enterprises Facilitation Council, Cuttack & Ors.**¹.

11. *Per contra*, Mr. Sanjeev Johari, learned Senior Counsel appearing on behalf of the assessee would support the impugned order, and submits that the Rajasthan Tax Board is absolutely justified in dismissing the appeals preferred by the Revenue, while allowing the appeals preferred by the assessee.

11.1. He would further submit that for the purpose of granting exemption under notification dated 14.02.2008, to the industrial unit, as per the scheme of the MSMED Act, clubbing of investment in plant and machinery is not permissible, and thus, clubbing of the said investment of plant and machinery at Sri Ganganager installed in the year 2009 and at Alwar Unit in 2012, could not have been done in the instant case of the assessee herein, which has been rightly set aside by the Rajasthan Tax Board vide the impugned common order dated 09.08.2018. He also submits that under the provisions of the MSMED Act of 2006, clubbing of the investments is not permissible and the Department of Industries, State of Rajasthan, has rightly issued a clarification dated 31.01.2014 to the effect that "*MSMED Act 2006 does not provide for clubbing of investments of different enterprises set up by the same person/company for the purpose of classification as micro, small & medium enterprises*". Furthermore, the notification dated 14.02.2008 has been clarified, in the form

1 2023 (III) ILR-CUT-643





of a clarificatory explanation, inserted vide notification dated 08.03.2017, and such explanation, clarificatory in nature, unambiguously states that clubbing of the investment made in plant and machinery in different enterprises set up under the same ownership, is not permissible.

11.2. Lastly, he would submit that the plant and machinery in two industrial units in question, under the ownership of the assessee herein, located at two different places (Sri Ganganagar and Alwar) and having geographical distance of more than 500 kms, were installed in different years, and if the clubbing in question is permitted, the very purpose, object and intent of the MSMED Act of 2006 of promoting units in the State of Rajasthan, would be defeated altogether, as in such a case, none of the owners/promoters would like to install more industrial units in the State. Therefore, the clubbing of investment as sought to be done in the present case was totally impermissible, and has rightly been rectified by the Rajasthan Tax Board by passing the impugned order. As such, all the revision petitions herein preferred by the Revenue deserves to be dismissed. In support of such submission, learned Senior Counsel relied upon decision of the Supreme Court in the case of **L.R. Brothers Indo Flora Limited vs. Commissioner of Central Excise**².

12. We have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

2 (2021) 19 SCC 576





13. In order to answer the substantial question of law so formulated, it would be appropriate to notice the first notification dated 14.02.2008 issued under Section 8(5) of the CST Act, 1956. The notification dated 14.02.2008 is reproduced as under:

"GOVERNMENT OF RAJASTHAN
FINANCE DEPARTMENT
(TAX DIVISION)

Notification

Jaipur, dated: 14.02.2008

In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act No.74 of 1956), the State Government being of the opinion that it expedient in the public interest so to do, hereby directs that tax payable under the said Act by a registered dealer during the period he enjoys status of Micro and Small enterprise (but not being a medium enterprise) as defined in the Micro, Small and Medium Enterprises Development Act, 2006 (Act No.27 of 2006), in respect of the sale of goods manufactured by him from his place of business in the State, in the course of inter-state trade or commerce shall be calculated at the rate of 0.25%.

[No.F.12(99)FD/Tax/07-66]

By Order of the Governor,
sd/-

(Rajat Kumar Mishra)

Secretary to the Government"

13.1. Thereafter, during the currency of the notification dated 14.02.2008, a clarification was issued by the Commissioner of Industries, Government of Rajasthan on 08.08.2011 (with reference to clarification on clubbing of investments) stating that the MSMED Act which does not provide for the clubbing of the investment of different enterprises set up by the same person or company for the purpose of classification as micro, small and medium enterprises.

13.2. Thereafter, the Commissioner of Industries, Government of Rajasthan issued a clarification notification dated 31.01.2014, by which it was clarified that the MSMED Act, 2016 does not





provide for clubbing of investment of different enterprises set up by the same person/company for the purpose of classification as micro, small & Medium. The clarification notification dated 31.01.2014 reads as under:

"राजस्थान सरकार
कार्यालय आयुक्त उद्योग
उद्योग भवन, तिलक मार्ग, जयपुर-302 005

क्रमांक- एफ 15(1)आयु.उ/ईएम.अनु./ईएम-मार्गदर्शन/2013
मैसर्स खाण्डेलिया उद्योग प्रा.लि.,
सी/375, एग्रो फूड पार्क,
उद्योग विहार (रीको),
श्रीगंगानगर।

दिनांक: 31.01.2014

विषय: Clarification regarding treating the unit established in Alwar as a separate unit under MSME Act, as per direction of Government of India vide Letter Dated 8.8.2011.

महोदय,

उपर्युक्त विषयान्तर्गत सूचित किया जाता है कि विकास आयुक्त का कार्यालय, सूक्ष्म, लघु एवं मध्यम उद्यम मंत्रालय, भारत सरकार, नई दिल्ली के पत्र दिनांक 08.08.2011 के अनुसार निम्न प्रकार स्थिति स्पष्ट है:

MSMED Act, 2006 does not provide for clubbing of investments of different enterprises set up by the same person/company for the purpose of classification as micro, small and medium. तदनुसार सूचित होवे।

भवदीय

sd/-

(अविन्द्र लढढा)

संयुक्त निदेशक, उद्योग"

14. Subsequently, the Finance Department of the Government of Rajasthan finally issued the amendment notification dated 08.03.2017 inserting an explanation in the notification dated 14.02.2008. The said amendment notification dated 08.03.2017 is reproduced as under:

**"FINANCE DEPARTMENT
(TAX DIVISION)
NOTIFICATION
Jaipur, March 08, 2017**

In exercise of the powers conferred by sub-section 95) of section 8 of the Central Sales Tax Act, 1956 (Central Act No.74 of 1956), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendment in this department's notification number F.12(99)FD/Tax/07-66 dated 14.02.2008, as amended from time to time, namely:-



AMENDMENT

At the end of the said notification the following Explanation shall be added, namely:-

"Explanation: For ascertaining the status of Micro and Small Enterprise, under this notification, the investment made in Plant and Machinery in different enterprises set up under the same ownership shall not be clubbed."

15. A careful perusal of the aforesaid notification dated 08.03.2017, would show that it directs that for ascertaining the status of micro and small enterprise under the notification, the investment made in Plant and Machinery in different enterprises set up under the same ownership shall not be clubbed.
16. The Rajasthan Tax Board relying upon the notification dated 08.03.2017, clarifications dated 08.08.2011 & 30.01.2014, came to the conclusion that the investments made towards the plant and machinery in the two enterprises of the assessee deserve to be treated as separate; since neither enterprise has an investment of more than Rs.5 crores, all the assessment orders by which the assessing officer declined the benefit of the notification dated 14.02.2008 to the assessee were legally unsustainable.
17. At this juncture, it is apt to note that in "Principles of Statutory Interpretation, 15th Edition by Justice G.P. Singh, (at Page 166 under the head "3.10 Explanation"), it has been stated that an explanation is at times appended to explain the meaning of words contained in the Section. It becomes a part and parcel of the enactment, the meaning to be given to an explanation must depend upon its terms, and *"no theory of its purpose can be entertained unless it is to be inferred*



from the language used". An explanation does not ordinarily enlarge the scope of the Section appended to it, but if it does, effect must be given to legislative intent, even though legislature has named a provision as an explanation.

17.1. Similarly, in **Km. Sonia Bhatia vs. State of U.P. & Ors.**³, it has been held by their Lordships of the Supreme Court that the explanation merely widens the scope of the main section and is not meant to carve out a particular exception to the contents of the main provision.

18. Now, coming to the facts of the instant case, it is quite vivid that the notification dated 14.02.2008 granting exemption to micro and small enterprises on inter-State sales at a concessional rates of tax, which was clarified on 08.08.2021 by Industries Department of the State holding that the MSMED Act of 2006 does not provide for clubbing of the investment of different enterprises set up by same person or company for the purpose of classification as micro, small and medium enterprises; the same was further clarified by the Industries Department itself on 31.01.2014 stating that the clubbing of the investment of various small or ancillary industrial units have been withdrawn vide notification dated 27.02.2009; and finally by notification dated 08.03.2017, the amendment was incorporated in the notification dated 14.02.2008 itself clearly providing that for ascertaining the status of micro and small enterprises, under the notification, the investment made in plant and machinery in different

3 (1981) 2 SCC 585



enterprises set up under the same ownership shall not be clubbed.

18.1. It is well settled that the unless the mutual dependence amongst the two units are established, they cannot be clubbed together. In this regard, a decision rendered by the Rajasthan High Court in the case of **Renu Tandon vs. Union of India**⁴ may be noticed, wherein it has been held as under:

36.In the present case, the most important aspect about having common funding and financial flow-back is missing and therefore, to withdraw the assessment or club the clearances is wholly unjustified and illegal and without jurisdiction. Reference in this connection may be made to *International Dyestuff Mfg. Co. v. Collector of Central Excise, Baroda* [1991 (53) E.L.T. 85 (Tribunal) : (1991) 33 ECR 31]. The petitioner has asserted on oath that she had opened a separate bank account, she is herself operating the same and obtained limits and that the impugned notice is conspicuously silent and there is no allegation worth the name that they have any common funding or financial flow-back. Mere blood relationship or sharing of staff, some temporary common employment, similarity of product is also not sufficient to draw an inference that the two units should be clubbed together.....”

19. Similarly, the Supreme Court in the matter of **State of Harayana & Ors. vs. Bharti Teletech Ltd.**⁵, relying upon the decisions in the case of **Commissioner of Sales Tax vs. Industrial Coal Enterprises**⁶, **CIT vs. Straw Board Mfg. Co. Ltd.**⁷ and **Bajaj Tempo Ltd. vs. CIT**⁸ has held that an exemption notification should be construed liberally once it is found that the entrepreneur fulfills all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled

4 1993 (66) E.L.T. 375 (Raj.)

5 Civil Appeal No.6791 of 2004, decided on 20.01.2014

6 (1999) 2 SCC 607

7 (1989) Supp (2) SCC 523

8 (1992) 3 SCC 78



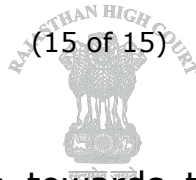
to the benefit thereof, the same should not be denied. The Supreme Court finally held that the exemption being an exception has to be respected. It was held in para 22 as under:

"22. From the aforesaid authorities, it is clear as crystal that a statutory rule or an exemption notification which confers benefit to the assessee on certain conditions should be liberally construed but the beneficiary should fall within the ambit of the rule or notification and further if there are conditions and violation thereof are provided, then the concept of liberal construction would not arise. Exemption being an exception has to be respected regard being had to its nature and purpose. There can be cases where liberal interpretation or understanding would be permissible, but in the present case, the rule position being clear, the same does not arise."

20. Reverting finally to the facts of the case, in light of the principle of law laid down hereinabove, we find that the Revenue has failed to establish that both the units of assessee situated at Sri Ganganagar and Alwar have common interest in the business of each other and they have common funding and financial flow-back, and merely because they are owned by the assessee company, as there is mutuality of business interest between the two units have not been established, that cannot be a ground for clubbing the investment of the assessee's two units and as such, the Rajasthan Tax Board has rightly held that the clubbing of the investment of the assessee's two units is illegal and that could not have been done in light of the notification dated 08.03.2017 as well as clarification dated 08.08.2011 and 31.01.2014.

21. This Court is in complete agreement with the conclusion drawn by the Rajasthan Tax Board in the impugned order that





the investments made towards the plant and machinery in the two enterprises of the assessee deserve to be treated as separate; since neither enterprise has an investment of more than Rs.5 crores, all the assessment orders herein depriving the assessee of the benefit of the notification dated 14.02.2008 to the assessee are legally unsustainable.

22. We do not find any illegality, perversity and jurisdictional error in the impugned order passed by the Rajasthan Tax Board, Ajmer, so as to warrant any interference by this Court in the instant revision petitions.
23. Consequently, the present revision petitions stand dismissed, leaving the parties to bear their own costs.

(BALJINDER SINGH SANDHU),J

(SANJAY K. AGRAWAL),CJ

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