(2008) 07 UK CK 0054

In the Uttarakhand High Court

Eveready Industries India Ltd. APPELLANT

Vs

State of Uttarakhand and Others RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Uttar Pradesh Reorganisation Act, 2000 — Section 86, 87
Uttarakhand Value Added Tax Act, 2005 — Section 76, 80, 81

Citation : (2008) 17 VST 18

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Since the controversy including the legal issue involved in these writ petitions is similar, therefore, for the sake of convenience, all the three writ petitions are being decided by this common judgment.

2. The writ petition No. 1683 of 2007 (M/S) has been filed for the following reliefs:

(a) a suitable writ, order or direction in the nature of certiorari be issued quashing the circular dated January 13, 2006 issued by the Commissioner of Taxes, Dehradun, respondent No. 2, as well as the circular dated January 4, 2006 issued by respondent No. 1;

(b) a suitable writ, order or direction in the nature of certiorari be issued quashing the notice dated January 20, 2006 issued by the Deputy Commissioner (Assessment), respondent No. 3;

(c) a suitable writ, order or direction in the nature of mandamus be issued restraining/prohibiting respondent No. 3 from imposing any tax upon the petitioner for the assessment years 2005-2006 and 2006-2007 on the sales made by the petitioner within the State of Uttaranchal of the goods manufactured in its new unit for which the eligibility certificate has been granted on October 22, 1999;

(d) to issue any other suitable writ, order or direction as this honourable court may deem fit and proper in the circumstances of the case;

(e) to award the cost of the petition to the petitioner.

3. According to the petitioner, petitioner is a private limited company incorporated in the Indian Companies Act, 1956 and is registered under the Uttaranchal (U.P. Trade Tax Act, 1948) as adopted by Uttaranchal Adaptation and Modification Order, 2002 and is also registered under Central Sales Tax Act, 1956 with the Deputy Commissioner (Assessment), Trade Tax, Roorkee. The petitioner has its factory in the State of U.P. at Plot No. 51, Udyog Vihar, Surajpur Kasna Road, Greater Noida, which is a new unit established u/s 4A of the U.P. Trade Tax Act (for short, "the Act") for manufacture of colour TV, air-conditioners and washing machines in pursuance of the notification dated February 21, 1997 issued u/s 4A of the Act. An eligibility certificate was granted by the prescribed authority for a period of 15 years with effect from March 27, 1998 to March 26, 2013 or to the extent of 200 per cent of the fixed capital investment which was made by the petitioner within the specified period as provided in Clause 3(a) of the notification dated February 21, 1997.

4. The State of U.P. announced its Industrial Policy in 1994 for grant of exemption from payment of tax to all the new units making investment of more than Rs. 50 crores as well as to the units undertaking expansion, modernisation and diversification after December 1, 1994 and before March 31, 2000 u/s 4A of the Act and since the petitioner had established its new unit at Greater Noida before March 31, 2000 and had started its production with effect from March 27, 1998 by making huge investment of about Rs. 300 crores, exemption was granted to the petitioner as referred to in the notification dated February 21, 1997.

5. After creation of new State of Uttaranchal (now Uttarakhand), the State Government has adopted the Act and the word "Uttaranchal" has been substituted in place of Uttar Pradesh therein. According to the petitioner, no amendment has been made in the Notification dated February 21, 1997.

6. The grievance of the petitioner is that after enforcement of the VAT Act on October 1, 2005, the Principal Secretary Finance, Uttaranchal, sent a letter No. 01/XXVII(8)/VAT/2005 dated January 4, 2006 thereby the exemption u/s 4A of the Act has been discontinued !n the State of Uttaranchal. Consequently, the Commissioner of Taxes, Dehradun, issued a circular to all the authorities concerned to take action with the result the Deputy Commissioner (Assessment), Commercial Taxes, Roorkee issued notice dated January 20, 2006 for the months of October and November 2005 directing the petitioner to deposit the tax at 12.5 per cent.

7. The letter of the Principal Secretary, Government of Uttaranchal dated January 4, 2006 and the circular issued by respondent No. 2 dated January 13, 2006 as well as the notice dated January 20, 2006 issued by respondent No. 3 are under challenge in the present writ petition.

8. Counter-affidavit was filed by the respondents. The respondents have admitted that eligibility certificate was granted in favour of the petitioners and exemption was granted to them u/s 4A of the Act under Notification dated February 21, 1997 for the period mentioned therein. The affidavit was sworn in by the then Deputy Commissioner (Assessment), Commercial Tax, Roorkee, wherein it was stated that the benefits of exemptions u/s 4A of the Act stood ceased with the implementation of VAT in Uttaranchal. It was stated that the Act has been repealed by the VAT Act with effect from October 1, 2005 and the exemptions stood discontinued in view of the bar created u/s 80(13) of the VAT Act.

9. The respondents have also filed additional supplementary counter-affidavit. In paragraph No. 5 following averments were made:

5. That in reply to the contents of para 5 of the supplementary affidavit it is submitted that the State of Uttarakhand after its creation issued a subsequent notification on December 26, 2000; copy whereof is being filed herewith and is marked as annexure No. A.S.C.A. 2 to this affidavit, and after enforcement of VAT Act, 2005 the notification dated October 12, 2006 has been issued which does not have a retrospective effect. Hence petitioner is not entitled for the benefit of tax exemption with effect from October 1, 2005 to October 12, 2006. The copy of the said notification dated October 12, 2006 is being filed herewith and is marked as annexure No. A.S.C.A. 3 to this affidavit.

10. The petitioner filed rejoinder affidavit, wherein it was denied that the exemption u/s 4A of the U.P. Trade Tax Act is not available after the State of Uttaranchal has opted for VAT Act on October 1, 2005. It was stated that in view of proviso to Section 76(6)(b) of the VAT Act the petitioner who was enjoying the exemption from tax for the period before the commencement of the VAT Act, having not exercised the option for deferment, shall continue to avail the exemption for the remaining period in respect of which the eligibility certificate has been granted. It was also stated that since the petitioner was enjoying the exemption under eligibility certificate for a period of 15 years, the petitioner is entitled for exemption for the remaining period of exemption in accordance with the provisions of Section 76(6)(b)(i) of the VAT Act. It was further stated that in view of the provisions of Section 80(15) read with Section 76(6)(b) of the VAT Act it is absolutely clear that after the enactment of VAT Act in Uttaranchal, exemption u/s 4A of the Act to the existing units holding eligibility certificate which were granted exemption prior to November 9, 2000 shall be entitled to exemption for the remaining period of eligibility certificate.

11. It has also been stated in the rejoinder affidavit that the rebate of tax was granted by the Uttaranchal State by notification dated December 26, 2000 on the sale of goods by any dealer having his place of business in the State of Uttaranchal to the extent of exemption from or reduction in the rate of tax available to the manufacturing dealer having his place of business in the State of Uttar Pradesh on the sale of such goods. Relevant extract of paragraph 9(iii) of

the rejoinder affidavit reads as under:

(iii) That, in view of Section 80(3) of the VAT Act read with Section 4(2)(f), the petitioner is entitled for grant of exemption on the basis of Notification dated December 26, 2000 issued u/s 5 of the Repealed Act since all the notifications issued by the State of Uttaranchal which includes notification dated December 20, 2000 before October 1, 2005 shall continued to be enforced after October 1, 2005 and which is admittedly not inconsistent with the provisions of the VAT Act. On the other hand, the notification dated December 26, 2000 is absolutely in accordance with Section 4(2) of the Act.

12. Writ Petition No. 1654 of 2007 (M/S) has been filed for the following reliefs:

(a) A suitable writ, order or direction in the nature of certiorari be issued quashing the circular dated January 13, 2006 issued by the Commissioner of Taxes, Dehradun, respondent No. 2, as well as the circular dated January 4, 2006 issued by respondent No. 1.

(b) A suitable writ, order or direction in the nature of certiorari be issued quashing the notice dated March 6, 2006 issued by the Deputy Commissioner (Assessment), Commercial Taxes, Rishikesh, i.e., respondent No. 3.

(c) A suitable writ, order or direction in the nature of mandamus be issued restraining/prohibiting respondent No. 3 from imposing any tax upon the petitioner for the assessment years 2005-2006 and 2006-2007 on the sales made by the petitioner within the State of Uttaranchal of the goods manufactured in its new unit for which the eligibility certificate has been granted on December 20,1999 an addenda to eligibility certificate on August 21, 2000.

(d) To issue any other suitable writ, order or direction as this honourable court may deem fit and proper in the circumstances of the case.

(e) To award the cost of the petition to the petitioner.

13. Brief facts, giving rise to the present writ petition, are that the petitioner is a public limited company incorporated in the Indian Companies Act and is registered under the Uttaranchal (U.P. Trade Tax Act, 1948) as adopted by Uttaranchal Adaptation and Modification Order, 2002 and is also registered under the Central Sales Tax Act with the Deputy Commissioner (Assessment), Commercial Taxes, Rishikesh. The petitioner has its factory in the State of U.P. at Plot No. B-1/2 Sector-80, Phase-II, Noida, which is a new unit u/s 4A of the Act. The petitioner established the unit for manufacturing of dry cell batteries, battery intermediates and plastic moulded components in pursuance of the notification dated February 21, 1997 issued u/s 4A of the Act.

14. An eligibility certificate was granted by the prescribed authority on December 20, 1999 u/s 4A of the Act and addenda to this certificate was also granted on August 21, 2000 for a period of 15 years with effect from November 8,1998 to November 7, 2013 or to the extent of 150 per cent of the fixed capital

investment fixing the monetary limit on Rs. 53,17,79,316 which was made by the petitioner within the specified period as provided in Clause 3(a) of the notification dated February 21,1997.

15. According to the petitioner, when the State of U.P. announced its Industrial Policy of 1994 for grant of exemption u/s 4A, thereby granting exemption to the units making investment of more than 50 crores from payment of tax be they new units or units undertaking expansion, modernisation and diversification after December 1, 1994 and before March 31, 2000 as detailed in the Notification published in the official Gazette on March 21, 1997.

16. It has been stated in paragraph No. 8 of the writ petition that the petitioner has established new unit at Noida before March 31, 2000 and started its trial run production on August 4, 1998 and commercial production with effect from March 17, 1999 having the date of commencement of facility as per eligibility certificate with effect from November 8, 1998 and has made huge investment of more than Rs. 50 crores in this unit. The exemption was granted to the petitioner under notification dated February 21, 1997 issued u/s 4A of the Act for a period of 15 years with effect from November 8, 1998 to November 7, 2013.

17. By virtue of Section 87 of the U.P. Re-organisation Act, 2000, all enactments, the Acts, Rules and notifications which were enforced in the erstwhile State of U.P. were made applicable to the State of Uttaranchal. The notification dated February 21,1997 was not modified, amended or altered by the State of Uttaranchal and the same is fully applicable to the petitioner also in respect of the goods manufactured at Sahibabad and sold by the petitioner from its branches situate in the State of Uttaranchal.

18. On October 1, 2005, Value Added Tax Act (for short, "the VAT Act") has been enforced in the State of Uttaranchal (now Uttarakhand). Section 81 of the VAT Act has repealed the Uttaranchal (U.P. Trade Tax Act, 1948) Adaptation and Modification Order, 2002. After enforcement of the VAT Act, Principal Secretary, Finance, Uttaranchal sent a letter dated January 4, 2006 mentioning therein that the benefit of exemption u/s 4A of the Act in respect of the units situated in the State of U.P. has been discontinued in the State of Uttaranchal in view of the provisions of Sub-section (13) of Section 80 of the VAT Act. Hence all those units which were established in the State of U.P. will not be entitled to the said exemption for the remaining period. On the basis of the letter No. 01/VII(8)/ VAT/2005 dated January 4, 2006 the Commissioner of Taxes, Dehradun issued a circular dated January 13, 2006 to all the Deputy Commissioners (Assessment) and other authorities including Trade Tax Officers of Commercial Tax to take action in accordance with the directions of the State Government and the opinion of the Law Department. Copy of the letter dated January 4, 2006 and copy of circular dated January 13, 2006 have been annexed as annexure Nos. 4 and 5 to the writ petition. Consequently, the Deputy Commissioners (Assessment), Commercial Taxes, Rishikesh issued notice dated March 6, 2006 for the month of October, 2005 to January, 2006 directing the petitioner to deposit the tax at 12.5

per cent.

19. In this writ petition, the letter dated January 4, 2006 and the circular dated January 13, 2006 are under challenge.

20. In Writ Petition No. 1709 of 2007 (M/S), the petitioner has prayed for quashing of circular dated January 13, 2006 issued by respondent No. 2 as well as the circular dated January 4, 2006 issued by respondent No. 1. The petitioner has also prayed for writ of certiorari to quash the notice dated February 2, 2006 issued by respondent No. 3. The petitioner has further prayed for writ of mandamus restraining respondent No. 3 from imposing any tax for the assessment years 2005-2006 and 2006-2007 on the sales made by the petitioner within the State of Uttaranchal of the goods manufactured in its new unit for which the eligibility certificate had been granted on August 22, 2001.

21. According to the petitioner, the petitioner is a public limited company incorporated in the Indian Companies Act registered under the Uttaranchal (U.P. Trade Tax Act, 1948) as adopted by Uttaranchal Adaptation and Modification Order, 2002. The petitioner is also registered under the Central Sales Tax Act with the Deputy Commissioner (Assessment-6), Commercial Taxes, Dehradun. The petitioner has its factory in the State of U.P. at Plot No. 23, Site No. IV, Industrial Area, Sahibabad, Ghaziabad, which have undertaken expansion u/s 4A of the Act. As per eligibility certificate, exemption u/s 4A of the Act was granted to the petitioner under notification dated February 21,1997 for a period of 15 years with effect from December 31, 1998 to December 30, 2013.

22. The grievance of the petitioner is that after enforcement of VAT Act on October 1, 2005, the Principal Secretary, Finance, State of Uttaranchal issued a circular on January 4, 2006 to the effect that the exemption granted u/s 4A of the Act had been discontinued as per provision of Section 80(13) of the VAT Act. Hence action should be taken in accordance with the directions of the State Government. In pursuance of the said circular dated January 4, 2006, respondent No. 2 issued directions to the assessing authorities to take action and the Deputy Commissioner (Assessment-6), Commercial Taxes, Dehradun issued notice dated February 2, 2006 for the months of October 2005 to December 2005 directing the petitioner to deposit the tax at four per cent.

23. I have heard learned Counsel for the parties and perused the record including the averments made in the memo of writ petitions, the supplementary affidavit, the counter-affidavit, supplementary counter-affidavit and rejoinder affidavit.

24. The undisputed facts of the case are that the petitioners had been granted eligibility certificate and they had been enjoying exemption u/s 4A of the Act prior to the creation of new State of Uttaranchal. It is admitted by both the parties that the State Government has issued notification No. 817/XXVII(8)/ Vanijya Kar (VAT)/2006, dated October 12, 2006 whereby a rebate to tax on the sale of goods by any dealer having his place of business in the State of

Uttaranchal to the extent of exemption from or reduction in the rate of tax available to the manufacturing dealer having his place of business in the State of Uttar Pradesh on sale of such goods has been granted with certain conditions including that "such goods are manufactured in a unit established in the State of Uttar Pradesh having eligibility certificate (validity commencing prior to November 9, 2000) issued u/s 4A of the Uttar Pradesh Trade Tax Act, 1948 for the manufacture of such goods". It is also an undisputed fact that the Commissioner of Taxes, Uttaranchal, has issued a letter dated November 25, 2003 to all the Deputy Commissioners (Tax Assessment), Trade Tax, Uttaranchal, wherein directions relating to exemption u/s 4A of the Act granted to the units on the basis of eligibility certificate were issued. It is also an undisputed fact that the State of Uttaranchal has adopted the enactments at the time of creation of this State, as applicable in the State of Uttar Pradesh in view of the provisions of Section 86 of the Uttar Pradesh Reorganization Act, 2000. The State of Uttaranchal had also issued notification No. 1214 dated March 23, 2002 whereby Uttaranchal (Uttar Pradesh Trade Tax Act, 1948) Adaptation and Modification Order, 2002 came into force and all the provisions of the Act were made applicable to the State of Uttaranchal as they were applicable in the erstwhile State of Uttar Pradesh as is evident from annexure No. 1 of the main writ petition.

25. Respondents Nos. 2 and 3 have filed additional supplementary counter-affidavit and have annexed a copy of the notification dated December 26, 2000. The notification reads as under:

Whereas, the State Government is satisfied that it is expedient in the public interest so to do:

Now, Therefore, in exercise of the powers conferred by Section 5 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor is pleased to allow; with effect from December 26, 2000, a rebate of tax on the sale of goods by any dealer having his place of business in the State of Uttaranchal to the extent of exemption from or reduction in the rate of tax available to the manufacturing dealer having his place of business in the State of Uttar Pradesh on the sale of such goods, subject to the following conditions, namely:

Conditions

(i) such goods are manufactured in a unit established in the State of Uttar Pradesh having eligibility certificate (validity commencing prior to November 9, 2000) issued u/s 4A of the aforesaid Act for the manufacture of such goods;

(ii) such goods are sold for the first time after their manufacture within the period of exemption or within the period in which five per cent monetary limit of exemption has been availed, whichever is earlier, after bringing them into the State by way of transfer other than sales by manufacturer having his place of business in the State of Uttar Pradesh ;

(iii) certificate issued by the assessing authority of the State of Uttar Pradesh is produced before the assessing authority of the State indicating therein that the amount has been reduced in the overall limit of exemption available to the manufacturer.

(iv) Rebate shall be withdrawn, if the certificate referred to in Clause (iii) is found false.

26. From a bare perusal of the notification dated December 26, 2000 it is obvious that this notification refers to the eligibility certificate issued u/s 4A of the Act by the State Government in the erstwhile State of Uttar Pradesh and the rebate of tax was being enjoyed by the petitioners. This notification makes it clear that the rebate of tax was available to the units which were granted eligibility certificate in the erstwhile State of U.P. It is admitted by the respondents that the eligibility certificate had been granted to the petitioners by the erstwhile State of Uttar Pradesh for the stipulated period as stated in the memo of writ petition as provided in Clause 3(a) of the notification dated February 21, 1997.

27. It is thus evident that the petitioners had been enjoying exemption from payment of tax u/s 4A of the Act under notification dated February 21, 1997 in the erstwhile State of Uttar Pradesh and thereafter by the impugned circular dated January 4, 2006, the facility of exemption was allegedly discontinued by the State Government in view of the provisions of Sub-section (13) of Section 80 of the VAT Act. Again, the State of Uttarakhand issued another notification dated October 12, 2006 thereby granting rebate of tax on the sale of goods by any dealer having his business in the State of Uttaranchal and possessing eligibility certificate (validity commencing prior to November 9, 2000) issued u/s 4A of the Act. Thus, according to the respondents, the tax was payable by the petitioners for the period October 1, 2005 to October 11, 2006.

28. Learned Counsel for the petitioners has vehemently contended that the provisions of Section 5 of the Act is analogous to Section 4(6) of the VAT Act, 2005. Therefore, in view of the provision of Sub-section (3) of Section 80 of the VAT Act, the petitioners are entitled to the facility of exemption of tax for the period October 1, 2005 to October 11, 2006. Therefore, the petitioners cannot be asked to deposit the tax for that period.

29. The VAT Act was enforced with effect from October 1, 2005 in the State of Uttarakhand. Section 80 of the VAT Act deals with Transitional Provisions. Sub-section (3) thereof reads as under:

(3) All Rules, regulations, notifications or orders made or directions issued by the State Government or any orders or directions issued by the Commissioner under any provisions of the repealed Act or as the case may be, the Repealed Ordinance, or Rules made thereunder, and continuing to be in force on the day immediately before the date of commencement of this Act shall continue to be in force on or after such date in so far as they are not inconsistent with the

provisions of this Act and the Rules made thereunder until they are repealed or amended.

30. Relevant extract of Clause (a) of Sub-section (6) of Section 4 of the VAT Act reads as under:

(6) Rebate on tax on certain purchases and sales: (a) Subject to such conditions as it may impose, the Government may, if it deems necessary so to do in the public interest, by notification in the Official Gazette, exempt the sale or purchase of any goods, or any sales or purchases made to or by a class of dealers or persons specified in the said notification from payment of the whole or any part of any tax payable under the provisions of this Act, and any notification issued under this Section may be issued so as to be retrospective to any date not earlier than the date of commencement of this Act and such exemption shall take effect from the date of the publication of the notification in the Gazette or such other earlier or later date as may be mentioned therein.

31. Section 5 of the Act reads as under:

5. Rebate of tax on certain purchases or sales.- (1) Where the State Government is satisfied that it is expedient in the public interest so to do, it may by notification, and subject to such conditions and restrictions as may be specified therein, allow a rebate up to the full amount of tax levied on any specified point on,-

(a) the sale or purchase of any goods, or

(b) the sale or purchase of such goods by such person or class of persons as may be specified in the said notification.

(2) The rebate under Sub-section (1) may be allowed with effect from a date prior to the date of the notification.

32. Learned Counsel for the petitioners further contended that the provisions of Sub-section (13) of Section 80 of the VAT Act are to be read with the provisions of Sub-sections (14) and (15) thereof. Learned Counsel has pressed into service that as per provisions of Sub-sections (13) and (15) of Section 80 read with Section 76(6)(b) of the VAT Act, the petitioners cannot be denied exemption from tax for the remaining period under the eligibility certificate.

33. Sub-sections (13) and (15) of the VAT Act read as under:

(13) Subject to the provisions of Sub-section (14) and Sub-section (15) of this section, any exemption from payment of tax or any concession in payment of tax or concession or reduction in rate of tax or any rebate or reimbursement in respect of any sale or purchase of any goods granted under any provisions of the Repealed Act or, as the case may be, the Repealed Ordinance or Rules made or notifications issued thereunder, shall not be admissible in respect of purchase or sale of any goods on or after the date of commencement of this Act unless the State Government has already allowed such facility to continue under the

relevant provisions of the Repealed Ordinance, and in such case the facility shall continue until repealed or amended by the State Government.

(15) Any exemption from or any concession in payment of tax or concession or reduction of tax in respect of any sale or purchase of any goods granted to any industrial unit under provisions of Section 4A of the repealed Act or, such facility allowed under the relevant provisions of repealed Ordinance, shall continue for the remaining unexpired period as per provisions of Section 76 of this Act and subject to such conditions and restrictions as the State Government may specify.

34. At this juncture, a reference to the provisions of Section 76(6)(b) (i) and (ii) of the VAT Act is necessary, which provide as under:

(b) The dealer who were enjoying exemption from tax for any period before the commencement of the Act, may, either-

(i) continue to do so for the period remaining on that date out of the maximum period mentioned in eligibility certificate, and to the extent of remaining balance amount (amount of exemption from tax mentioned in the eligibility certificate less the aggregate of amount of exemption from tax as has been availed before the date of commencement of this Ordinance); or

(ii) opt, in the prescribed manner, for benefit of moratorium for payment of tax in lieu of exemption from tax and such units shall be eligible for facility of moratorium to the extent of aggregate amount of hundred per cent of the amount of exemption from tax mentioned in the eligibility certificate and fifty per cent of the amount of fixed capital investment mentioned in the eligibility certificate less the aggregate of amount of exemption from of tax as has been availed before the date of commencement of the ordinance, for the period remaining on that date out of the maximum period mentioned in the eligibility certificate:

Provided that if the dealer does not choose either of the two options, within 30 days of the commencement of this Act, it shall be presumed that the dealer desires to continue as per provision (i) above.

35. On the other hand, it was vehemently contended on behalf of the respondents that the provision of Sub-section (15) of Section 80 of the VAT Act applies to the manufacturing units of the State of Uttaranchal only. It was also argued that the petitioners are not entitled for tax exemption with effect from October 1, 2005 to October 12, 2006. The argument of the learned Additional C.S.C. is misconceived for the simple reason that the notification dated December 26, 2000 was issued by the State of Uttaranchal, as referred to above, whereby rebate on tax was available to the petitioners and as per provision of Sub-section (3) of Section 80 of the VAT Act it has been provided that the notifications under the repealed Act/Ordinance continuing to be in force on the day immediately before the date of commencement of this Act shall continue to be in force on or after such date in so far as they are not inconsistent with the

provisions of this Act. Since the notification dated December 26, 2000 was issued u/s 5 of the Act and since the provisions of Section 4(6) of the VAT Act and that of Section 5 of the Act are analogous and not inconsistent with each other, the petitioners shall be deemed to be enjoying the rebate of tax throughout, i.e., between October 1, 2005 to October 11, 2006. The State Government by Notification dated October 12, 2006 issued under Sub-section (6) of Section 4 of the VAT Act thereby superseded the existing notification dated December 26, 2000 and granted rebate of tax on the sale of goods by any dealer having his place of business in the State of Uttaranchal to the extent of exemption from or reduction in the rate of tax available to the manufacturing dealer having his place of business in the State of Uttar Pradesh on the sale of such goods with certain conditions. All those four conditions are the same as they were included in the notification dated December 26, 2000 issued u/s 5 of the Act. It is pertinent to mention here that the said notification, according to the State-respondents, was in existence while notification dated October 12, 2006 was issued.

36. Having considered the provisions of the VAT Act referred to above read with the provisions of Notification dated December 26, 2000 it is crystal clear that the respondents could not have denied the exemption simply on the strength of Sub-section (13) of Section 80 of the said Act, particularly ignoring the provisions of Sub-section (15) and Section 76(6)(b) (i) and (ii) thereof. I am of the considered view that the petitioners are fully entitled to the exemption from tax granted to them under the eligibility certificate by the erstwhile Government of State of Uttar Pradesh and vide notification dated December 26, 2000 issued by the Uttaranchal Government for the period remaining on the date of commencement of VAT Act, i.e. October 1, 2005. From a perusal of record, it does not come out that petitioners had exercised option under Clause (ii) of Section 76(6)(b) of the VAT Act, within the stipulated period. Therefore, it shall be presumed that the petitioners desire to continue as per provision of (i).

37. Even otherwise, from a perusal of the provisions of Section 4(6) of the VAT Act and Section 5 of the Act, it is obvious that these provisions are analogous and are not inconsistent with each other. Therefore, in view of the transitional provisions of Sub-section (3) of Section 80 of the VAT Act, the rebate granted to the petitioners vide Government notification dated December 26, 2000 u/s 5 of the Act shall be deemed to be continuing even after enforcement of the VAT Act till the date of publication of notification dated October 12, 2006.

38. For the reasons and discussion aforesaid, all the three writ petitions deserve to be partly allowed. All the three writ petitions are partly allowed. Respondent No. 3 is restrained by a writ of mandamus from imposing any tax upon the petitioners in pursuance of the circular dated January 13, 2006 issued by respondent No. 2 acting upon the circular dated January 4, 2006 issued by respondent No. 1.

