(2008) 07 AHC CK 0259

In the Allahabad High Court

Shikhar Chand Pradeep Kumar APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

Date of Decision : 09-07-2008

Acts Referred:
General Clauses Act, 1897 — Section 27
Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2009) 23 VST 99

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The present revision is directed against the order dated December 29, 1999 passed by the Trade Tax Tribunal, Lucknow, in Appeal No. 33 of 1999 whereby and whereunder it has granted eligibility certificate to the applicant for the remaining period with effect from February 6, 1995, the day when the applicant applied for the grant, for second time.

2. The applicant is a "new unit" within the meaning of Section 4A of the U.P. Trade Tax Act, 1948. It was established in June, 1994 for manufacture of veneer core flush door, pannel door, plywood and block board, etc. The production of the unit was started on June 18, 1994 and the first sale took place on June 22, 1994. It applied for grant of exemption u/s 4A of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act"). According to it, on December 6, 1994, i.e., within six months from the date of first production, requisite papers were sent by registered post to the General Manager, District Industries Centre, Ghaziabad. The said registered envelope was returned back by the post office with the endorsement that the State Government employees were on strike. After the call-off of the strike, the applicant again applied for grant of eligibility certificate and sent the requisite papers on February 6, 1995. This time the application was returned by the authority concerned on the ground as according to it the papers were incomplete. The objection was that the applicant-dealer is not registered

with Small Scale Industries Department. The registration with the Small Scale Industries Department was granted on December 26, 1995.

3. The divisional level committee granted the eligibility certificate by the order dated February 1, 1997 with effect from December 26, 1995 up to June 21, 2002. The applicant thereafter filed a review application which was ultimately dismissed on December 19, 1998.

4. The said order was challenged in appeal before the Trade Tax Tribunal which was numbered as Appeal No. 33 of 1999. The said appeal has been allowed in part by the Tribunal and it has ordered the eligibility certificate already granted to the dealer be amended and made it effective since February 6,1995, the date on which the applicant had sent the application for grant of eligibility certificate, for a second time.

5. In the memo of revision, the following questions of law have been framed:

1. Whether, on the facts and circumstances of the case, the Tribunal was correct that the dispatch of exemption application by registered post to the General Manager, District Industries Centre, Ghaziabad on December 6, 1994 admittedly within six months from the date of manufacture as provided u/s 4A(5)(a) of the Act, and the return of the same by the Postal Department on account of indefinite strike of the State Government employees, does not fall under the word "applies" as mentioned in Section 4A(5)(a) of the Act?

2. Whether, on the facts and circumstances of the case, the return of registered envelope by Postal Department containing the correct address is not a presumed service u/s 27 of the General Clauses Act, 1897 read with Section 114 of the Evidence Act, 1872 specially when there was no latches on part of the applicant in dispatching the application?

3. Whether, in any view of the matter, the Tribunal rightly directed the District Level Committee to allow the exemption effective from February 6,1995 in the eligibility certificate, i.e., date when the exemption application was made by the applicant after the strike of the State Government employees was called off?

4. Whether the Tribunal was correct not to allow the modification in the eligibility certificate from June 22, 1994, i.e., the date of first sale?

6. Heard Sri Rakesh Ranjan Agarwal, learned Counsel for the applicant and the learned Standing Counsel for the Department.

7. Sri Rakesh Ranjan Agarwal, learned Counsel for the applicant, submits the following two points:

1. That the applicant had applied for grant of eligibility certificate by means of application dated December 6, 1994 sent under the registered postal cover to the authority concerned. The said application was filed within six months, the period provided for filing such application and therefore, the eligibility certificate should have been granted with effect from June 26, 1994, the date of "first sale".

2. That the applicant-unit was temporarily registered with Small-Scale Industries Department. The permanent registration was obtained subsequently. He submits that a temporary registration was granted by the authority concerned. In view of the decision of this Court in Etah Steels Pvt. Ltd. v. Commissioner of Trade Tax [2003] UPTC 1252, permanent registration was not required for the purposes of claiming exemption.

8. The learned Standing Counsel, on the other hand, submits that sending the application on December 6, 1994 does not mean that the dealer applied within the meaning of Section 4A of the Act. The dealer-applicant did not "apply" within the statutory period and it removed the defects subsequently, the Tribunal was justified in granting the exemption from the date when the defects were removed, for the remaining period.

9. The respective submissions of learned Counsel for the parties were considered and the record perused.

10. Taking the first point first, it may be noted that from the very beginning the case of the dealer-applicant is that it sent the application within the period of six months from the date of production, i.e., on December 6, 1994 by a registered post. Along with the affidavit filed in support of revision, the applicant has enclosed the documents such as postal receipt showing the dispatch of the application by registered post and photocopy of the returned registered envelope containing the endorsement made by the postman that due to strike of State Government employees, the Article is returned undelivered. The correctness or genuineness of these documents were not doubted or disputed either by the Divisional Level Committee or by the Tribunal. Pointedly attention of the Tribunal was invited by the dealer to the above facts. The Tribunal without making any adverse comments, proceeded to decide the appeal on the ground that for whatever be the reason, the application was not filed within the time, so the applicant was not entitled for eligibility certificate for the full period. In other words, according to it the fact that the dealer had applied on December 6,1994 and its application was returned by the postal department due to State Government employee''s strike, no advantage can be derived by the applicant. On the facts of the present case, it is difficult to agree with the aforesaid approach of the Tribunal. It is not disputed that there was strike by the State Government employees at the relevant point of time. The application was sent under a registered cover. There is a presumption regarding the service of documents sent by a registered letter to the addressee if it is correctly addressed. The said presumption is provided for u/s 114 of the Evidence Act, 1872 read with Section 27 of the Post Office Act, 1898. Apart from the above, the applicant has done what it could do in the facts and circumstances of the case. It is also well-settled that no person can be compelled to do an impossible act. On the face of a strike nobody could serve or file the application before the authority concerned. No person was there to receive the same. The view taken by the Tribunal that the applicant did not "apply" within the prescribed period is

not legally correct. On the facts of the present case, the applicant did what it could do in the facts and circumstances of the case and as such the finding recorded by the Tribunal that the applicant did not apply within the statutory period cannot be sustained. The said issue is therefore, decided in favour of the applicant and against the Department.

11. So far as the second point is concerned, it is squarely covered by a decision of this Court in Etah Steels Pvt. Ltd. [2003] UPTC 1252. The learned Standing Counsel could not distinguish the ratio of the said case on the facts of the present case.

12. Viewed as above, the revision succeeds and allowed. The questions of law raised in the revision are decided in favour of the applicant and against the Department by holding that the applicant made the application well within the prescribed period of time. The Tribunal is directed to pass a consequential order u/s 11 of the U.P. Trade Tax Act. No order as to costs.

