
(2009) 12 AHC CK 0304
In the Allahabad High Court

Rattan Vanaspati Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A, 7D

Citation : (2010) 30 VST 61

Hon'ble Judges : Sabhajeet Yadav, J;Prakash Krishna, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsels for the parties.

2. By means of present petition, the petitioner has sought a writ in the nature of certiorari for quashing the order dated July 17, 2001 passed by the Commissioner of Trade Tax, U.P., Lucknow, whereby the installed production capacity of the petitioner's unit has been fixed at 30,000 M.T. of vanaspati ghee per year while disposing of the application filed by the petitioner for composition of tax u/s 7D of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act").

3. The facts of the case in brief are that the petitioner is a public limited company incorporated under the Indian Companies Act. It had entered into an agreement for financial assistance, before establishing manufacturing plant of vanaspati ghee with Industrial Finance Corporation of India (hereinafter referred to as I.F.C.I.) on March 27, 1992. The petitioner's unit was a "new industrial unit" within the meaning of Section 4A of the U.P. Trade Tax Act under the notification dated July 27, 1991, the exemption was granted from payment of trade tax up to December 1, 1999 to the new industrial units. The dispute in the present writ petition is confined to the period of four months commencing December 1, 1999 to March 31, 2000. For the aforesaid period, the petitioner filed requisite application u/s 7D of the Act stating that the installed production

capacity of the petitioner's manufacturing unit is 62.50 M.T. per day and therefore, its actual installed production capacity is 18,750 M.T. per annum. Along with the said composition application number of documents in support of the installed production capacity were filed. The Commissioner of Trade Tax by the impugned order has found that the installed production capacity of the petitioner's unit is 30,000 M.T. per annum instead of 18,750 M.T. per annum and it determined the composition amount accordingly payable by the petitioner, by the impugned order. Challenging the said order, the present writ petition has been filed principally on the ground that the impugned order has been passed without taking into consideration the reply filed by the petitioner, its contents and the documents.

4. A counter-affidavit has been filed stating that a composition scheme is an agreement between the dealer and the State Government, by which an agreed amount is fixed in lieu of tax. The said scheme is optional. The petitioner along with application u/s 4A had annexed certain documents, which clearly discloses that the annual installed production capacity of the petitioner's unit is 30,000 M.T. per annum. It has been further stated that according to own showing of the petitioner the installed production capacity of the petitioner's unit is 30,000 M.T. per annum. The reference made by the petitioner to certificate issued by the chartered engineers, certifying that the installed production capacity is 62.50 M.T. per day is not acceptable in view of the other available documents on the record.

5. In the rejoinder affidavit the plea taken in the writ petition has been reiterated and a copy of the reply dated December 26, 2000 submitted by the petitioner in response to the notice No. 1782 dated December 18, 2000 given by the Commissioner of Trade Tax, besides the other documents has been annexed to show that the installed production capacity is 62.50 M.T. per day which would come to 18,750 M.T. per annum and it would not be 30,000 M.T. per annum as determined by the Commissioner, Trade Tax. Sri Bharatji Agrawal, learned senior Counsel appearing on behalf of the petitioner, submits that the impugned order has been passed without taking into consideration the various documents filed by the petitioner and in support of its case that the installed production capacity is 62.50 M.T. per day. He invited the attention of the court towards various documents such as circular dated February 27, 2000 issued by the Commissioner of Trade Tax in pursuance of the decision dated February 14, 2000 taken by the State Government in this regard. Attention was also invited towards the application u/s 4A of the Act for grant of exemption, the returns filed before the Registrar of Companies, eighth annual report 1998-99 of the petitioner's company, the certificate given by the H.B.T.I., Kanpur and other documents to show that the installed production capacity of the petitioner's unit is 62.50 M.T. per day.

6. Sri S.P. Kesarwani, learned Standing Counsel, on the other hand, submits that in view of the fact as found in the survey conducted by the official of the

Department and also the information given by the petitioner in the form "memorandum of information" signed by the Director, the installed production capacity has been accepted as 30,000 M.T. Therefore, no interference in the present writ petition is called for.

7. We have considered the respective submissions of learned Counsel for the parties and perused the record.

8. In the present case at the very outset it may be stated that we are required to find out as to whether there is any error in the decision making process of respondent No. 2 or not. In the writ petition we are not required to determine the installed production capacity of the unit in question, which is to be decided by the authority concerned. From a perusal of the circular dated February 22, 2000 issued by the Commissioner of Trade Tax in the light of the decision taken by the State Government on February 14, 2000, it appears that a dispute was raised by U.P. Vanaspati Producer Association (registered), Bulandshahar with respect to the question of determination of the installed production capacity of vegetable ghee manufacturing units registered with Government of India, Ministry of Food Consumer Affairs (Department of Sugar and Edible Oil) seeking composition of tax u/s 7D of the Act. One of the questions raised therein was with regard to such units whose installed production capacity has been certified by the said Ministry but actually they are manufacturing vegetable ghee beyond their installed production capacity. The State Government took a decision that even in such cases, the unit will be entitled for composition of tax as per certified installed production capacity. However, while considering the application for composition of next year a report will be submitted in respect of such unit to the concerned officer who will take into account the fact that such unit is making more production over and above the installed production capacity. Learned senior Counsel for the petitioner submits that in view of the above decision of the State Government, there was no justification for asking the petitioner to pay the composition amount as indicated in the impugned order. He submits that the composition amount should have been calculated treating the installed production capacity as 18,750 M.T. per year and not by 30,000 M.T. We find that the said argument was raised in reply to the show-cause notice but has not been addressed by respondent No. 2 while passing the impugned order, therefore, the impugned order is vitiated.

9. Besides, we find that the impugned order is based basically on the inspection report dated October 25, 2000 submitted by the Deputy Commissioner (SIB), Trade Tax, Moradabad to the Commissioner of Trade Tax. In the said report it has been reported that on inspection it was found that the unit is running in three shifts and in every shift it is producing 28 M.T. of vegetable ghee. The other circumstance which has been taken into consideration is that in the inspection dated October 23, 2000 it was found that the capacity of deodouriser is 100 M.T. per day, wherein the filling of 90 M.T. per day was done. The Commissioner of Trade Tax proceeded to determine the production capacity of the unit on the

basis that the capacity of each plant of unit remains almost the same and the capacity of one of the unit will indicate the capacity of the entire unit. The said approach of the Commissioner of Trade Tax is not convincing. During the course of argument "process of flow chart of manufacture of vanaspati ghee" was filed which shows the production of vanaspati ghee. Two modes one called "normal process" and the another from mustard oil have been shown. It shows a long process for manufacture of vegetable ghee from the oil which is raw material. It passes through various stages such as (a) neutralisation, pre-bleaching, hydrogenation, vitaminisation and filling, deodourisation and post neutralisation and bleaching, (b) pre-neutralisation, pre-bleaching, pre-deodourisation, deodourisation, post neutralisation the bleaching, hydrogenation and vitaminisation and filling. The Commissioner has not considered the capacity of other parts of the unit nor there appears to be any indication thereof in the survey report done by the Deputy Commissioner. As against this, the petitioner has filed various documents which cannot be said to be wholly irrelevant or manufactured. The plant was got installed through Alfa Lavel India Limited and Mech Process Engineers P. Ltd. They supplied the plant and machineries on turnkey basis. The agreements dated July 4, 1991 and July 2, 1991, with these suppliers are on the record and they prima facie do support the case of the petitioner. Certificate dated December 15, 1999 is on the record. It certifies that the plant and machinery available with Ratan Vanaspati Limited, Gajrauna, U.P., is capable of producing 62.50 T.P.D. of vanaspati ghee from vegetable oils. Similarly, in the annual report for 1998-99, the same installed production capacity has been disclosed. Besides the above, there are other documents to show that the installed production capacity of the petitioner's unit is as disclosed by it. These documents are in the nature of declaration given to the U.P. Pollution Control Board, etc. In reply to the show-cause notice, the reliance was placed on the above referred documents. However, we find that in the impugned order there is no discussion of the aforestated documents. These documents have been conveniently ignored. It was expected from the authority concerned before arriving at a decision to have considered the documents which were referred by the petitioner in its reply dated December 26, 2000.

10. Even otherwise also, we have been informed that question of determination of installed production capacity of a unit is a technical issue, which cannot be decided simply by making a survey. The State Government was alive to the situation and that is the reason that it formed an expert committee which consists experts on the subject besides one departmental member. Before deciding the application for composition, it should have been better for respondent No. 2 to have called a report from the said expert committee. If the said expert committee is not presently working, the Commissioner on its own in the light of the earlier expert committee may constitute an expert committee so that the installed production capacity of the unit may be worked out.

11. Taking into consideration the entire facts and circumstances of the case, we are of the considered view that the matter requires reconsideration by

respondent No. 2, in the light of the observations made above. Respondent No. 2 may constitute a committee of experts if it is not satisfied that the documents filed by the petitioner, to find out the installed production capacity of the petitioner's unit at the relevant point of time. It may be placed on record that the petitioner's unit was a new unit and it has not sought any expansion or extension of the unit. There appears to be no difficulty in getting a report from the expert committee. The impugned order is liable to be quashed on the ground that it has been passed in a cursory manner without taking into consideration the documents relied upon by the petitioner in support of its case.

12. In view of above discussion, writ petition is allowed. The matter is restored back to the Commissioner of Commercial Tax, U.P. to take a fresh decision in the light of observations made above and may also consider the inspection of the petitioner's unit by an expert committee. The said authority shall also take into consideration the reply filed by the petitioner.