(2014) 04 AHC CK 0029

In the Allahabad High Court

Case No : Writ Petition No. 651 (M/B) of 1992

Ishwar Packaging Products Private Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:
Factories Act, 1948 — Section 2(m), 6

Citation : (2014) 5 ADJ 15

Hon'ble Judges : Vishnu Chandra Gupta, J;Narayan Shukla, J

Bench : Division Bench

Advocate : Pradeep Agarwal, Advocate for the Appellant; H.P. Srivastava and A.C.S.C, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Vishnu Chandra Gupta, J.—By means of this writ petition, the petitioner-M/s. Ishwar Packaging Products Private Limited has claimed the following reliefs:

(a) Issue a suitable writ, order or direction in the nature of writ of certiorari quashing the curtailment of Eligibility Certificate on account of registration under the Factories Act for the period 15.12.1984 to 17.7.1987, as contained in Annexure-IV to this writ petition.

(b) Issue a suitable writ, order or direction in the nature of writ of Mandamus directing the opposite party No. 2 to amend the Eligibility Certificate and the petitioner be made eligible for exemption from payment of Sales Tax from the date of application for registration under the Factories Act.

(c) Issue a suitable writ, order or direction in the nature of writ of mandamus directing the opposite party No. 3 not to make any assessment for the Assessment Year 1985-86 to 1989-90 pending disposal of the present writ petition.

The brief facts for deciding the writ petition are that the petitioner is a private limited company duly registered at the relevant time under U.P. Sales Tax Act, 1948 (hereinafter referred to as ''the Act'') and under Central Sales Tax Act. The petitioner was established a new unit and claimed Eligibility Certificate u/s 4-A of the Act. The first date of commencement of production in the unit was 15.12.1984 and the date of the first sale was 23.4.1985. The certificate of Small Scale Industrial Unit was also issued in favour of the petitioner by Director of Industries. In pursuance of an application u/s 4-A of the Act. Eligibility certificate (Annexure-V to the writ petition) was issued to the petitioner on 21.10.1989 for the period of seven years from the date of commencement of production i.e. 15.12.1984 but reduced the period till 17.7.1987 from the date of commencement for the reason of non-availability of registration of Unit under the Factories Act. Aggrieved by the curtailment of the said period till 17.7.1987, the instant writ petition has been filed.

2. It has been averred in the writ petition that petitioner''s capital investment was more than three lac and the first purchase of raw material was 12.12.1984. The first sale was made on 23.4.1985. The petitioner obtained Power Connection on 5.10.1985. At the time of commencement of production, the number of workers employed in the unit of the petitioner were less than ten, even than he moved an application to the Inspector of Factories on 10.3.1985 i.e. prior to the date of first sale for depositing the requisite fee for registration under the Factories Act, 1948. However, the original application dated 10.3.1985 was returned in original to the petitioner with the endorsement of factories Inspector that since only 5-6 employees were employed as such there was no necessity to apply for registration under the Factories Act. A photostat copy of the same has been annexed as Annexure-II to the writ petition and the copy of order passed on the application dated 10.3.1985, the copy of which was issued to the petitioner on 3.12.1991 has been enclosed as Annexure-IIA to the writ petition. It was further averred in the writ petition that the petitioner not having been satisfied to the remark made by the Inspector of Factories deposited a sum of Rs. 250/- with the State Bank of India on 8.4.1986 for registration under the Factories Act. Copy of challan has been annexed as Annexure-III to the writ petition. It was further averred that a registration certificate was issued under the Factories Act on 31.3.1989 w.e.f. 17.7.1987 and the certificate was valid up to 31.12.1987 and was subsequently renewed from time to time uptill 31.12.1990, which has been enclosed as Annexure-IV to the writ petition.

3. The petitioner moved a review petition before opposite party No. 2-Joint Director of Industries for granting Eligibility Certificate on the ground that the petitioner is entitled for a period of seven years i.e. from 15.12.1984 to 14.12.1991 but the said period has been curtailed since the registration under the Factories Act was granted w.e.f. 17.7.1987. Thereafter Writ Petition No. 1151 (M/B) of 1991 was filed by the petitioner keeping in view the fact that the opposite party was in haste in completing the assessment proceeding. The Division Bench of this Court in the aforesaid writ petition passed an order dated 21.3.1991 directing the Divisional Level Committee not to proceed with the

assessment proceedings till the decision on the review application is taken within the stipulated period as fixed by the Court. The order of this Court has been annexed as Annexure-IX to the writ petition. The review petition of the petitioner was rejected vide order dated 26.1.1992 (Annexure-X to the writ petition).

4. In the counter-affidavit, it has been averred that survey of the petitioner''s unit was conducted by the Trade Tax Officer in the presence of Ashok, Director of the Company and as per attendance register on the date of survey, twenty four persons were found working in the unit. A copy of survey report dated 24.6.1986 has been filed as Annexure-CA-2 to the counter-affidavit. It was further averred that an inspection of the petitioner''s unit was made by Inspector of Factories on 17.7.1987 and he found that fifteen persons were working in the petitioner''s unit. Thereafter the petitioner preferred an application under the Factories Act for having its unit registered under the Factories Act. In pursuance of this application, the petitioner was granted registration under the Factories Act on 31.3.1989 w.e.f. 17.7.1987. A copy of which has been enclosed as Annexure-CA-4 to the counter-affidavit.

5. In view of above, the eligibility certificate prior to 17.7.1987 cannot be said to be erroneous. However, it is not disputed that petitioner''s unit started production from 15.12.1984. It was further averred in the counter-affidavit that Notification No. ST-II-6468/X-9 (208)/1981-U.P. Act-XV-48-Order-84, dated August, 27, 1984 and Notification No. ST-II-605/X-9 (208)-1981-Act-74-56-Order-85, dated 29th January, 1985 were issued u/s 4-A of the Act. Copies of the aforesaid notifications dated 27.8.1984 and 29.1.1985 have been enclosed as Annexure-CA-6 and 7 to the counter-affidavit respectively.

6. In pursuance of these notifications, it was stated in the counter-affidavit that for the entitlement of benefit u/s 4-A of the Act, an industrial unit is required to be registered under the Factories Act. It was further averred that actually the capital investment in the unit was more than seven lac, therefore, it was incumbent upon the petitioner''s unit to have a registration under the Industries Act also. It was further averred that application of the petitioner dated 10.3.1985 is not an application for registration under the Factories Act because under the Factories Act, an application for registration is required to be moved on the Form No. 4 appended to the Schedule of U.P. Factories Rules, 1950. The same has been annexed as Annexure-CA-8 to the counter-affidavit. Moreover, as per inspection made by the Inspector of Factories on 17.7.1987, the number of workers were more than ten, therefore, he wanted registration under the Factories Act. The petitioner is not entitled for exemption u/s 4-A of the Act and the authorities rightly curtailed the period on account of absence of certificate of registration under the Factories Act in view of the notification cited above.

7. We have heard Sri Pradeep Agarwal, learned counsel for the petitioner and Sri H.P. Srivastava, learned Additional Chief Standing Counsel for the opposite parties.

8. Learned counsel for the petitioner relying upon the judgment rendered by this Court in M/s. Sahu Stone Crushing Industries v. Divisional Level Committee, Jhansi and another, 1994 (1) UPTC 1, submits that requirement of registration under the Factories Act is not mandatory but directory, therefore, curtailment of period by Divisional Level Committee was not in accordance with law and the petitioner is entitled to get benefit of Section 4-A of the Act from the date of first production and not from 17.7.1987. The aforesaid judgment of the High Court was challenged by the Divisional Level Committee before the Apex Court in Divisional Level Committee and Another Vs. Sahu Stone Crushing Industries, and the Apex Court has made the following observations in paragraphs 4 and 5:

4. However, Mr. Puri, the learned counsel for the respondent, pointed out that the High Court had missed the real thrust of the challenge although it has made a mention of it in the judgment. The High Court points out that it was averred in paragraph 3 of the writ petition that where the number of workers in a new unit is less than ten at the time it goes into production such a unit would not be required to be registered under the Factories Act since u/s 2(m) thereof only those factories in which the number of workers are ten or more can be registered. His submission was that if the benefit is relatable to the date of the registration then such new units would be totally out of the exemption purview and that is the reason why, according to him, clause (c) of sub-section (5) of Section 4-A was ultra vires. That question has not been squarely dealt with by the High Court. It is, therefore, necessary to remit the matter to the High Court for a fresh consideration.

5. In the result, the appeal is allowed. The impugned order of the High Court is set aside and the matter is remitted to the High Court for disposing of the question based on the language of Section 2(m) of the Factories Act and the argument that clause (c) of sub-section (5) of Section 4-A is ultra vires because it discriminates between new units which are registrable under the Factories Act and those that are not registrable thereunder. The High Court will reconsider the matter at an early date. No order as to costs.

9. After the judgment of the Apex Court, the matter was reconsidered and decided by this Court in Sahu Stone Crushing Industries Vs. Divisional Level Committee and Another, . The High Court after considering the provisions contained under the Factories Act especially under the garb of language of Section 2(m) of the Factories Act has made the following observations in paragraphs 17, 18 and 19:

17. Where a new unit does not employ 10 or more than 10 workers it is not factory as defined u/s 2(m) of the Factories Act, 1948, and thus does not require registration u/s 6 of the Factories Act, 1948. In such case requirement of applying for registration and getting registration and license as pre-condition of grant of eligibility certificate is not necessary. Where the legislation by reference provides for the requirement, to be complied with in law, which is not insisted by the Act to which reference has been made, it is not necessary to comply with

that condition. The law does not insist upon some thing, which is not permissible or provided in the statute.

18. We are of the opinion that where a unit employs less than 10 workers at the time, when it goes into production, the unit would not be required to be registered under the Factories Act and in respect of such unit insistence of the registration under the Factories Act or the making of application as condition precedent to grant of exemption in the units would not apply. The provisions of the requirement of registration of such industrial units is directory and cannot be treated to be mandatory. There may be situation, as in the present case where industrial unit was having less than 10 workers at the time, when it goes on production, and subsequently it employs more than workers increasing the number more than 10 required registration under the Act. In such case requirement of registration may be treated to be mandatory but that the date on which the registration of such unit has been registered, cannot be co-related or treated, to have cut down and reduce the period of exemption. In such case period of exemption will be applicable from the date, when the unit started into production and made its first sale.

19. In the present case it is not denied that the unit started into production and first sale was made on 3rd December, 1986. The District Level Committee was thus not justified in reducing the period to begin from the date, when it obtained registration, on 24th November, 1988, after it had applied, on being included in the definition of factory u/s 2(m) of the Act on employing 10 or more than 10 workers.

10. After considering all the judgments referred by learned counsel for the petitioner and after considering the submissions of learned counsel for the parties, we are of the firm view that while curtailing the period for grant of benefit of Section 4-A of the Act prior to 17.7.1987 was not supported with any reason. We find sufficient force in the submissions of learned counsel for the petitioner. Every authority is supposed to pass order after giving certain reasons to support his findings in view of law laid down by the Apex Court as well as by this Court in catena of judgments. If in an unit the workers employed is less than ten workers, then there is no need to register such unit under the Factories Act and if it is so, the necessity of registration under the Factories Act is not at all required and in the light of that pre condition of having registration under the Factories Act was held to be not mandatory. This aspect of the matter has not been considered by the Divisional Level Committee while disallowing the benefit of Section 4-A prior to 17.7.1987. What material was placed before Divisional Level Committee by the petitioner before passing the order of curtailment and what material has been considered by Divisional Level Committee is not reflected from the order impugned as contained in Eligibility Certificate.

11. In view of above, we are of the view that eligibility certificate in question issued for curtailing the period of exemption prior to 17.7.1987 is liable to be set aside. The matter requires to be reconsidered by the Divisional Level Committee,

in the light of the aforesaid facts of this case, whether the petitioner is entitled to get benefit of Section 4-A of the Act prior to 17.7.1987 on the ground that unit was not having the strength of workmen more than ten.

12. As this is a question of fact whether prior to 17.7.1987 how many workers were working in the unit has to be ascertained by the Divisional Level Committee and not by this Court.

13. Consequently, we set aside the order of curtailment of period prior to 17.7.1987 and direct the Divisional Level Committee to decide the same a fresh that whether the petitioner is entitled to get benefit of Section 4-A of the Act from the date of first production as contained in eligibility certificate or not. If not, up to which date. The reasons may also be assigned in writing after giving opportunity of being heard to the petitioner and the revenue. The Divisional Level Committee shall decide it within a period of two months from the date of production of a certified copy of this order. With the aforesaid observations, the writ petition is finally disposed of.

