(2013) 05 AHC CK 0465

In the Allahabad High Court

Case No : Writ Tax Nos. 232 and 1410 of 2003

Nilkamal Plastics Limited APPELLANT

Vs

Divisional Level Industrial Development Authority RESPONDENT

Date of Decision : 22-05-2013

Acts Referred:

Citation : (2014) 73 VST 169

Hon'ble Judges : Sunil Ambwani, J;Bharat Bhushan, J

Bench : Division Bench

Judgement

1. We have heard Sri Bharat Ji Agrawal, senior advocate, assisted by Sri Piyush Agrawal. Learned standing counsel appears for the State respondents. In these two writ petitions, a short question that has arisen for consideration is as to whether exemption granted to the existing unit on investment of Rs. 5 crores, for a period of 15 years to the extent of 200 per cent, could be curtailed by notification issued by the State Government.

2. In Writ Petition No. 232 of 2003, the petitioner has prayed for direction to quash the order dated January 13, 2003, passed by the Greater Noida Divisional Level Industrial Development Authority Committee, and further to restrain it from taking any proceedings in response to the order dated January 13, 2003.

3. The petitioner has relied upon the judgments of the court in Arora Box Industries, Varanasi v. Divisional Level Committee, Varanasi [1993] UPTC 204 and Newage Printing Ink Company, Meerapur, Allahabad v. State of U.P. [1995] UPTC 952, in which it was held that after granting exemption, the Divisional Level Committee has no power to curtail the period.

4. The writ petitions have been filed on the principle of law that any amendment in the exemption certificate could have been carried out only by the Commissioner, Trade Tax, and that for the purpose, the Divisional Level Committee has no authority, to modify the eligibility certificate.

5. In the counter-affidavit of Sri R.C. Dixit, Deputy Commissioner (Assessment), Trade Tax, Noida, it is stated that Ordinance No. 18 of 1999 was promulgated, to provide full exemption for 15 years to those units who have made fixed capital investment of more than Rs. 5 crores within five years. The Ordinance was subject to issuance of notification. Since no notification was issued and published, the exemption, as contemplated by way of Ordinance No. 18 of 1999, cannot be extended for 15 years, to any dealer. The Notification Nos. 640 and 641 dated February 21, 1997, granting exemption in the trade tax, were made applicable to only those units, which have fixed capital investment of more than Rs. 50 crores. The limit of Rs. 50 cores was never reduced by any notification. On the contrary, similar benefits were provided by Ordinance No. 18 of 1999, even to those units having fixed capital investment of more than rupees five crores, subject to issuance of notification, which never came into being. Accordingly, no benefits could be extended to the units having fixed capital investment of more than rupees five crores.

6. Sri Bharat Ji Agrawal has relied upon a judgment of the Supreme Court in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, in which it was held that if the notification issued by Government Order, in exercise of power u/s 7 of the Bihar Finance Act was found to be repugnant to the industrial policy declared in a Government resolution, then to that extent the notification must be held to be bad. In opening part of para. 7 of the judgment, the Supreme Court observed that issuance of notification by the State Government in exercise of power u/s 7 of the Finance Act, entitles the industrial units to avail of incentives and benefits declared by the State Government in its own industrial incentive policy. In exercise of such power, it would not be permissible for the State Government, to deny any benefit which is otherwise available to an industrial unit under the incentive policy.

7. In the present case, the industrial policy is clearly reflected in the proviso to section 4A of the Act as amended by Ordinance No. 18 of 1999, which provides that in respect of goods manufactured in a new unit having a fixed capital investment of five crore rupees or more or in an existing unit which may make fixed capital investment of five crore rupees or more in expansion, diversification, modernisation and backward integration or any one of them, within such period not exceeding five years, as may be specified in the notification, the exemption from or reduction in the rate of tax may be granted.

8. The extent of exemption and its percentage, provided in section 4A of the Act as amended by Ordinance No. 18 of 1999, is subject to issuance of notification, which in the present case, was not issued. The notification is an essential condition, sine qua non for grant of exemption. We do not agree with the submission of Sri Bharat Ji Agrawal that issuance of notification is not necessary for giving benefit of the proviso u/s 4A of the Act as amended by Ordinance No. 18 of 1999. The grant of exemption is only an enabling provision, subject to issuance of notification by the State Government.

9. We are informed that the State Government has granted the relief on the quantum of exemption to the petitioner. In this writ petition, we are not concerned with such relief, as the only question, which was required to be considered is whether the petitioner is entitled to the exemption claimed by it, in absence of any notification. The writ petition is dismissed.