(2011) 11 AHC CK 0289

In the Allahabad High Court

Case No : Trade Tax Revision No. 259 of 2011

Shree Agro Polyform Pvt. Ltd.	APPELLANT
Vs	
Commissioner, Commercial Taxes, U.P. Lucknow	RESPONDENT

Date of Decision : 03-11-2011

Acts Referred:
Uttar Pradesh Value Added Tax Act, 2008 — Section 58

Citation : (2012) 53 VST 443

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Assisted by Piyush Agarwal, for the Appellant; Sanjeev Sankhdhar, for the Respondent

Judgement

Rajiv Sharma, J.—Heard Sri Bharat Ji Agarwal, senior advocate, assisted by Sri Piyush Agarwal, learned counsel for the applicant and Sri Sanjeev Sankhdhar, learned counsel for the opposite party. Through the instant revision u/s 58 of the U.P. Value Added Tax Act, 2008, the applicant has assailed the order dated July 26, 2006 passed by the Commissioner, Trade Tax, U.P., Lucknow, and the order dated June 9, 2011 passed by the Commercial Tax Tribunal, Lucknow.

2. Brief facts, giving rise to the instant revision, are that the applicant-Shree Agro Polyform Pvt. Ltd., is engaged in manufacturing twisted iron bars (saria). On completing all formalities, the applicant applied for exemption from payment of tax as provided u/s 4A of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act"). The eligibility certificate was granted to the applicant for five years from the date of first sale, i.e., from March 24, 1990. Thereafter, the applicant was selling its product and was filing its return and assessments were being made thereon.

3. A proceeding u/s 4A(3) of the Act was initiated against the applicant on the basis of survey, whereby it has been alleged that the factory was closed for more than six months at a stretch and as such, a notice was issued to the applicant. On receipt of notice, the applicant tendered his reply, stating therein that the

factory was never closed for more than six months at a stretch and further at the time of survey, neither any statement was made by the watchman that the factory was closed for more than two months nor read out to the watchman. He submits that an affidavit of the watchman was also filed, wherein it has been stated due to rains, factory was closed for 2-3 days and the watchman has never given the statement that the unit was closed for more than 2-3 months. The Commissioner, Trade Tax, U.P., Lucknow, vide order dated July 11, 1997, cancelled the eligibility certificate with effect from March 24, 1990, i.e., from the date of inception of the period of exemption.

4. Against the order dated July 11, 1997, the applicant has preferred an appeal, bearing No. 132 of 1997, before the Trade Tax Tribunal, Lucknow, (hereinafter referred to as, "Tribunal"), who, vide order dated February 4, 2000, allowed the appeal, set aside the order dated July 11, 1997 and remitted the matter to the Commissioner, Trade Tax, U.P., for deciding it afresh. On remand, the Commissioner, Trade Tax, U.P., vide order dated March 26, 2002, again cancelled the eligibility certificate with effect from March 24, 1990.

5. Feeling aggrieved by the order dated March 26, 2002, the applicant has again filed an appeal, bearing No. 56 of 2002, before the Tribunal, who, vide order dated March 24, 2003, allowed the appeal, set aside the order dated March 26, 2002 and remitted the matter again for deciding it afresh. The Commissioner, on remand for the second time, again vide order dated July 26, 2006, cancelled the eligibility certificate. Feeling aggrieved, the applicant has again preferred an appeal, bearing No. 41 of 2006, before the Tribunal, who, vide order dated June 9, 2011, dismissed the appeal and confirmed the order dated July 26, 2006. Hence the instant revision.

6. Sri Bharat Ji Agrawal, senior advocate, appearing on behalf of the applicant submits that the Commissioner, vide circular dated November 25, 1987, held that twisting of iron bar amounts to manufacture, hence, entitled for exemption u/s 4A of the Act. The applicant''s business premises was surveyed on October 14, 1993. On survey, the surveying authorities itself reported that in the factory, the production activity was being undertaken for the last two months. He submits that no adverse inference can be drawn on the basis of survey dated January 5, 1994 as from the production register it is evidently clear that prior to January 5, 1994, the manufacturing activity was being undertaken by the applicant and from October 14, 1993 to January 5, 1994, the production has been undertaken by the applicant. Therefore, the factory of the applicant was neither closed nor any evidence was brought on record to suggest that the factory was closed for more than six months at a stretch. Thus, the Tribunal was not justified in affirming the order of the Commissioner passed u/s 4A(3) of the Act.

7. Sri Bharat Ji Agrawal submits that if the authorities have come to the conclusion that the unit was closed for more than six months at a stretch, then, for the period for which the unit was closed only thereafter the exemption can be cancelled and not prior to the period in which the unit has continuously run.

Thus, the exemption cannot be cancelled for the period unit has continuously run. In support of his submission, he relied upon the judgment of this court rendered in the case of Junta Dal Mill v. Commissioner, Trade Tax reported in (1999) UPTC 1123 and Ramraj Rice Mills v. State of Uttar Pradesh reported in (1997) 104 STC 570 (All); (1995) UPTC 163.

8. Sri Bharat Ji Agrawal has lastly submitted that since the written statement submitted by the applicant has not been considered by the Tribunal, it would be a fitness of thing if the matter be remanded back to the Tribunal for deciding the same afresh, in accordance with law, expeditiously, to which Sri Sanjeev Sankhdhar, learned standing counsel has no objection. Considering the peculiar facts and circumstances of the case and also with the consent of learned counsel for the parties, the revision is allowed partly. The order dated June 9, 2011 passed by the Commercial Tax Tribunal, Lucknow, is hereby set aside. The matter is remitted to the Commercial Tax Tribunal, Lucknow, for deciding it afresh, after affording opportunity of hearing to the petitioner, expeditiously, say, within a period of three months from the date of receipt of a certified copy of this order.