(1994) 04 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3951 of 1991

Saket Tubes and another APPELLANT

Vs

State of U.P.and others RESPONDENT

Date of Decision : 27-04-1994

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4A, 4A(1), 4A(5)(c)

Citation : (1994) 04 AHC CK 0038

Hon'ble Judges : Shobha Dikshit, J and I.S.Mathur, J

Final Decision : Allowed

Judgement

Shobha Dikshit, J.—The petitioner is challenging the validity of the order dated 1101991 passed by the joint Director, Industries, Lucknow Region, Lucknow contained in Annexure3 to the writ petition, on the ground that it is not open to the concerned authority, opposite party no. 3 to curtail the period of five years for which the exemption/eligibility certificate has been granted to it under Section 4A(1) of the U. P. Sales Tax Act Merely on the ground that since the date of registration of the unit under Indian Factories Act, 1948, is subsequent to the date of commencement of production by the unit, hence the period or exemption shall stand reduced to that extent. In the present case, the exemption was granted to the unit with effect from 941985 for five years upto 841990 but since the unit was registered under Indian Factories Act with effect from 1121986, hence the benefit of exemption was given to the petitioner from 1121986 and not from 941985. It is this action of the opposite parties which is under challenge is this writ petition and the relief sought is to quash the impugned order dated 1101991 partially and modify it suitably so as to give benefit of the exemption for the actual period of five years with effect from 941985 to 841990.

2. The brief facts of the case are that the petitioner unit was established as a new unit at Chinhat, Dewa Road, Lucknow having its registered office at Darshan Nagar, Faizabad for manufacturing R. C. C. pipes and collars. It got itself duly registered with the directorate of Industries as a small scale unit and a

registration certificate dated 2 21985 was accordingly issued in favour of this unit certifying that the production also commenced by the unit from February, 1985. This registration certificate has been annexed as Annexure1 to the writ petition. Since petitioner was a new unit, therefore, it applied for grant of exemption under Section 4A of U. P. Sales Tax Act. This application after remaining pending for quite sometime with the opposite parties was rejected by them vide orders dated 441988 for various reasons which are no more relevant for the purpose of present controversy. Aggrieved by the same, the petitioner sought a review of the same. While this review application was pending, the opposite parties proceeded to assess the petitioner unit for sales tax, hence a writ petition no. 2538 (M/B) of 1990 was filed by the petitioner before this Court when a Division Bench vide its order dated 1631990 restrained the sales tax authorities from making assessment for the assessment year 198586 till the disposal of the review application. Finally, the review application was allowed and the petitioner was granted exemption for five years vide orders dated 1101991. By this order, an exemption certificate has been granted in favour of the petitioner for five years with effect from 941985 upto 841990 but actually, this exemption has been confined/curtailed and made effective from 1121986 and not from 941985 as has been granted, on the ground that the benefit of exemption shall commence from the date of the registration of the unit with the Indian Factories Act. 1948 treating the same as sinequanon for grant of exemption,

3. In support of the aforesaid contention, the writ petitioner has placed reliance on several decisions of this Court holding that the provision of registration under the Indian Factories Act, 1948 is not mandatory but only directory. For this purpose, reliance has been placed on the case of M/s. Kuchchal Industries v. Divisional Level Committee reported in 1990 U. P. Tax Cases 481 which has been subsequently followed in the case of M/s Ajanta Tiles Company v. Convenor, Sales Tax Exemption, Divisional Level Committee & others reported in 1990 U. P. Tax Cases 526, Photostat copies of both these judgments have been annexed as Annexure7s and 8 to the writ petition,

4 A detailed counter affidavit has been filed on behalf of the opposite parties justifying the curtailment of the period of exemption and treating the date of registration under the Indian Factories Act as the relevant date for this purpose. The opposite parties for this purpose have placed reliance on the amended provisions of Section 4A vide amending Act, U. P. Act No 28 of 1991. made applicable with retrospective effect from 12101983 read with notification dated 2781984 as amended on 26121986. The stand of the opposite parties, therefore, is that since law has changed due to amendment in Section 4A, therefore, the law as laid down in the aforesaid decisions is no more applicable to the facts of the present case.

5. The petitioner has filed rejoinderaffidavit reiterating the pleas taken by it in the writ petition as also refuting the plea of change in law and consequent change in legal position by stating that even after the above mentioned

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amendment in Section 4A of the U. P. Sales Tax Act, the legal position remains the same as has been held in the case of M/s. Sahu Stone Crushing Industries v. Divisional Level Committee, Jhansi and another reported in 1994 U. P, Tax Cases page 1 i. e. that the provision for getting a new unit registered under Indian Factories Act is directory only and not mandatory.

6. We have examined both set of decisions i. e. pre amendment as contained in Annexures7 and 8 to the writ petition as also the post amendment decisions as the case of M/s Sahu Stone Crushing Industries v. Divisional Level Committee, Jhansi and another and come to the conclusion that the controversy raised in the present writ petition is squarely covered by the decisions of this Court.

7. We have heard the learned counsels for both the parties and have gone through the relevant provisions of U. P. Sales Tax Act and the decisions referred and relied by them.

8. Learned counsel for the petitioner submitted before us that prior to amendment in Section 4A of U. P. Sales Tax Act by the amending Act No. 28 of 1991, the legal position was that there was no provision in the main Section 4A of the Sales Tax Act regarding the requirement of registration of a new unit under the Indian Factories Act for the purpose of grant of exemption. The only requirement was furnishing of an eligibility certificate. However, it is only in the notification dated 2781984 as amended subsequently issued in exercise of the powers under Section 4A of the U. Sales Tax Act that in its Explanation it was provided (explained) that an industrial unit is that new unit which is registered under the Indian Factories Act, 1948 or having applied for registration under the said Act and deposited the requisite fee for that purpose. It is on the basis of this provision in the Explanation to the Notification that the sales tax authorities though granted the exemption from sales tax to a new unit on furnishing the eligibility certificate but curtailed the period of exemption and confined the same to the date of registration under the Indian Factories Act, 1948. It is the validity and legality of this provision in the Explanation which came up for consideration before a Division Bench of this Court in the above referred case of M/s. Kuchchal Industries v. Divisional Level Committee reported in 1990 U. P. Tax Cases 481 that a Division Bench of this Court came to the conclusion that the aforesaid requirement of registration under Indian Factories Act is directory only any not mandatory. This judgment was subsequently followed in the case of M/s. Ajanta Tiles Company, Muzaffarnagar v. Convenor, Sales Tax Exemption, Divisional Level Committee & others reported in 1990 U. P. Tax Cases 526.

9. The amending Act U. P. Act No. 28 of 1991 has brought an amendment in Section 4A (l) of the Sales Tax Act itself and a new subsection (5) has been inserted with effect from 1391985 providing in sub clause (c) as follows :

"(c) In relation to a new unit referred to in clause (1) of the Explanation, where the application or registration under the Factories Act, 1948 is made on and the registration is granted with effect from, a date later than the date of

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commencement of the period of facility notified under subsection (1), then subject to the provisions of clause (b), only for part of the period, notified under subsection (1), which shall be computed from the date from which such registration becomes effective till the end of the period of such facility."

10. It is this amendment which has been referred to in the counter affidavit by the opposite parties and on the basis of the same, it has been urged on their behalf that the condition of registration under the Indian Factories Act is now no more directory but is mandatory.

11. Learned counsel for the petitioner submitted that even the amended Section 4A(l of the U. P. Sales tax Act came up for consideration before another Division Bench of this Court in the matter of M/s. Sahu Stone Crushing Industries v. Divisional Level Committee, Jhansi and another, reported in 1994 U. P. Tax Cases page 1 (photostat copy annexed to rejoinder affidavit) which while noticing various decisions of Hon''ble Supreme Court of India and the aforesaid two decisions of this Court came to the following conclusions :

"The above observation of the Supreme Court in the aforesaid case makes it clear that in deciding whether a provision is mandatory or directory one of the important questions which has to be considered is whether the object of the legislation will be defeated or furthered in holding the provision to be mandatory or directory, we have also to see the consequences which would follow from construing the provisions one way or the other. In the present case, if we hold clause (c) of subsection (5) of Section 4A to be mandatory it will go against the object of the provision viz. to encourage the setting up of new industries in the State. It is well known that there is often bureaucratic delay in disposing of the application for registration under the Factories Act and hence to treat the above provision as mandatory would go against the intention of the legislature. The conditions in Section 4A are after all only to ensure that there is a genuine new unit and not a fictitious one. Hence to insist on registration under the factories Act as a sine qua non would be taking over technical view of the matter. In fact, Explanation l(b)(ii) of Section 4A makes it clear that even though the unit is not registered under the factories Act but only an application for registration has been made still it has to be treated as a new unit.?

"In Kuchchal Industries case, (supra) it was held by a Division Bench of this Court that the requirement of registration under the Factories Act cannot always be complied with because new unit which has less than 10 employees does not come within the definition of ''factory'' in Section 2(m) of the Factories Act, and hence to insist upon such registration would deprive such small units of the benefit of exemption under Section 4A. The S. L. P. against the said decision was dismissed by the Supreme Court. The ratio of the said decision is obviously that the requirement of registration under the Factories Act is only directory and not mandatory. The purpose of requirement of registration is only to ensure that there is a genuine new unit and hence this condition need not be insisted upon when by other materials it can be demonstrated that a genuine new unit has

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been setup. The requirement of registration under the Factories Act has, hence, to be treated as directory and not mandatory."

12. In yet another recent decision dated 1931994, in the matter of M/s. Small Steel Industries v. State of U. P. and others, W. P. No. 374/89 another Division Bench of this Court again reiterated the fame view after noticing all the above referred decisions i. e. that the provision regarding registration of new units under Indian Factories Act is merely directory alone, hence the period of exemption granted to a new unit should run from the date of grant of exemption and not from the date of registration under the Indian Factories Act. Since the law is settled by several decisions, hence this matter needs no further discussion by us as we are in full agreement with the view taken by different Division Benches of this Court.

13. In view of the above, we are clearly of the view that subsection (5) of Section 4A of U. P. Sales Tax Act is directory and not mandatory, hence the petitioner is entitled to exemption from the date of commencement of production i. e. 2121985, and not from the date of registration under the Indian Factories Act i. e. 1121986.

14. The writ petition, therefore, succeeds and is allowed with costs. The impugned order dated 1101991 contained in Annexure3 is hereby quashed to the extent that it provides for commencement of exemption with effect from 1121986. The Divisional Level Committee is further directed to make appropriate amendment/correction in the eligibility certificate contained in Annexure1 to the writ petition, in accordance with law having regard to the observations made by us in this judgment. Assessment proceedings, if any, shall also stand quashed.

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