(2002) 01 AHC CK 0068

In the Allahabad High Court

Case No : Writ Petition No.240 (MS) of 2002

Krishna Rice Mill,Hardoi APPELLANT

Vs

President, Trade Tax Tribunal, U.P.and Another RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Limitation Act, 1963 — Section 5
Uttar Pradesh Trade Tax Act, 1948 — Section 10(2)

Citation : (2002) 01 AHC CK 0068

Hon'ble Judges : U.K.Dhaon, J

Final Decision : Allowed

Judgement

U.K. Dhaon, J.—The petitioners have approached this Court against the order dated 15.1.2001 passed by the Trade Tax Tribunal, Lucknow which has refused to entertain the appeal preferred by the petitioners against the eligibility certificate issued under Section 4A of the Trade Tax Act.

2. The brief facts of the case are that an application was moved by the petitioners for the issue of eligibility certificate under the provisions of the U.P. Trade Tax Act (hereinafter referred as the Act) before the Divisional Level Committee, Division Lucknow and the said application was rejected by the order dated 29.12.199. The petitioners thereafter filed a review petition before the same authority and also filed an appeal against the order dated 29.12.1999 before the Trade Tax Tribunal. At the time of hearing of appeal on 9.6.2000, a letter dated 9.6.2000 was submitted before the Full Bench of the Tribunal by Joint Director, Industries, Lucknow stating that in the meeting dated 15.5.2000 of D.L.C. the petitioner''s review application has been accepted and the unit has been found eligible for exemption and Eligibility Certificate was proposed to be issued to the petitioner soon. On the basis of the said statement, the appeal which was filed by the petitioners against the order dated 29.12.1999 was dismissed by the Trade Tax Tribunal as infructuous. Lateron, the petitioners acquired the knowledge that the certificate was already issued on 31.5.2000 but the entire redress was not granted to the petitioners. An application under

Section 22 of the Act was moved before the Trade Tax Tribunal for rectification of the error in the order dated 9.6.2000. The said application under Section 22 of the Act was rejected by the Tribunal by the order dated 10.8.2001 on the ground that the petitioners can challenge the order dated 31.5.2000 by way of appeal under Section 10(2) of the Act. The petitioners immediately filed an appeal under Section 10(2) of the Act on 28.8.2001 along with an application under Section 5 of the Limitation Act. The Trade Tax Tribunal by the impugned order has rejected the application under Section 5 of the Limitation Act. Being aggrieved by the said order the petitioners have approached this Court.

3. The learned counsel for the petitioners submits that on the legal advice, the petitioners were prosecuting their case before the authorities and on a wrong statement made by the Industries Department the appeal which was preferred by the petitioners against the order dated 29.12.99 was dismissed as infructuous. He further submits that as soon as through certificate dated 31.5.2000, the petitioners acquired the knowledge that the entire redress was not granted to the petitioners, they moved an application under Section 22 of the Act which was rejected by the Tribunal holding that appeal will lie under Section 10(2) of the Act and as such the Tribunal ought to have condoned the delay and entertained the appeal for decision on merits.

4. Sri Rakesh Bajpai, learned counsel appearing on behalf of the opposite parties submits that there is no illegality in the impugned order as the appeal was preferred after more than 356 days. He further submits that only Section 5 of the Limitation Act applies to the provisions of the Trade Tax Act and Section 14 of the Limitation Act is not applicable.

5. I have considered the arguments of the learned counsel for the parties and gone through the record.

6. There is no dispute that the appeal which was preferred by the petitioners against the order dated 29.12.99 passed by the Divisional Level Committee was dismissed as infructuous on the basis of a statement made by the Industries Department and lateron when the petitioners acquired the knowledge that the certificate under Section 4A of the Act was already issued on 31.5.2000 and the exemption as prayed by the petitioners was not granted through the said certificate, the petitioners moved an application under Section 22 of the Act on 11.6.2000 before the Trade Tax Tribunal which was rejected by the Tribunal by the order dated 10.8.2001 holding that appeal lies under Section 10(2) of Act against the order dated 31.5.2000 and the Application under Section 22 of the Act is not maintainable. The petitioners immediately thereafter filed an appeal on 28.8.2001 along with an application under Section 5 of the Limitation Act for condoning the delay. The Tribunal ought to have allowed the application under Section 5 of the Limitation Act as the Tribunal was of the view that the application under Section 22 of the Act was not maintainable and the only remedy available to the petitioners is under the provisions of Section 10(2) of the Trade Tax Act. The appeal which was filed by the petitioners against the order

dated 29.12.99 was also dismissed as infructuous in view of the fact that a wrong statement was made by the Officer of the Industries Department. The Tribunal ought to have decided the appeal preferred by the petitioners on merits. The impugned order passed by the Tribunal is legally not sustainable.

7. The Writ petition succeeds and a writ in the nature of certiorari is issued quashing the order dated 15.10.2001 passed by the Trade Tax Tribunal contained in Annexure8 to the writ petition. As the petitioners have challenged the order dated 31.5.2000 on 28.8.2001 just within 18 days from the order dated 10.8.2001 the delay in filing the appeal is hereby condoned. The Tribunal is hereby directed to register the appeal of the petitioners and decide the same on merits within three months, in accordance with law.

(Petition allowed)