(2003) 02 AHC CK 0111

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1550 of 1990

H.M. Industries and Another — APPELLANT

Vs

Sales Tax Officer and Another — RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2003) 131 STC 173

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of ceritorari quashing the order dated January 17, 1987 (anncxure 3 to the writ petition) by which the petitioners'' application u/s 4-A of the U.P. Trade Tax Act, 1948 has been rejected and the order dated October 24, 1990 (annexure G to the writ petition) by which the review petition has also been rejected. The petitioners have prayed for a mandamus to be issued to respondent No. 2 to issue eligibility certificate to the petitioners u/s 4-A.

2. Heard learned counsel for the parties.

3. The petitioner No. 1 is a proprietorship firm and petitioner No. 2 is its proprietor. It established a new unit with new machinery on a plot of land at A-62 in Sector VIII, Noida, for the establishment of its factory. The Director of Industries, U.P., granted it, provisional registration on October 19, 1983 for manufacture of machinery parts and auto parts. The petitioner-firm was registered under the U.P. Sales Tax Act on July 2, 1984 with effect from April 19, 1984. The petitioner-firm took a loan of Rs. 4 lacs from the U.P. Financial Corporation for the establishment of the factory. The petitioner applied for exemption u/s 4-A of the U.P. Trade Tax Act for a period of six years. On this application an enquiry was held by the Sales Tax Officer on February 3, 1987. A

true copy of the enquiry report is annexure 1.

4. The factory building of the petitioner was situated on land in a low lying area hence the petitioner apart from other building material purchased 5 trucks of dust for levelling the low lying area for a sum of Rs. 500 at Rs. 100 per truck. The bill issued for the same on August 4, 1986 is annexure 2. Since the petitioner bona fide used this dust and old crucibles for filling the land he kept the bills on record and made the necessary entries which were produced before the sales tax authorities.

5. In para 12 of the petition it is stated that the petitioner did not use crucible for manufacturing of the machinery parts and auto parts and the work is done by lathe machines and drilling machines, etc., receipts for which were also produced before the sales tax authorities.

6. The petitioner''s application u/s 4-A was rejected by order dated January 17, 1987 which is said to have been communicated to the petitioner by letter of the Area Development Officer, Noida, dated February 1, 1989 vide annexure 3. The petitioners filed review application stating that the petitioners are fabricating cylinder liners for which casted raw cylinder liners are purchased from the market and fabricated with the help of lathe and drilling machine as per the required specifications and sold in the market. This process does not involve any casting activity and the petitioners had never done any casting work. True copy of the review application dated February 27, 1989 is annexure 4 and true copy of the affidavit filed with that application is annexure 5. It is stated in para 16 of the petition that the petitioners were not given opportunity of hearing and the review application was rejected by order dated December 4, 1989 which was supplied to the petitioners. The petitioners came to know about the dismissal of the review petition when the sales tax authorities started proceeding for assessment. True copy of the letter of the Area Development Officer dated October 4, 1990 is annexure 6.

7. We have perused the impugned orders annexures 3 and 6 to the writ petition. The order dated January 17, 1987 as communicated by order dated February 1, 1989 states that the petitioner''s application u/s 4-A is being rejected because the crucible is old. In review application, annexure 4 to the petition dated February 27, 1989 the petitioner has stated that he always purchased the casted raw cylinder liners from the market and did fabrication with the help of lathe and drilling machines as per required specifications and sold in the market.

8. Learned counsel for the petitioners has relied on the Supreme Court decision in Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, . In that decision it was held that since the object of the exemption provision is to encourage growth of new industries a liberal view, should be taken regarding the provision. In Jawahar Metal Industries (P.) Ltd. v. State, of U.P, 1995 UPTC 812 the fact was that the total investment in the machinery was Rs. 19,24,891 whereas the total value of the item alleged to be old was Rs. 11,325.

It was held by the division Bench of this Court following the decision of the Supreme Court in Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, that exemption u/s 4-A shall not be denied on this account.

9. The facts of the above case are squarely applicable to the facts of the present case. The purpose of Section 4-A is to encourage growth of new industries, and a narrow interpretation should not be taken about the same vide Commissioner of Sales Tax Vs. Industrial Coal Enterprises, .

10. Following the aforesaid decisions, this writ petition is allowed. The impugned orders are quashed. The respondents are directed to grant exemption u/s 4-A of the Act for the period which petitioner applied.

