(2009) 04 AHC CK 0807

In the Allahabad High Court

Govind Vanaspati (P) Ltd. APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 10, 4A

Citation : (2010) 27 VST 251

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bharati Sapru, J.—Heard learned senior Counsel Sri Bharat Ji Agrawal assisted by Sri Piyush Agrawal for the assessee and Sri B.K. Pandey learned standing counsel for the Department.

2. This revision has been filed by the assessee being aggrieved by an order of the Tribunal dated February 20, 2001 by which the Tribunal has rejected the case of the assessee for grant of an exemption under notification dated July 27, 1991 by which exemptions towards the tax were given to certain industries, whose date of production was falling between the dates with effect from April 1, 1990 up to March 31, 1995.

3. The questions of law referred are as under:

(1) Whether the applicant having established its unit in pursuance of Notification No. 1093 dated July 27, 1991 in which the unit manufacturing vanaspati was not in the prohibited list and the same was included for the first time in annexure II of Notification dated March 31, 1995, hence the applicant was entitled for the grant of eligibility certificate having set up the unit prior to March 31, 1995?

(2) Whether the land having been purchased for the vanaspati unit in the year 1993, the building having been constructed in 1994 and the raw material and electric connection having been obtained prior to March 31, 1995, and the

applicant has invested a substantial amount of more than crores of rupees prior to March 31, 1995 on the representation made by the State Government in Notification No. 1093 dated July 27, 1991; hence in view of the law laid down by the honourable apex court in the case of Pournami Oil Mills and Others Vs. State of Kerala and Another, State of Bihar and Another Vs. Usha Martin Industries Ltd., and Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, the applicant was entitled for grant of eligibility certificate u/s 4A of the U.P. Trade Tax Act?

(3) Whether the raw material having been purchased on March 27, 1995 for a sum of Rs. 2,68,800 from the registered dealer M/s. Prahlad Industries, Kosikala, Mathura, the payment of which, was made by A/c payee cheque and the electric generators having been installed for power on March 25/26, 1995; hence in view of the Explanation (3) to Section 4A of the Act the artificial date of starting production has to be seen and not the actual date of starting production?

(4) Whether the Trade Tax Tribunal was not justified in completely overlooking the certificate of the Asstt. Director, Electric Safety, U.P. Government, Mathura, dated March 29, 1995 while deciding the appeal?

(5) Whether the Trade Tax Tribunal has committed an error of law in overlooking the written arguments which were filed and the various documents which were filed along with the written arguments while dismissing the appeal of the applicant?

(6) Whether in any view of the matter, the order passed by the Trade Tax Tribunal is illegal and is liable to be quashed?

4. The facts of the case are that the assessee is a private limited company incorporated under the Indian Companies Act, 1956, which sought to establish a new unit in the city of Mathura, in pursuance of the benefit which was being extended under Notification dated July 27, 1991 issued by the State u/s 4A of the U.P. Trade Tax Act for the manufacture of vanaspari.

5. The State Government had issued Notification No. 1093 dated July 27, 1991 with a view to promote industrial growth in the State of U.P. for both units, which were being newly set up and also to units, which were undertaking expansion.

6. The case of the assessee is that as the notification was extended to vanaspati manufacturing unit also, the assessee attracted by the promise under notification sought to set up a new manufacturing unit in Mathura. It purchased the land in the year 1993 and a licence was granted to it on February 9, 1993 for establishing the said unit.

7. The assessee thereafter entered into an agreement on March 25, 1994 with another company for supply of the equipment, plant and machinery for the erecting new unit.

8. The assessee has stated in the revision that on the basis of the promise and

assurance of the State Government by way of notification dated July 27, 1991, the assessee made an investment of Rs. 10,14,000 for the purchase of the land and also completed its construction of building in the year 1994. The construction cost came to Rs. 72 lakhs.

9. The other facts stated in the revision are that the assessee purchased til oil which were the raw material for sum of Rs. 2,68,800 on March 27, 1995 from one M/s. Prahlad Industries, Kosikala, Mathura. The assessee has also stated that the mustered oil, which is also the raw material was purchased for a sum of Rs. 3 lakhs on March 30, 1995 from M/s. Jhunnilal Hari Shanker, Kosikalan, Mathura and packing material was purchased on March 31, 1995 for Rs. 3,800.

10. The assessee has also stated that the assessee installed six generators, which were received from Ghaziabad in agreement dated March 14, 1995. Three generators were received on March 25, 1995 and other three generators were received on March 26, 1995. It is stated that after the generators were duly installed, the same were duly inspected by the Assistant Director, Electricity Safety Department, Mathura on March 29, 1995, who issued a certificate to the assessee that the generators were found on the site and permission was granted to run the generators.

11. It is the assessee''s case that all these documents pursuant to the raw material as well as generators were filed before the Divisional Level Committee, which was deciding the application of the assessee for grant of an eligibility certificate u/s 4A of the Act. However the Divisional Level Committee by its order dated December 17, 1998 rejected the application of the assessee on the ground that a subsequent Notification No. 780 was issued by the State Government on March 31, 1995 whereupon the units manufacturing vanaspati were put in the negative list as mentioned in the annexure 2 of the notification dated March 31, 1995.

12. Aggrieved by the order passed by the Divisional Level Committee, the assessee filed an appeal u/s 10 of the U.P. Trade Tax Act. The assessee challenged the order of the Divisional Level Committee on the ground that firstly the unit was entitled to the benefit of the notification dated July 27,1991 on account of the fact that on the basis of relief which was offered in the said notification, the assessee has sought to set up its new unit in the State of U.P. Secondly the assessee had asked before the Divisional Level Committee that the assessee had purchased the raw material, i.e., til oil for a sum of Rs. 2,68,800 on March 27,1995 and another raw material worth Rs. 3 lakhs on March 30,1995 and also it had installed the generators on March 26, 1995 and therefore it had started production within the meaning of "date of staring production" as given in the Explanation (3) to Section 4A of the Act, which is quoted hereinbelow:

(3) ''Date of starting production'' means, the latter of the following dates, namely:

(a) the date on which any raw material (which term includes accessories, components, parts and packing material) required for use in the manufacturing (whether on trial or commercial basis) or as the case may be, packing of the goods is purchased for the first time, or

(b) where the manufacture of goods is not possible without power, the first date on which power supply for manufacturing (whether on trial or commercial basis) from whatever source is obtained by the unit:

Provided that in respect of such raw material or packing material purchased on or after April 1,1990 from outside India, the date of clearance by the customs authorities under the Customs Act, 1962 shall be reckoned as the date of its purchase for the purposes of Clause (a):

Provided further that where any stage of manufacture is commenced before any of the dates referred to above, the date of such commencement shall be the date of starting production.

13. It was the assessee''s contention that in view of the fact that it had started its production before March 31, 1995. It was entitled to grant of the relief under the notification dated July 27, 1991.

14. In support of this argument, the learned Counsel for the assessee had also filed written argument before the Trade Tax Tribunal. The Tribunal has however rejected the appeal of the assessee by its order dated February 20, 2001, which is the order impugned in the present revision.

15. The learned Counsel for the assessee has argued that the order passed by the Tribunal is wholly arbitrary and illegal and has been passed in ignorance of the material evidence, which was there before the Tribunal to establish that the parameters required u/s 4A, Explanation (3) were satisfied prior to March 31, 1995 and therefore the assessee was clearly entitled to the benefit of the notification.

16. The learned Counsel for the assessee has argued that the assessing authority has himself recorded that the assessee had purchased til oil for a sum of Rs. 2,68,800 on March 27, 1995 but has returned the finding that the same was used in the month of September 1995.

17. In so far as the mustered oil was concerned, the learned Counsel for the assessee has relied on the survey report dated April 26, 1995, which recorded that the raw material had been found on the site.

18. The learned Counsel for the assessee has further argued that other than this, the Divisional Level Committee itself recorded that the generators were found on the site on March 27, 1995.

19. The Tribunal, while passing the impugned order, has however confused the issue by recording that the actual production started in the month of September, 1995.

20. It is well-settled by the decisions of this Court cited before me that the "date of production" as provided in Sections 4A and 3B of the Act, has been interpreted to mean not the actual date of production but as defined in Section 4A, Explanation (3) as the artificial date of production.

21. It is argued by the learned Counsel for the assessee that the "date of starting production" with regard to a new unit necessarily means that an enquiry should be made into the question as to when the raw material was purchased for the purpose of being used in the new unit and secondly the date of installing the power connection whether it is permanent or temporary.

22. For this purpose, the learned Counsel for the assessee has relied on the decision of this Court in the case oijagat Machinery Manufacturers Private Limited v. State of Uttar Pradesh reported in [1987] UPTC 1358.

23. He has argued that in view of the fact that it was fully established before the Tribunal as well as the Divisional Level Committee that (a) raw material was there before March 31, 1995; and (b) for the source of energy, these generators were installed before March 31, 1995. As such the assessee had become entitled to be granted relevant promises and reliefs under the notification dated July 27, 1991.

24. The learned Counsel for the assessee has also argued that because all the promises assured under the notification, the assessee had altered his position considerably and had expanded a considerable amount of money for the setting up of the new unit in U.P. also. As such he would be entitled to the benefit of the said notification.

25. The learned Standing Counsel has however argued in support of the order of the Tribunal. He has argued firstly that the case of the promissory estoppel was not argued before the Tribunal. Secondly he has argued that it was not established that the raw material had been purchased before March 31, 1995 and also he has argued that the generators were not fixed in the earth but were there on trolleys.

26. I have heard both sides at length and have perused the material on record.

27. The facts, which emerge from the material on record are that the assessee had purchased land for setting up of a new unit in the year 1993. He had completed the construction in the year 1994. The assessee had also applied for the power connection, which had been granted to him but had not been fixed.

28. It is also clear from the record that the assessee had indeed purchased the til oil for Rs. 2,68,800. On March 27, 1995 generators were found at the site, even by the survey report dated April 26, 1995. The fact that the generators were found at the site is also evident from the certificate dated March 29, 1995 issued by the Assistant Director, Electricity Safety Department, U.P. Government, Mathura. Thus clearly the assessee has been able to establish his case that the "date of production" as stated was prior to March 31, 1995. The provisions of

Section 4A, Explanation (3) thus stood satisfied by the assessee.

29. In view of the above, I am of the opinion that the view as taken by the Tribunal with regard to the "actual date of production" is clearly a mistaken view and deserves to be struck down. As such the order of Tribunal dated February 20, 2001 as well as the order dated December 17, 1998 passed by Additional Director (Industries), Agra Mandal, Agra is therefore set aside. This Court holds that the assessee is entitled to the benefit of Notification No. 1093 dated July 27, 1991. The authority concerned is directed to issue an eligibility certificate to the assessee forthwith.

30. The revision is allowed as above. No costs.