(2013) 01 AHC CK 0382

In the Allahabad High Court

Case No : Trade Tax Revision No. 31 of 1999

Parmshwar Quality Rice Mill — APPELLANT

Vs

Commissioner of Trade Tax — RESPONDENT

Date of Decision : 18-01-2013

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2013) 58 VST 90

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : Pradeep Agarwal, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—Present revision has been filed u/s 11 of the U.P. Trade Tax Act, 1948 by the assessee against the judgment and order dated November 10, 1998 passed by the Trade Tax Tribunal, Lucknow, in Second Appeal No. 33 of 1996 u/s 4A of the U.P. Trade Tax Act. The brief facts of the case are that the assessee had established a new unit for processing of the rice from paddy. An exemption certificate u/s 4A was granted by the competent authority for the period of January 22, 1987 to January 21, 1993 i.e., six, years. Later, the competent authority found that the factory was registered under the Factories Act only on July 11, 1990. So, prior to it, the exemption period was curtailed. In other words, the exemption period with effect from January 22, 1987 to July 11, 1990, was curtailed. For the remaining period, the exemption was allowed. Being aggrieved, the revisionist has approached the Tribunal, who vide its impugned order has rejected the claim of the assessee. Still not being satisfied, the assessee has filed the present revision.

2. With this background, heard Sri Pradeep Agarwal, learned counsel for the assessee and Sri Sanjeev Sankdhar, learned counsel for the Department.

3. After hearing both the parties and on perusal of the record, it appears that the

exemption was granted u/s 4A of the Act by the competent authority. Section 4A is reproduced as under:

4A. Exemption from trade tax in certain cases.--(1) Notwithstanding anything contained in any other provisions except the provisions of section 3H of this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or in any districts or parts of districts in particular, it may on application or otherwise, in any particular case or generally, by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding fifteen years from such date on or after the date of starting production as may be specified by the State Government in such notification, which may be the date of the notification or a date prior or subsequent to the date of such notification and where no date is so specified from the date of first sale by such, manufacturer, if such sale takes place within six months from the date of starting production and in any other case from the-date following the expiration of six months from the date of starting production and subject to such conditions as may be specified, be exempt from trade tax on sale of goods whether wholly or partly or he liable to tax at such reduced rate as it may fix:

4. Undoubtedly in the instant case, the first sale was with effect from January 22, 1987. In the case of Mahaveer Paints and Adhesive Pvt. Ltd., Kanpur v. CTT [2006] 52 STI 45 (All), it was observed by this honourable High Court that the period when the manufacturing was continuing, then the period of exemption cannot be curtailed as the same was covered by the exemption period.

5. Further, this honourable High Court in the case of Kuchchal Industries, Saharanpur v. Divisional level Committee Meerut [2013] 58 VST 93 (All) [Appx.]; [1990] UPTC 48,1 (All) observed that once the eligibility certificate was granted, authorities concerned cannot reduce or curtail the statutory period of exemption on the ground that the unit was registered under the Factories Act on a date latter than the date of application u/s 4A. The honourable Court observed that;

Neither section 4A nor notification issued under it, clothes the authority with such power. Eligibility certificate is required to be granted to a unit if it satisfies the requirement of being a new unit as provided under the Act. Period from which it commences is not left to discretion of the authority. Once it was found to be new unit entitled to exemption from 1984 the period for which it was entitled for grant of eligibility certificate had to be determined under the Act and the notification applicable at that time from the date of production which under clause of Explanation to section 4A meant that the date on which raw material was purchased or installation of power connection whichever was latter. This could not be altered or modified by the authority granting the certificate.

6. Against the above-mentioned decision, the, honourable Supreme Court has dismissed the S. L. P. (Civil) No. 117 of 1991 filed by the Department on January

16, 1991, by observing that:

January 16, 1991: Their Lordships N.M. Kasliwal and K. Ramaswami, JJ. dismissed a SLP by the State against the judgment and order dated December 22, 1989 of the Allahabad High Court in C.M. W.P. No. 1668 of 1988 whereby the High Court, allowing the dealers writ petition, held that the fact that the dealer was registered under the Factories Act at a later date could not curtail the eligibility certificate granted u/s 4A of the U.P. Sales Tax Act, 1948, for five years from the start of production in 1984. In this case the dealer was registered under the Factories. Act only in 1987, and the authorities sought to curtail the registration certificate as effective only from 1987 to 1989. instead of from 1984 to 1989. Commissioner of Sales Tax v. Kuchchal Industries SLP (Civil) No. 117 of 1991.

7. In the light of above discussions and by considering the totality of the facts and circumstances of the case, I set aside the impugned order as well as the impugned certificate issued by the Divisional Level Committee for curtailment of the period. The assessee will get the consequential relief. The revision is allowed