(2003) 09 AHC CK 0270

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1059 of 1987

Raebareli Flour Mills Pvt. Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2003) 09 AHC CK 0270

Hon'ble Judges : Umeshwar Pandey, J;M. Katju, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned Counsel for the Petitioner and learned Standing Counsel.

This writ petition has been filed against the impugned order dated 16.9.1987 passed by the Respondent No. 2, Annexure-5 to the writ petition. The Petitioner has also prayed for a mandamus restraining the Respondents to restrain from realizing any sales tax from the Petitioner or requiring the Petitioner to deposit any sales tax for the assessment years 1983-84 to 1988-89.

2. The Petitioner is a company registered under the Indian Companies Act, 1956 which carries on the business of manufacture and sale of Aata, Maida, Suji and Bran. The State Government vide its Order dated 30.9.1982 u/s 4A of the U.P. Trade Tax Act granted the exemption from payment of sales tax to the new units, which were to be established in Uttar Pradesh. The Petitioner has alleged that its unit is covered under Clause (2) of the Notification dated 30.9.1982 for which the Petitioner was granted an Industrial licence by the Central Government.

3. It is alleged in para-8 of the petition that the Petitioner purchased new machineries, the value of which was about Rs. 40 lacs. Apart from it, the Petitioner had made huge investment of more than Rs. Six lacs towards land and building for starting the new unit. Petitioner has been granted registration by the

Director of Industries, Bulandshahar vide registration certificate dated 29.9.1984, Annexure-1 to the petition.

4. In this certificate of registration, it is mentioned that the date of start of actual production in the flourmill off the Petitioner was with effect from 9.1.1983.

5. The Petitioner made an application for exemption u/s 4A of the U.P. Trade Tax Act, vide Annexure-2 to the petition. The Petitioner also applied for registration under the Factories Act and got a certificate dated 3.2.1983 vide Annexure-4 to the writ petition.

6. It is alleged in para-15 of the petition that the General Manager, District Industries Centre, Bulandshahar recommended grant of eligibility certificate to the Petitioner. However, that application was rejected on 23.3.1987. Against that order, the Petitioner filed a review application, which too has been rejected by order dated 16.9.1987, vide Annexure-5 to the petition.

7. A perusal of Annexure-5 shows that Respondent No. 2 has rejected the application u/s 4-A of the Act on the ground that the Petitioner made purchases of raw materials on 31.5.1982 and hence the date of starting the production shall be taken as 31.5.1982.

8. It is alleged in para-22 of the petition that Respondent No. 2 has rejected the application for exemption overlooking the registration certificate issued by the Director of Industries in which the date of starting production has been mentioned as 9.1.1983. In para 24it is alleged that the assessing authority also observed in the assessment order for assessment year 1981-82 that production in the Petitioner''s unit was started in January, 1983 vide Annexure-6 to the petition.

9. Counter affidavit has been filed and we have perused the same. In para-10, it is stated that the unit started its trial production on 31.5.1982.

10. In para-14 of the counter affidavit, it is stated that application u/s 4-A was rejected because the Petitioner was not found to be a new unit as defined in the relevant definition in Section 4-A. Among the condition of eligibility for exemption was the condition that the unit started production on or after 1.10.1982. It is alleged that since the production was started before 1.10.1982, the Petitioner was not eligible for sales tax exemption and accordingly his application was rejected.

11. It has been held by the Supreme Court in Janta Machine Tools v. State of U.P. and Ors. 1989 suppl. (1) S.C.C. 281, that the trial production does not amount to the date of actual production under the Government Order dated 30th September, 1982.

12. The facts of the case are covered by the Division Bench decision of this Court in Magnum Papers Pvt. Ltd. v. State of U.P. and Ors. 2003 U.P.T.C. 354 (vide Paragraphs 10 & 11).

13. Following the aforesaid decision, the writ petition is allowed. The impugned order dated 16.9.1987 is quashed and the Divisional Level Committee, Meerut is directed to grant eligibility certificate u/s 4-A to the Petitioner as prayed for forthwith. Till grant of eligibility certificate the assessment proceedings for the assessment years 1983-84 to 1988-89 shall remain stayed.