**(2005) 05 AHC CK 0049**

**In the Allahabad High Court**

**Case No :** Trade Tax Revision No. (5) of 2004

Maitri Steels Limited APPELLANT

Vs

The Commissioner, Trade Tax RESPONDENT

**Date of Decision :** 04-05-2005

**Acts Referred:**

Factories Act, 1948 — Section 47
Uttar Pradesh Trade Tax Act, 1948 — Section 11, 4A
Uttar Pradesh Trade Tax Rules, 1948 — Rule 25(3)

**Citation :** (2005) 05 AHC CK 0049

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Advocate :** Bharat Ji Agarwal and Piyush Agarwal, for the Appellant;

## Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as ""Act") is directed against the order of Tribunal dated 23rd September, 2003 by which the appeal filed by the applicant against the order of the Divisional Level Committee dated 08.05.2003.

2. Brief facts of the case are that the applicant established a new unit for the manufacture of flats, rounds, joist, angle etc. Applicant claimed to be a Small Scale Industry and accordingly a certificate was issued by the Director of Industries, U.P. on 16th October, 1992. First sale was made on 30th September, 1992. Applicant applied for exemption u/s 4-A of the Act which was allowed by the Divisional Level Committee and eligibility certificate was issued on 12th July, 1994 granting exemption for the period of 10 years from 30th September, 1992 or 150 percent of the capital investment of Rs. 91,72,447/- whichever expire earlier. Applicant moved review application on 09.08.1994 under Rule 25 (3) (c) of the Act on two grounds, namely, (1) that the investment made in the construction of residential houses for the workers at Rs. 1,89,100/- should be added in the fixed capital investment. (2) Applicant unit is a Small Scale Industry under the guidelines of the Central Government, Department of Industries letter

 

No. S.O.-232 (E) dated 02.04.1991 and hence under notification No. ST-II-1093/ X1-7 (42)-86-UP Act-XV/48-Order-91, dated 27.07.1991 entitled for 175 percent of the fixed capital investment. Divisional Level Committee vide its order dated 08.05.2003 rejected both the aforesaid claims Against the said order, appeal was filed before the Tribunal which has also been rejected.

3. Heard learned counsel for the parties.

4. Learned counsel for the applicant submitted that under the Notification No. ST-11-1093/XI-7 (42)-86-UP Act-XV/48-Order-91, dated 27.07.1991, Small Scale Industry established at Kanpur Dehat was entitled for 175 percent of the fixed capital investment. He submitted that Explanation (2) to the Notification defines "Small Scale Unit" means an industrial undertaking certified by the Director of Industries, Uttar Pradesh in accordance with the guidelines issued in this behalf by the Government of India and under the guidelines issued by the Government of India vide letter No. S.O. 232 (E) dated 02.04.1991 only investment made in plant and machinery are to be considered and its value should not exceed Rs. 60 lacs and the value of the land and building should not be considered and if the value of plant and machinery are to be taken, the total value of plant and machinery comes to less than Rs. 60 lacs, lie further submitted that in the subsequent Notification No. TT-2-780/XI-9 (226)/94-UP Act-15/48-Order-95, dated 31.03.1995 by the amendment the word "within the meaning of Clause (4) of Explanations to Section 4-A of the Act has been deleted and the aforesaid Notification has been clarified by the Government. He further submitted that by the further amendment vide Notification No. ST-II-1309/XI-9 (226)/94-Aet-74-56, Order-97, Lucknow dated 05th May. 1997, the meaning of the word Small Scale Industry has been amended and only the value of plant and machinery has been considered for capital investment upto Rs. 60 lacs. He submitted that if subsequent notifications are to be considered then under the Notification dated 27.07.1991 also only value of the plant and machinery are to be considered for computation of Rs. 60 lacs. He submitted that the subsequent Notification is relevant for interpreting the earlier Notification and in support of his contention he relied upon the decision of the Apex Court in the case of Pappu Sweets and Biscuits etc v. The Commissioner of Trade Tax reported in 1998 U.P.T.C. 1086. With regard to the capital investment of Rs. 1,89,100/- made in the construction of the labour quarter inside the factory, he submitted that it is the rest room and necessary for running of the factory, therefore, its value is liable to be included in the fixed capital assets.

5. Learned Standing Counsel submitted that the exemption notification has to be interpreted strictly and for this he relied upon the decision of the Apex Court in the case of Novapan India Ltd, Hyderabad v. Collector of Central Excise and Custom reported in 1994 Supp (3) SCC 606 and the case of State Level Committee v. MAS Morgardshammar India Ltd reported in 1996 UPTC 213. He submitted that language of the notification dated 27.07. 1991 is clear and the claim of the applicant has to be considered within the ambit of the language of

 

the notification dated 27.07.1991 and Help of subsequent notification is not required. He further submitted that the subsequent notification is relevant from the date of its gazette and are not relevant for the earlier periods. He submitted that in the Explanation to the notification dated 27.07.1991, Small Scale Industry is defined, which clearly states that a Small Scale Industry undertaking but the fixed capital investment (within the meaning of Clause (4) of Explanations to Section 4-A of the Act) whereof does not exceed Rs. 60 lacs, therefore, fixed capital investment as defined by Clause (4) of Explanation to Section 4-A has to be considered which means value of land, building, plant, machinery, equipment etc. He submitted that admittedly, the value of land, building, plant, machinery etc was in excess of Rs. 60 lacs and therefore, the unit of the applicant was not the Small Scale Unit as defined by the Explanation of the notification dated 27.07.1991 and, thus, the unit was not entitled for exemption to the extent of 175 percent of the capital investment He further submitted that the servant quarters where residential quarters are not necessary to run the unit. He submitted that the servant quarters are not required to be constructed u/s 47 of the Factories Act and, therefore, its value has rightly not been added in the fixed capital investment .

6. I have perused the order of the Tribunal and the authorities below.

7. Admittedly, exemption u/s 4-A of the Act has been sought under Notification No. ST-II-1093/X1-7 (42)-86-UP Act-XV/48-Order-91. dated 27.07.1991 and there is no dispute that the value of the land, building, plant, machinery etc. was more than Rs. 60 lacs and the value of the plant and machinery was less than Rs. 60 lacs. Now question for consideration is whether the applicant unit was a Small Scale Industry within the ambit of the Notification dated 27.07.1991. There is no dispute that if the applicant unit is Small Scale Unit within the meaning of Small Scale Unit as defined under the notification, it is entitled for exemption to the extent of 175 Percent of the fixed capital investment. Explanation (2) of the Notification No. ST-II-1093/XI-7 (42)-86-UP Act-XV/48-Order-91, dated 27.07.1991 reads as follows.

"Small Scale unit" means an industrial undertaking certified by the Director of Industries, Uttar Pradesh in accordance with the guidelines issued in this behalf by the Government of India to be-

(a) a small scale industrial undertaking but the fixed capital investment (within the meaning of Clause (4) of explanation sto Section 4-A of the Act whereof does not exceed sixty lakh rupees;

(b) an ancillary industrial undertaking but the fixed capital investment (within the meaning of Clause (4) of explanation to Section 4-A of the Act) whereof does not exceed seventy five lakh rupees".

8. The aforesaid Hxplanation given in the Notification No. TT-2-780/XI-9 (226)/94-UP Act-15/48-Order-95, dated 31st March, 1995 reads as follows.

 

"Small scale unit", means an industrial undertaking certified by the Director of Industries, Uttar Pradesh in accordance with the guidelines, issued in this behalf by the Government of India to be :-

(a) a small scale industrial undertaking the fixed capital investment whereof does not exceed sixty lakh rupees;

(b) an ancillary industrial undertaking the fixed capital investment whereof does not exceed seventy-five lakh rupees."

9. Explanation (2) of the notification after the amendment by the Notification No. ST-II-1308/XI-9 (226)/94- U.P. Act-15-48, Order-97, Lucknow dated 05th May, 1997dated 05th May, 1997 reads as follows.

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10. Clause (4) of Explanation to Section 4-A of the Act which defines fixed capital investment reads as follows.

"fixed capital investment", means value of land and building and such plant, machinery, equipment, apparatus, components, moulds dyes, jigs and fixtures as have not been used in any other factory or workshop in India : Provided that -

(a) for the purposes of determining value of land and building only the following shall be taken into account,-

(i) value of only such portion of land and building as is necessary for the establishment or running of the factory or workshop of the unit;

(ii) expenses incurred in registration of land and building under the provisions of the Registration Act, 1908 and in development of land as development charges payable to any statutory body;

(iii) the value of land or building already owned and given by the proprietor, partner, managing director, promoter director or holding company as his or its share in the capital in case the unit is established in such land or building;

(iv) the amount or proportionate amount paid or payable as premium during the period for which exemption u/s 4-A is granted on account of lease and the expenses incurred on registration of the lease deed under the Registration Act, 1908, in case the unit is established in land or building taken on lease;

(v) the value of land or building which is necessary for establishing or running the unit under some statutory obligation.

(b) for the purposes of determining value of plant, machinery, equipment, apparatus, components, moulds, dyes, jigs and fixtures only the following shall be taken into account:-

(i) investment, whether by means of purchase, hire or lease in such plant, machinery, equipment, apparatus, components and machinery as is necessary for the establishment or running of the factory or workshop;

(ii) investment as is necessary under some statutory obligation; and

(iii) expenses incurred in erection and installation of such plant and machinery and bringing it to the site.

(c) the State Government may, by notified order, specify the procedure for determining fixed capital investment.

(d) if a unit has made fixed capital investment under two or more heads of expansion, diversification, modernisation and backward integration but fixed capital investment made under each such head is not ascertainable than the break-up of fixed capital investment furnished by the unit will be accepted."

11. Guidelines issued by the Government of India vide letter No. 232 (E) dated 02.04.1991 reads as follows:

"S.O. 232 (E)-Whereas the Central Government considers it necessary with a view to ascertain which ancillary and Small Scale Industrial Undertakings need supportive measures or exemption or other favourable treatment under the Industries (Development and Regulation Act, 1951 ( 65 of 1951), (here in after referred to as the said Act) to enable them to maintain their availability and strength so as to be effective in-

1. Requirements to be complied with by an Industrial Undertaking for being regarded as Small Scale Industrial Undertaking-

(a) An Industrial undertaking in which the investment in fixed asserts in plant and machinery whether held on ownership terms or on lease or by hire purchase does not exceed rupees sixty lakhs."

12. In my opinion, submission of the learned counsel for the applicant cannot be accepted. The language of the definition of Small Scale Unit given in Explanation (2) of the notification dated 27.07.1991 is clear and specific so far as the value of the fixed capital investment not exceeding Rs. 60 lacs is concerned, it has been stated that the Small Scale Industry undertaking, but the fixed capital investment (within the meaning of Clause (4) of Explanations to Section 4-A of the Act) whereof does not exceed Rs. 60 lacs) then so far as the valuation of the Rs. 60 lacs is concerned, guidelines issued by the Government of India may not be relevant. However, in case, if in the notification nothing would have been said about the value of the fixed capital investment then the reference of the guidelines given by the Government of India would have been adopted, but in view of the specific mention about the fixed capital investment in the notification, value of the fixed capital investment has to be considered in accordance to the language used in the notification. It clearly says that Small Scale Industry undertaking, but the fixed capital investment (within the meaning of Clause (4) of Explanations to Section 4-A of the Act) whereof does not exceed Rs. 60 lacs), thus, the fixed capital investment as defined in Clause (4) of Explanation to Section 4-A of the Act has to be considered which includes the value of the land, building, plant, machinery etc and not plant and machinery alone. There is no ambiguity in this regard. Amendment in Explanation (4) by the subsequent notification also supports the case of the revenue that under the notification dated 27.07.1991, legislature intended to give the meaning of fixed capital investment given in Clause (4) of Explanations to Section 4-A of the Act which includes land, building, plant, machinery etc. It is a settled principle of law that the exemption notification has to be construed strictly.

13. In the Case of Swadeshi Polytex Limited v. Income Tax Officer reported in 1980 UPTC 1084. the Division Bench of this Court held as follows:

"It is well established that where the language of a section is plain and unambiguous, it is not open to courts to read into it limitation which are not there based on a priority reasoning as to the probable intention of the legislature. Such intention can be gathered from the words actually used in the legislature and what is unexpressed has the same value as to what is unintended."

14. In the case of Commissioner of Sales Fax, Gujarat v. Union Medical Agency reported in 1981 UPTC 520, the Apex Court held as follows:

"If the meaning of the section is plain, it is to be applied whatever the result"

15. In the case of Assessing Authority cum-Excise & Taxation Officer, Gurgaon and Anr. v. East India Cotton Mfg. Co. Ltd., Faridabad reported in 1981 UPTC 1319, the Apex Court held as follows:

"It is also a well settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added or subtracted unless there are adequate grounds to justify the inference that the legislature clearly so intended."

16. In the case of Commissioner of Income Tax, Orissa and Ors. v. N.C. Budharaja & Company and Anr. reported in 1993 UPTC 1335. the Apex Court held as follows:

"The principle of a liberal interpretation which advances the purpose and object underlying the provision cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to re-write the section or substitute words of its own for the actual words employed by the Legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the Legislature."

17. In the case of Gurudevdatta VKSSS Maryadit and Others Vs. State of Maharashtra and Others, , the Apex Court held as follows:

"Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinaly or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute."

18. The argument of the learned counsel for the applicant that the subsequent notification is clarification cannot be accepted for the simple reason that the notification No. 1093....dated 27.7.1991 under which exemption has been claimed is clear and plain and does not need any clarification.

19. So far as claim of the applicant that a sum of Rs. 1,89,100/-invested in the construction of servant quarters be added in the fixed capital investment. I do not find any force. Construction of the servant quarters is not compulsory in any provision of the Act. It is not necessary for running of the factory or workshop of the unit and, therefore it does not fall within the ambit of Clause (a) of Explanation (4) to Section 4-A of the Act.

20. In the result, revision fails and is accordingly dismissed.