
(2004) 12 AHC CK 0066
In the Allahabad High Court
Case No : Trade Tax Revision No. 2419 of 2004

Deki Electronics Limited

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10, 10(2), 10B, 11, 13A
Uttar Pradesh Trade Tax Rules, 1948 — Rule 25(3)

Citation : (2004) 12 AHC CK 0066

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 12.04.2004 passed by the Full Bench of the Trade Tax Tribunal, Lucknow.

2. Brief facts of the case are that the applicant established a new unit for the manufacturing of metalised film capacitors at D-9, Sector-10, Noida and applied for exemption u/s 4-A of the Act. Exemption was allowed and eligibility certificate was issued on 13.08.1997 u/s 4-A of the Act granting the exemption from tax on the fixed capital investment of Rs. 58,14,000/- to the extent of 100% or for a period of eight years commencing from 24.10.1994, whichever expired earlier. Subsequently, at the instance of the applicant, said eligibility certificate was amended vide letter No. 1214 dated 14.09.2001 and the period of eight years amended from 24.01.1995 to 23.01.2003, Thereafter, the unit shifted its establishment from D-9, Sector-10, Noida to B-20, sector-58, Noida It appeal's that after grant of the exemption, some old machines have also been installed. During the course of the assessment proceedings for the assessment year 1998-99, it came to the notice of the assessing officer that the information about the shifting of the unit was not given. Thereafter, applicant moved an application

on 24.12.2001 for the change of the address before the Divisional Level Committee. The said application was considered by the Divisional Level Committee in its meeting dated 28.09.2002 and rejected the same on the ground that no permission was taken for the change of the place from Industry Department and the application for change of address was not given on a prescribed proforma and the old machines were installed at B-20, Sector-58, Noida and the other goods were also being manufactured. Applicant filed a review application dated 19.10.2002, which was considered by the Divisional Level Committee in its meeting on 21.11.2002 and the application for the change of place was allowed on the ground that new place was inspected by the Industry Department vide letter No. 2578 dated 20.03.2002 and list of the machines were certified which shows that the unit had taken the permission from Industry Department before the change of place and the information in an application in the prescribed proforma was only a technical mistake. Divisional Level Committee was also of the view that the unit had not claimed any exemption on the turn over of goods produced by the old machines and these alleged old machines were installed after the grant of exemption certificate and the items exempted were not produced by these machines. In coming to the aforesaid conclusion Divisional Level Committee relied upon the decision of this Court in the case of Superlite Engineering, Meerut v. CIT, reported in STI, 2000 All. High Court 367 and Mansarowar Bottling Company Limited v. CTT, reported in 1999 NTN (Vol. 14), 644 in which it was held that if the place of business is changed after the grant of certificate, it does not effect the certificate issued u/s 4-A of the Act. Consequently, Divisional Level Committee allowed the review application and approved the original certificate as amended on 14.09.2001.

3. Feeling aggrieved by the aforesaid order of the Divisional Level Committee, Commissioner of Trade Tax filed appeal No. 62 of 2003 u/s 10 of the Act before the Tribunal. Tribunal by the impugned order allowed the appeal. Tribunal held that Divisional Level Committee had concluded, on the basis of the certificate made by the officer of the Industry Department and the list of the machines certified on 20.03.2002, that the permission was given by the Industry Department for the change of place from D-9, Sector-10, Noida to B-20, Sector-58, Noida, is not correct. According to the Tribunal, perusal of the original application as given by the unit on 24.12.2001 shows that it was only for the change of address in the eligibility certificate. In this application, it has been mentioned that they had shifted their manufacturing unit from plot No. D-9, Sector-10, Noida to their own plot at B-20, Sector-58, Noida and the request was made to change the address of the unit and necessary endorsement in the original eligibility certificate, which was also enclosed alongwith the application. Tribunal was of the view that perusal of the application shows that no request was made for permitting them to change the place of business and further, record also shows that application dated 11.12.2001 was filed by the unit requesting General Manager, District Industries Centre, Noida for getting machines inspected as installed in the factory premises at B-20, Sector-58, Noida

as the unit had to apply for the term loan in lieu of Trade tax, under the deferment scheme to IMCUP. The unit had also enclosed the list of machines to be verified and it appears that on that application, the verification of the machines was done by the Industries Department, as mentioned by the Divisional Level Committee. Tribunal accordingly held that the verification made by the Industries Department could not be treated as the permission by the Industries Department to the unit before the change of place of business. However, it has been accepted by the Tribunal that a legally unit was not required to seek any prior permission for the change of place of business, but has to inform. Tribunal further observed that in the original certificate u/s 4-A of the Act, exemption was granted to a new unit, manufacturing the some items at a particular place. The place, where the unit is to be established shifted has its importance not only district wise but even unit established at adjacent plot can effect the nature of eligibility certificate, therefore, non-compliance of the condition by the dealer was material. Tribunal has also accepted the submission of the Learned State Representative that the review application was not maintainable under Rule 25(3) (c) of the U.P. Trade Tax Rules, 1948, in as much as rule provide the review against the rejection of the exemption application within thirty days and the rejection of application for change of address in the certificate, already granted, can not be treated as order refusing to grant eligibility certificate. Tribunal held that the Divisional Level Committee had no jurisdiction or authority to consider the review application given by the unit, and impugned order was without jurisdiction. Tribunal finally held that the Divisional Level Committee had wrongly allowed the review application without any jurisdiction and the impugned order being void abinitio is liable to be set aside and accordingly, allowed the appeal.

4. Heard learned counsel for the parties.

5. Learned counsel for the applicant submitted that the order of the Tribunal is illegal and without jurisdiction on the ground that the appeal against the order of the Divisional Level Committee u/s 10 of the Act was not maintainable in as much as by the order of the Tribunal nor the exemption was allowed nor it has been refused. He further submitted that the Tribunal has erred in holding that the review application was not maintainable and, therefore, the order of the Tribunal allowing the review application was without jurisdiction and void abinitio is illegal. He submitted that in a strict sense it may not be maintainable under Rule 25(3)(c) of the U.P. Trade Tax Rules, 1948 but every authority having a power to decide the issue and passes the order has also power to consider the review application and, therefore, if the review application was filed before the Divisional Level Committee for the re-consideration of its order, it was maintainable under the General Clauses Act. He further submitted there was no provisions under the Act or Rules seeking any prior permission while shifting the unit from one place to another place. The only required was agree information, which was duly given to the Industries Department on the basis of which the machines installed at the new place was also verified and the report in this

regard was also submitted to the Divisional Level Committee. He further submitted that in the return filed in Form-4, new place of factory had always been mentioned. In this way. Trade Tax Department had also been given information about the shifting of the unit. He submitted that in the case Mansarovar Bottling Company Limited v. CTT, reported in 1999 NTN 644 it has been held by this Court that mere by shifting the unit from one place to another place, exemption can not be denied. Learned Standing Counsel submitted that allowing the revenue amount to granting the exemption and, therefore, appeal u/s 10 of the Act was maintainable.

6. Section 10(2) of the Act reads as follows:

"Section 10(2) Any person aggrieved by an order passed u/s 9 (other than an order referred to in Sub-section (4-A) of that section), Section 10-B, subsection (2~K) or Sub-section (3) of section 4-A, a decision under 35, a direction under the proviso to Sub-section (6) of Section 13-A or an order granting or refusing to grant an eligibility certificate within the meaning of clause (d) of Sub-section (2) of Section 4-A may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal:

Provided that where the disputed amount of tax, fee or penalty does not exceed two thousand rupees and no question of law is involved, the appellant may, at his option, request the Tribunal in writing for summary disposal of his appeal whereupon the Tribunal may decide the appeal accordingly.

Explanation - For the purposes of this sub-section, the expression "any person" in relation to any order passed by an authority other than the Commissioner includes the Commissioner and, in relation to any order passed by the Commissioner includes the State government:"

7. u/s 10(2) of the Act, appeal lies against the order granting or refusing to grant the eligibility certificate within the meaning of clause (a) of Sub-section (2) of Section 4-A of the Act. Question for consideration is whether the order of the Divisional Level Committee dated 21.11.2002 allowing the application seeking the permission or giving the information about the shifting of unit from one place to another place amounts to granting of eligibility certificate within the meaning of clause (a) of Sub-section 2 of Section 4-A of the Act.

8. In my opinion, order of Divisional Level Committee does not come within the purview of grant of eligibility certificate within the meaning of clause (a) of Sub-section 2 of Section 4-A of the Act and, therefore, the appeal against the order of Divisional Level Committee dated 21.11.2002 was not maintainable before the Tribunal. The eligibility certificate under clause (a) of Sub-section 2 of Section 4-A of the Act has already been granted by letter dated 13.08.1997 and no fresh eligibility certificate was issued by Divisional Level Committee in its meeting dated 21.11.2002, communicated vide letter No. 1755 (3) dated 06.01.2003. By the said letter the earlier eligibility certificate issued by Divisional Level Committee has been recognised/approved.

9. For the reasons stated above, I am of the view that appeal No. 62 of 2003 u/s 10 of the Act was not maintainable and, therefore, the impugned order of Tribunal is without jurisdiction and is liable to be set aside. In the circumstances, that the appeal is held not maintainable and the order of the Tribunal is without jurisdiction, it is not necessary to go into the merit of the case.

10. In the result, revision is allowed. Order of the Tribunal is quashed.