(2000) 02 AHC CK 0171

In the Allahabad High Court

Case No : Civil Misc. Writ petition No. 5 of 1986

Anil Kumar Ramesh Chandra Glass Works and Another — APPELLANT

Vs

State of Uttar Pradesh and Another — RESPONDENT

Date of Decision : 04-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Trade Tax Act, 1948 — Section 4A, 4A(3)

Citation : (2000) 119 STC 305

Hon'ble Judges : S. Rafat Alam, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal and Piyush Agrawal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

S. Rafat Alam, J.—In the instant petition under Article 226 of the Constitution of India the petitioners have prayed for the following relief :

"(i) that a suitable writ, order or direction be issued quashing the notices dated December 10, 1985 issued by the Sales Tax Officer, Sector 3, Firozabad, respondent No. 2 for the assessment years 1982-83 (U.P. and Central), 1983-84 (U.P. and Central) and 1984-85 (U.P. and Central) for completing assessments as also for provisional assessment for the months April, 1985 to October, 1985 and thereby seeking to impose sales tax on the petitioner''s turnover treating the petitioner No. 1 as not a new unit, collectively attached as annexure-5 ;

1(a) that a suitable writ, order or direction be issued quashing assessment orders dated December 26, 1985 passed by the Sales Tax Officer, Sector 3, Firozabad, respondent No. 2 for the assessment years 1983-84 (U.P. and Central), 1984-85 (U.P.), and 1985-86 for the months of April to October, 1985 and filed collectively as annexure-9 to the writ petition :

(b) that a suitable writ, order or direction be issued quashing the demand of Rs.

3,39,100 being tax imposed by the Sales Tax Officer, respondent No. 2 on the petitioners turnover of glass bangles for the assessment year 1983-84 (U.P. and Central), 1983-85 for the months of April to October, 1985 ;

(ii) that a suitable writ, order or direction be issued in the nature of mandamus or prohibition prohibiting or restraining the Sales Tax Officer, Sector 3, Firozabad, respondent No. 2, from in any way imposing or realising any amount as sales tax on the turnover of glass bangles manufactured by the petitioner''s unit ;

(iii) that a suitable writ, order or direction be issued holding the petitioner''s unit entitled for the grant of exemption u/s 4-A of the U.P. Sales Tax Act ;

(iv) that any other and further writ, order or direction, which this Honourable Court deems fit and proper in the circumstances of the case, be also issued ;

(v) that costs of the petition be awarded to the petitioners as against the respondents."

2. The short controversy involved in this writ petition is that whether a dealer can be called upon by the Sales Tax Officer for assessment and to deposit sales tax in spite of having been exempted from realising the same in view of the eligibility certificate granted u/s 4-A of the U.P. Sales Tax Act, 1948 (for short "the Act") and whether the Sales Tax Officer has jurisdiction to sit in judgment over the grant of eligibility certificate by the Joint Director of Industries or the authorities empowered in this regard.

3. Heard Shri Bharatji Agrawal, learned Senior Counsel appearing for the petitioners and the learned Standing Counsel appearing on behalf of the respondents.

4. The State Government time to time announced various incentives by giving concession in the form of rebate or exemption of sales tax to a new entrepreneur in order to encourage rapid growth of the industries in the State. Section 4-A of the Act enables the State Government to grant exemption from sales tax with a view to increase production of any goods or to promote the development of any industries in the State generally or in any district or part of district particular for such period as notified, but not exceeding 7 years from the date as may be specified in the notification. In exercise of the aforesaid power G.O. No. 8244 dated September 30, 1982 was issued announcing exemption of sales tax to the new small-scale units which has commenced its production of goods on or after 1st of October, 1982. The object and purpose of granting such exemption was to increase industrial activity within the State by encouraging to set up new small-scale industrial units or its expansion, diversification or modernisation by the existing industrial unit.

5. Petitioner No. 1 is the registered partnership firm which was registered as a small-scale industry vide registration certificate dated September 15, 1983 for manufacturing of glass bangles. Petitioner No. 2 is one of its partner. It has been stated that the petitioners being induced by the announcement of the State

Government granting exemption vide G.O. No. 8244 dated September 30, 1982, set up the present small-scale unit for the manufacture of glass bangles at Firozabad in the district of Agra after huge investment. It has further been stated that the petitioners had taken a loan of about Rs. 3,00,000 (rupees three lacs) from the State Bank of India, New Branch, Firozabad, and thereafter, the present unit was set up at Negla Kalan Singh (Sati Ashram) bypass road, Firozabad. In the certificate of registration the date of commencement of its production was mentioned as 1st of November, 1982. It was also registered under the Factories Act, 1948 and the U.P. Sales Tax Act. It has also applied for the grant of recognition certificate u/s 4-B of the Act, which was issued with effect from January 3, 1983. It has been alleged that when the unit started its production, i.e., on November 1, 1982, an application for grant of eligibility certificate u/s 4-A of the Act was moved before the prescribed authority, i.e., the General Manager, District Industrial Centre, Agra, in the prescribed pro forma along with all the relevant and necessary information and papers. However, till the issuance of the eligibility certificate the petitioners continued to realise the sales tax and accordingly deposited the same on its turnover. When after necessary enquiry and verification of the papers, the petitioners'' unit was found to be eligible for grant of exemption u/s 4-A of the Act. The Joint Director of Industries vide letter dated October 23, 1984 issued the eligibility certificate, a copy whereof has been annexed as annexure-4 to the writ petition. The petitioners thereafter stopped realising and depositing the sales tax on its turnover and also stopped availing the benefit given u/s 4-B of the Act. However, in December, 1985, the petitioners were served with the impugned notices dated December 10, 1985 calling upon them to appear before the respondent No. 2 on December 23, 1985 for completing the assessment proceedings for the assessment years 1982-83 (U.P. and Central), 1983-84 (U.P. and Central) and 1984-85 (U.P. and Central) and also for provisional assessment for the months April, May, June, July, August, September and October, 1985 (U.P. and Central).

6. In compliance to the aforesaid notices, the petitioners appeared before the respondent No. 2 on December 23, 1985, and filed the reply stating therein that the petitioners'' unit having been found to be a new unit has been granted exemption u/s 4-A of the Act by the Joint Director of Industries, Agra, vide eligibility certificate dated October 2, 1984, and therefore, they have not realised sales tax on its turnover from the date of issuance of the eligibility certificate and as such, he cannot be asked now to deposit the sales tax in respect of turnover of its unit.

7. In the meanwhile, the petitioners also approached this Court On January 2, 1986, by filing the present writ petition challenging the impugned notices on the ground, inter alia, that they are without jurisdiction. The writ petition was admitted on January 3, 1986 and the further proceedings in pursuance of the impugned notice dated December 10, 1985 was stayed. It has been alleged by filing amendment in the writ petition that when the interim order of this Court dated 3rd of January, 1986 was communicated to the respondent No. 2 he did

not acknowledge the same and hurriedly passed the impugned order of assessment by ante-dating the same purported to have been passed on December 26, 1985 although the interim order of this Court was operating against him. In that view of the matter, amendment in the writ petition as well as in the prayer portion was moved and allowed by this Court, in pursuant thereto the necessary amendment has also been carried out.

8. Shri Bharatji Agrawal, learned Senior Counsel appearing for the petitioners, vehemently argued that once the eligibility certificate is granted by the competent authority u/s 4-A of the Act, the same cannot be ignored by the sales tax authorities and it is outside the purview of the assessing authority to question grant of eligibility certificate or to examine as to whether it has rightly been issued or not. The argument proceeds that whether the applicant seeking exemption u/s 4-A of the Act is an industrial unit or not and, therefore, eligible for exemption or not is to be considered by the State Government or by an officer empowered by the State Government. The Sales Tax Department or its authority has not been vested with the power either to grant any exemption or sit in judgment over the grant of exemption u/s 4-A of the Act. It is submitted that even u/s 4-A(3) of the Act the Commissioner has only been empowered to cancel the eligibility certificate in a case where the facility of exemption from the payment of sales tax has been misused or breached in any manner that too after giving a reasonable opportunity of being heard. In support of the aforesaid argument, reliance has been placed on a division Bench judgment of this Court in the case of Kumar Fuels, Pucca Bagh, Puranaganj, Rampur v. State of U.P. reported in [1986] 63 STC 467 ; 1986 UPTC 357.

9. On the other hand learned Standing Counsel while opposing the writ petition submitted that the petitioners are not a new unit and have obtained eligibility certificate by manipulating the facts and figures. It has been stated that in fact petitioners'' unit came into production with effect from April 20, 1982 but by wrongly showing the date of its commencement of its production as on November 1, 1982 obtained the certificate of exemption and as such it has rightly been ignored by the Sales Tax Officer and the assessment has been made. It is also contended that now the petitioners have got a remedy to challenge the same by filing appeal u/s 9 of the Act.

10. It is an admitted position that the Joint Director of Industries, Agra, recommended exemption from sales tax to the petitioners'' unit for a period of five years with effect from September 16, 1983. It is also admitted position that no proceeding u/s 4-A(3) of the Act has been initiated against the petitioners for having either misused or committing any breach of the eligibility certificate and thereby rendering themselves ineligible to get benefit of facility of exemption from the payment of sales tax. It is not in dispute that on the application of the petitioners with full particulars to the General Manager, District Industries Centre, who after examination of all available material made recommendation in favor of the petitioners to the Joint Director of Industries for grant of eligibility certificate

in favour of the petitioners'' unit. The Joint Director of Industries who was empowered to grant such certificate, having been satisfied that the petitioners'' unit is entitled to get benefit u/s 4-A of the Act, after following the prescribed procedure, issued the certificate. The only stand taken by the respondents before this Court is that the date of production of the unit furnished by the petitioners was wrong, hence they cannot get benefit of the certificate based on wrong information.

11. The Commissioner of Sales Tax or the Officers of the Sales Tax Department have not been empowered to issue eligibility certificate u/s 4-A of the Act granting exemption from the payment of sales tax nor they have been given power to cancel or amend the same except the Commissioner who has been given limited power u/s 4-A(3) to cancel where it has been misused or breached and not otherwise. The proviso to Section 4-A(3) of the Act further provides that no order under Sub-section (3) cancelling the eligibility certificate shall be passed without giving the dealer a reasonable opportunity of being heard. Learned Standing Counsel could not place before us any provision in the Act which empowers the Sales Tax Officer to examine the validity of eligibility certificate granted u/s 4-A of the Act or to cancel the same and, therefore, respondent No. 2 had no jurisdiction to ignore the eligibility certificate issued u/s 4-A of the Act so long it was not cancelled or withdrawn by the competent authority. The contention of the learned Standing Counsel that since by suppressing the material facts, the petitioners have obtained the certificate, in our view, does not give handle to the Sales Tax Officer to ignore the certificate until it is cancelled by the competent authority, i.e., the State Government or any officer empowered by the State Government in this regard. In our view, if an applicant or industrial unit has wrongly obtained eligibility certificate by furnishing wrong information, it is open to the Sales Tax Officer to move the authority who has granted the eligibility certificate or any appropriate authority empowered in this regard to review or to cancel the same but he cannot embark upon a fresh enquiry for himself as to whether the petitioners were entitled to the grant of eligibility certificate or not. Further till the certificate is not cancelled, it is binding on the taxing authority and no tax can be realised from such small-scale industry on its turnover. Even the Sales Tax Commissioner has limited power to cancel the eligibility certificate only where the facility of exemption has been misused but not on the ground that it has been obtained on wrong premises by furnishing wrong information. Similar view was taken by a division Bench of this Court in the case of Kumar Fuels, Pucca Bagh, Puranaganj, Rampur v. State of Uttar Pradesh [1986] 63 STC 467 ; 1986 UPTC 357 fact of which was more or less similar to the case in hand wherein it has been held as under :

"..........Whether the applicant was an industrial unit or not, whether the applicant was eligible for exemption or not had to be considered by the State Government or by an officer empowered by the State Government. There was no power with any officer of the Sales Tax Department of the Government in this behalf. Neither the Sales Tax Commissioner nor the Assistant Commissioner nor the Sales Tax Officer had been conferred any power either to grant any exemption or sit in judgment over the grant of exemption."

Their Lordship further held that :

"...........If a party does not fulfil the requirements for the grant of exemption or reduced rate of tax, it would not be granted such exemption or even the eligibility certificate. In case it was wrongly issued, the power to cancel it would be with the State Government or the officers mentioned above. It is well-established that the power to grant includes the power to cancel. The Sales Tax Officer or the Sales Tax Commissioner have no such power to cancel the eligibility certificate, for they do not have the power to grant the same. The Commissioner of Sales Tax has a limited power to cancel the eligibility certificate where there is a misuse of facility for exemption or grant of a reduction of tax. But that is an entirely different matter than the power to cancel eligibility certificate on the ground that it was obtained on wrong premises. That power vested only in the State Government."

12. The above view was again followed by another division Bench in the case of Paras Furnishers, Deoband, Saharanpur v. State of U.P. 1987 UPTC 1131, wherein it has been held that the Sales Tax Officer was not competent to sit in appeal or to review the decision contained in the recommendation of the Joint Director of Industries and the former cannot review the same or examine the whole thing as fresh but to act in accordance with the recommendation of the Joint Director of Industries.

13. The above view was again reiterated by another Division Bench of this Court in the case of Pan Tyres v. State of U.P. reported in [1997] 105 STC 111 ; 1996 UPTC 569 in which one of us (Honourable Mr. Justice M.C. Agarwal) was also member wherein it has been held as under :

"It is settled law that the eligibility certificate will remain operative till it is cancelled by a competent authority. The said certificate having not been cancelled by the competent authority so far, remained operative and that being so, no valid assessment can be made by the assessing authority for the period for which the eligibility certificate has been granted."

14. In the case in hand, admittedly, the Joint Director of Industries, who was the competent authority at the relevant time recommended for the grant of eligible certificate to the Sales Tax Officer by order dated October 23, 1984 on the condition mentioned therein. Admittedly, after issuance of the certificate the petitioners did not realise the sales tax. There is no allegation in the notice nor in the counter-affidavit that the petitioners have mis-used the facility of exemption or breached any condition of the certificate. Therefore, we hold that the Sales Tax Officer (respondent No. 2) had no jurisdiction to call upon the petitioners for assessment and payment of sales tax only on the ground that the exemption certificate has been obtained by furnishing wrong statement about the date of commencement of its production. In this view of the matter, the impugned notice

and the order of assessment passed thereon cannot sustain.

15. Shri Bharat Ji Agrawal, learned Senior Counsel for the petitioners, urged that the assessment order has been passed deliberately to over-reach this Court''s interim order dated January 3, 1986, purported to have been passed on December 26, 1985. It is submitted that the interim order of this Court was served on the Sales Tax Officer but he declined to accept the same and hurriedly passed the impugned order by ante-dating the same. There is no sufficient evidence on record to hold that this Court''s interim order dated January 3, 1986 was duly served on the Sales Tax Officer as alleged on January 4, 1986. There is also no sufficient material in record to hold or to arrive at to the conclusion that the impugned assessment order dated December 26, 1985 has been passed after this Court''s order dated January 3, 1986 with a view to frustrate the interim order. On the other hand there is categorical denial of service of this Court''s interim order dated January 3, 1986 and January 4, 1986 and it has been asserted that the above order was received in the office through post on January 15, 1986, which was endorsed by the respondent No. 2 on January 16, 1986 and thus the respondent No. 2 had no knowledge about the above interim order of this Court. Therefore, we are not inclined to hold that the Sales Tax Officer has passed the impugned order by ante-dating the same with a view to frustrate this Court''s interim order.

16. The objection of the respondents regarding availability of alternative remedy u/s 9 of the Act has also no substance for the reason that the impugned notices are clearly without jurisdiction and it is settled legal position that where the order impugned is completely without jurisdiction, this Court can interfere with the same and is not precluded from exercising its power under Articles 226/227 of the Constitution merely on the ground of existence of alternative remedy.

17. Having considered the submissions made on both sides, we are of the view that the impugned notices calling upon the petitioner for assessment in utter disregard of the eligibility certificate is clearly without jurisdiction and, therefore, the subsequent order of assessment on the basis of the aforesaid notice also cannot sustain and deserves to be quashed.

18. In the result, the writ petition succeeds and is allowed. The impugned notice dated December 10, 1985 and the impugned orders of assessment dated December 26, 1985 are hereby quashed. However, there will be no order as to costs.