
(2011) 03 AHC CK 0448
In the Allahabad High Court
Case No : Trade Tax Revision No. 888 of 2003.

Rotomac Pens Pvt. Limited	Vs	APPELLANT
State Level Committee, Lucknow and Another		RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2012) 47 VST 393

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, for the Appellant; B.K. Pandey, for the Respondent

Judgement

Rajes Kumar, J.—This is a revision filed u/s 11 of the U.P. Trade Tax Act, 1948 preferred against the order of the Tribunal August 27, 2003. The applicant is a company, incorporated under the Indian Companies Act, 1956. The applicant is also registered under the U.P. Trade Tax Act (hereinafter referred to as, "the Act"). The applicant established a new unit for the manufacturing of writing instruments in the year 1993. The date of production of the applicant-company was March 23, 1993. The first sale was dated May 3, 1993. The initial fixed capital investment was Rs. 99,54,118. The applicant applied for exemption u/s 4A of the Act. The application was allowed and an eligibility certificate bearing No. 710, dated July 1, 1995 was issued. The applicant-unit had undergone for diversification. Thereafter, the applicant had undergone for the third diversification in the year 1997 and the first sale took place on July 5, 1997. The additional fixed capital investment was disclosed at Rs. 40,54,702. An application claiming exemption, u/s 4A under the diversification scheme, was filed on December 24, 1997. This case is concerned with the claim of exemption under third diversification.

2. The Divisional Level Committee rejected the application claiming exemption for third diversification mainly on the ground that the additional investment was less than the 25 per cent of the original fixed capital investment. According to

the applicant, the additional fixed capital investment was more than 25 per cent of the original fixed capital investment of Rs. 99,54,118. The applicant filed the review application. On the application of the applicant, there was a difference of opinion in the Divisional Level Committee, hence the matter was referred to the State Level Committee. The State Level Committee vide order dated February 19, 2003, rejected the application on the ground that even the provision regarding additional fixed capital investment of 25 per cent or more than the original fixed capital investment has not been complied with.

3. Being aggrieved by the order of the Divisional Level Committee, the applicant filed an appeal before the Trade Tax Tribunal. The Tribunal vide impugned order dated August 27, 2003, dismissed the appeal. Hence the present revision. The Tribunal held as follows :

The dispute before us for determination is as to what is the meaning of "original fixed capital investment". At this stage it is relevant to note that the benefit of exemption in tax has been allowed not only to "new units" as defined u/s 4A of the "Act" but later on in the year 1990 even existing old units were given benefit of exemption in tax if they undertook expansion or diversification under specified conditions. Thus, in both the cases even the old units were permitted the benefit of exemption in tax if they undertook expansion or diversification, etc. Among other conditions one condition was common that unit should make additional fixed capital investment of at least 25 per cent of the "original fixed capital investment". To our mind framers of the law did not contemplate a situation as in the present case, that units would undertake one after other various expansions and diversifications. We have seen cases of units which have undertaken expansion together and also expansion and diversification within one year of earlier expansion or diversification. This fact has in fact created this question for determination as to what is the meaning of "original fixed capital investment" and its requisite additional fixed capital investment in case of expansion or diversification. If it was first expansion or diversification, there was no problem. In that case the "original fixed capital investment of a unit was the basis for working out the requisite 25 per cent of additional fixed capital investment but the problem is when the unit undertakes one" after other several schemes of expansion or diversification. The meaningful interpretation to our mind would be and should be the fixed capital investment was prior to second or third expansion or diversification. If the interpretation of the learned counsel for the appellant is accepted then the original fixed capital investment shall be taken as original fixed capital investment in every expansion or diversification, it would lead to frustrate the meaning of the fixed capital investment as used in the "Act". "Original fixed capital investment incidentally has not been defined in the Act. The word "original" has created conflict between the dealer and the State Level Committee. The use of this word in the statute has to be interpreted in the light of the purpose and context of the provision. When we apply this principle we find that "original fixed capital investment" may be "original fixed capital investment" for first expansion or diversification but in case of second and third expansion

and diversification it is not only the "original fixed capital investment but also the additional fixed capital investment which was before proposed expansion and diversification.

4. Heard Sri Bharat Ji Agarwal, learned senior advocate, appearing on behalf of the applicant and Sri B.K. Pandey, learned standing counsel.

5. The learned counsel for the applicant submitted that the object of section 4A is to increase industrialisation and the production. With this view the benefit has also been extended to even the existing units undergone for diversification for the claim of the exemption under the diversification scheme. The Explanation 5(d) provides that there should be an additional fixed capital investment of at least 25 per cent of such original fixed capital investment (without providing for depreciation). The word "original" is very relevant. The original fixed capital investment means the capital investment, which was made originally at the time of the establishment of the unit and not the total investment as on the date of claiming the exemption under the diversification. He submitted that the initial capital investment was Rs. 99,54,118 and the additional capital investment made in third diversification was Rs. 40,54,702, which was much more than 25 per cent of the original fixed capital investment. He placed reliance on the dictionary meanings of the word "original".

6. Sri B.K. Pandey, learned standing counsel, submitted that the object of granting exemption diversification scheme again and again is to give benefit of exemption in case additional capital investment is made, over and above the original capital investment already made and, therefore, there should be an additional fixed capital investment of more than 25 per cent of the original capital investment as on the date of claiming the exemption under the diversification scheme, which has not been complied with by the applicant and, therefore, the exemption has been rightly rejected.

7. Considered the rival submission and perused the impugned orders. The relevant part of section 4A reads as follow :

4A. Exemption from trade tax in certain cases.-(1) Notwithstanding anything contained in 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 twelve 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 be liable to tax at such reduced rate as it may fix :

Provided that no exemption shall be granted where the facility of concession or exemption has been availed u/s 4AAA.

Explanation (4)

(4) "Fixed capital investment" means value of land and building and such plants, 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 investment in land and building only the following shall be taken into account,-

(i) Investment in 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 for the period for which exemption u/s 4A 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 investment in land or building which is necessary for establishing or running the unit under some statutory obligation.

(b) for the purposes of determining investment in plant, machinery, equipment, apparatus and components, only the following shall be taken into account :-

(i) investment, whether by means of purchase, hire or lease in such plant, 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.

8. The condition as laid down in Explanation (5) and (5)(d) regarding additional fixed capital investment is given below :

(5) "Unit which has undertaken expansion, diversification or modernisation" means an industrial undertaking.-

(d) wherein an additional fixed capital investment of at least twenty five per cent of such original fixed capital investment (without providing for depreciation) is made;

9. Let us consider what is the meaning of word "original". The word "original" has been defined in different dictionaries as follows :

Webster's Encyclopedic Unabridged Dictionary of the English Language

Original : Belonging or pertaining to the original or beginning of something or to a thing at its beginning.

Webster's Third New International Dictionary

Original : Of or relating to a rise or beginning; existing from the start; initial primary, pristine.

The New Oxford Illustrated Dictionary

Original : Existent from the first; primitive, innate, initial; earliest.

10. It is the first principle of interpretation that the statute should be read in its ordinary, nature and grammatical sense. The apex court in the case of Hiralal Rattanlal Vs. State of U.P. and Another etc. etc., , held as follows :

In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes and the other rules of construction are called into aid only when the legislative intent is not clear.

11. The principle of strict interpretation of taxing statutes was enunciated by Rowlatt, J., in his classic Statement vide Cape Brandy Syndicate v. Commissioners of Inland Revenue (1921) 1 KB 64 held as follows :

In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

12. In the case of State of Kerala v. Vattukalam Chemicals Industries (2001) 124 STC 233 (SQ), the apex court held that the primary object to tax and exemption notification is to be construed strictly.

13. In the case of Union of India v. Suksha International & Nutan Gems reported

in (1989) 39 ELT 503 (SC), the apex court held that unduly reconstructing the scope of a beneficial provision to be avoided so that it may not take away with on hand what the policy gives with the other.

14. In the case of Commissioner of Income Tax, Amritsar Vs. Straw Board Manufacturing Co. Ltd., , the apex court held that it is necessary to remember that when a provision is made in the context of a law providing any concessional right of tax for the purposes of encouraging an industrial activity, a liberal construction should put upon the language of the statute.

15. The object of section 4A of the Act has been considered by the apex court in the case of Commissioner of Sales Tax Vs. Industrial Coal Enterprises, , the apex court has held that section 4A of the Act provides exemption from tax for the purposes of encouraging "production of goods" and promoting development of industry. The construction should be reasonable and purposive and should be liberally construed.

16 In the case of Bajaj Tempo Ltd., Bombay Vs. Commissioner of Income Tax, Bombay City-II, Bombay, , the apex court has held that a provision in taxing statute granting incentives for promoting growth and development should be construed liberally. A provision intending for promoting economic growth has to be interpreted liberally and the object for granting the exemption should not be defeated.

17. The object of section 4A of the Act is to encourage entrepreneurs to make further investments for the growth of the industry and the production and providing the benefit to the existing units, if they have undergone diversification, namely, intend to produce different goods than what the unit was producing earlier, after making a further investment and to promote the industrialisation and to increase the production. With this object a condition has been put that for the claim of exemption under the diversification scheme, there should be investment in excess of 25 per cent of the original capital investment.

18. The word "original", as defined by various English Dictionaries, referred to hereinabove, means "initial". The plain meaning of word "original" also appears to be "initial". The intent of the Legislature also appears to be that the existing unit may make a further investment exceeding 25 per cent of the initial capital investment for the purposes of exemption. Any other interpretation will frustrate the scheme.

19. Take a case where the manufacturer made the initial investment and on such investment the exemption is granted. Such unit prefers to make further investment for the purposes of expansion or for the purposes of diversification. In case of the first diversification on the additional investment exceeding 25 per cent of the original (initial) investment would make the unit eligible to claim exemption under the diversification, then why not unit cannot claim the exemption for further diversification making further investment exceeding 25 per cent of the original (initial) capital investment. In case if the interpretation of the

Revenue is accepted, it would mean that the additional investment should be exceeding 25 per cent of the total investment, including the original investment plus the further investment as on the date of the claim of the diversification. In my view, this cannot be the intention of the Legislature.

20. In view of the above, I am of the view that the unit is entitled for the benefit of the exemption under the diversification scheme, in case if it invests further 25 per cent of the original investment, that is, the initial investment in the unit and not 25 per cent of the total investment including the original investment and the further investment, as on the date of the claim of exemption. In the result, revision is allowed. The Divisional Level Committee is directed to pass appropriate order in the light of the law laid down above.