

(2007) 10 AHC CK 0038
In the Allahabad High Court

Shree Ambe Electricals Private Ltd.

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 29-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2009) 20 VST 425

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Judgement

Rajes Kumar, J.—Present revision under, Section 11 of the U.P. Trade Tax Act (hereinafter referred to as the "Act") is directed against the order of the Tribunal dated 13th October, 1999 arising from the proceeding u/s 4-A(3) of the Act.

2. Applicant is a Private Limited Company incorporated under the Indian Companies Act, 1956 having its registered office at B-2/28, Ashok Vihar, Phase-II, Delhi.

Applicant claimed to have established a new industrial unit at C-15, Section-7, NOIDA for the manufacturing of tube light fittings. Claimed to be a new unit, applicant applied for exemption on the turnover of manufactured product u/s 4-A of the Act. Divisional Level Committee examined the application and issued an eligibility certificate on 21st May, 1991 granting exemption for the period 12th March, 1990 to 11th March, 1996. It appears that on 23rd March, 1991, Sales Tax Officer, Mobile Squad, Mohanganj checked a vehicle loaded with tube light. At the time of checking, bill No. 219 dated 19th March, 1991 issued by the applicant was found. On physical verification it was found that on the packing boxes the name of the manufacturer M/S Grossav Industries, Noida was mentioned. For the aforesaid discrepancy, the goods were seized and subsequently released on furnishing of security. It appears that penalty u/s 13-A(4) of the Act was levied, which has been deleted in appeal. Thereafter, Commissioner of Trade Tax has issued a notice u/s 4-A(3) of the Act on 29.07.1995 on the allegation that the applicant was found selling the product manufactured by M/S Grossav Industries,

Noida against its bill on the garb of eligibility certificate which amounts to misuse of the eligibility certificate. Applicant filed reply which is Annexure-2 to the Revision petition. Commissioner of Trade Tax vide order dated 17.09.1996 passed an order u/s 4-A(3) of the Act and has withdrew the exemption from 19th March, 1991. Commissioner of Trade Tax held that the applicant had misused the eligibility certificate and was found selling the product manufactured by other units and claiming exemption on the strength of eligibility certificate. Being aggrieved by the order of the Commissioner of Trade Tax, Lucknow u/s 4-A(3) of the Act, applicant filed appeal before the Tribunal. Tribunal by the impugned order dismissed the appeal.

3. Heard Sri Bharat Ji Agrawal, learned Senior Advocate assisted by Sri Piyush Agrawal appearing on behalf of the applicant and Sri B.K. Pandey, learned Standing Counsel.

Learned Counsel for the applicant submitted as follows:

1. That the applicant as well as M/S Grossav Industries, Noida were purchasing packing material from M/S Kriti Krafts, Delhi. M/S Kriti Krafts, Delhi had inadvertently supplied the packing material bearing the name of M/S Grossav Industries, Noida and inadvertently in the factory of the applicant no body had noticed this fact and inadvertently the goods manufactured in the unit of the applicant had been packed in the packing material bearing the name of M/S Grossav Industries, Noida. The above mistake was only inadvertent mistake and on the basis of which it cannot be inferred that the eligibility certificate has been misused.
2. That the survey dated 23rd March, 1991 was in existence at the time of the issue of eligibility certificate dated 21st May, 1991.
3. If the inspection of the Sales Tax Officer, Mobile Squad would be a relevant consideration, eligibility certificate should not have been issued.
4. M/S Grossav Industries, Noida manufactures their product in the brand name of Solar while it is admitted that no brand name was found on the goods.
5. The inspected goods were cleared from the factory against Excise Gate pass No. 222 dated 19th March, 1991 on which the excise duty had also been paid. This establishes that the goods found loaded in the vehicle were the goods manufactured in the unit of the applicant.
6. The total-tax on such transaction was petty and for which no one can imagine to evade the tax.
7. The initiation of the proceeding is highly belated and therefore, not justified.
8. The department should have chosen to challenge the eligibility certificate.
9. The seizure of the goods on the ground that the unit was found evading the tax is no ground for refusal of the exemption.

10. No material was pointed out by the authorities below that there was any transfer of goods by M/S Grossav Industries, Noida to the present applicant.

11. The unit of the applicant is situated at C-15, Sector-7, Noida, while the unit of M/S Grossav Industries, Noida is situated at B-78, Sector-5 Noida. Both the units were not adjacent to each other and the entire case of the Revenue is based on surmises and conjuncture.

4. Learned Standing Counsel submitted that M/S Grossav Industries, Noida is a sister concern of the applicant. The Director of the present company Sri O.P. Agrawal is the brother of the Director Sri Gauri Shanker Agrawal son of Sri B.M. Agrawal partner of M/S Grossav Industries, Noida. M/S Grossav Industries, Noida was also manufacturing electrical fitting and the unit was exempted u/s 4-A of the Act and its exemption has been expired. Therefore, to claim the exemption on the manufactured product of M/S Grossav Industries, Noida eligibility certificate of the applicant has been used. He submitted that the certificate dated 10th January, 1996 claimed to have been issued by M/S Kriti Crafts, which is Annexure 4 and certificate dated 22nd April, 1996 of M/S Grossav Industries, Noida, which is Annexure 5 to the revision petition are after thought documents. These two certificates are neither mentioned in reply to the show cause notice nor have been considered and referred in the order of the Commissioner of Trade Tax u/s 4-A(3) of the Act. There is no reference in the grounds of appeal before the Tribunal nor in the order of the Tribunal. These two documents have not been relied upon before the Tribunal during the course of the argument, therefore, these two documents are the after thought documents and cannot be considered at this stage. He submitted that no evidence has been adduced to prove that M/S Kriti Crafts has dispatched the packing material bearing the name of M/S Grossav Industries, Noida to the applicant by mistake and there is no evidence that M/S Grossav Industries, Noida was manufacturing the goods of solar brand. These are only the claim of the applicant which have not been substantiated by any evidence. In the affidavit filed before the Commissioner of Trade Tax in the order passed u/s 4-A(3) of the Act, Sri Gauri Shanker Agrawal partner of M/S Grossav Industries, Noida has only confirmed that are purchasing the packing material from M/S Kriti Crafts, New Delhi. Nothing has been stated about the brand name or anything else. He submitted that on the facts of the case, it is absolutely clear that the applicant was found selling the goods manufactured by M/S Grossav Industries, Noida against its bill with the view to claim exemption on the strength of the eligibility certificate issued to the unit. Present is the clear case of misuse of eligibility certificate. He further submitted that if the transactions would not have been examined on 23rd March, 1991 the applicant would have successfully claimed the exemption on the goods manufactured by M/S Grossav Industries, Noida.

5. Having heard the learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below and also perused the documents filed along with the revision petition and the supplementary affidavit filed by the

learned Standing Counsel and the supplementary affidavit filed by the applicant.

In my opinion, on the facts and circumstances, the order of the Tribunal is not sustainable for the reasons stated below.

It is not disputed by any of the authorities that the applicant was not involved in the manufacturing of the goods on which the exemption has been sought. Perusal of the assessment order for the assessment year, 1990-91 which is annexed along with the supplementary affidavit filed by the Standing Counsel and the assessment order for the assessment year, 1991-92 which has been filed along with the supplementary affidavit filed by the applicant reveals that the turnover disclosed by the applicant of the manufactured products have been accepted.

In pursuance of the seizure of the goods on 23rd March, 1991, a penalty u/s 15-A(1)(o) of the Act was levied which was set aside by the Deputy Commissioner (Appeals) Trade Tax, Meerut vide order dated 19th March, 1996. Nothing has been brought on record to show that the said appellate order has been set aside or any further penalty has been levied for the alleged violation.

As the time of inspection dated 23rd March, 1991 along with the Igoods, bill No. 219 dated 19th March, 1991 issued by the applicant in favour of M/S Kapoor Electricals, Lucknow for Rs. 9851/- of tube light fittings was found. Excise gate passed No. 222 dated 19th March, 1991 was also issued on which the excise duty had been paid. It is not the case of the revenue that the entries of the bill and the excise gate pass were not found in the books of account. It is also not the case of the revenue that the goods which were checked were not in accordance to the bill and the excise gate pass.

Merely on the ground that the goods were found packed in a packing material in which the name of M/S Grossav Industries, Noida was mentioned from such isolated case, it has been inferred that the applicant was found selling goods manufactured by M/S Grossav Industries, Noida on the garb of the eligibility certificate does not appear to be justified.

It was explained that both the applicant as well as M/S Grossav Industries, Noida were purchasing packing material from M/S Kriti Krafts, Delhi and inadvertently M/S Kriti Krafts, Delhi had dispatched such packing material of M/S Grossav Industries, Delhi to the applicant. Certificate of M/S Kriti Krafts, Delhi in this regard was filed. In the certificate issued by M/S Grossav Industries, Noida they have denied the ownership of the impugned goods.

Except the aforesaid isolated instance of 23rd March, 1991, no other instance has been referred. The applicant was never found selling the product manufactured by M/S Grossav Industries, Noida prior to 21st March, 1991 or after 21st March, 1991. The value of such goods which was checked on 23rd March, 1991 was hardly of Rs. 9851/- on which the tax liability at the rate of 15 percent comes to Rs. 656/-. To save the aforesaid petty amount, no one could

take such risk.

When the certificate was issued on 21st May, 1991 the inspection dated 23rd March, 1991 was in existence.

The eligibility certificate was issued on 21st May, 1991 granting exemption for the period from 12th March, 1990 to 11th March, 1996, the order u/s 4-A(3) of the Act withdrawing the exemption from 19th March, 1991 was passed on 17.09.1996 after the expiry of period of exemption after the long period.

When the inspection was made on 23rd March, 1991 and the alleged discrepancy was found then there was no justification why the proceeding for the withdrawal of the exemption was not initiated immediately. The notice was issued on 29.07.1995 and the exemption was withdrawn vide order dated 17.09.1996.

The possibility of mistake in supplying the packing material printed with M/S Grossav Industries, Noida to the applicant by the supplier M/S Kriti Krafts cannot be overruled particularly when it has not been disputed that both the applicant as well as M/S Grossav Industries, Noida were getting supply from M/S Kriti Krafts.

The possibility of dispatch of the goods manufactured by the applicant in the packing material in which the name of M/S Grossav Industries, Noida was printed inadvertently cannot be overruled.

There is no material on record that the impugned goods was not the manufactured goods of the applicant and was the manufactured goods of M/S Grossav Industries, Noida.

The entire allegation is merely based on surmises, conjuncture and suspicion.

6. In. the case of Protec Coating Pvt. Ltd. Noida, Ghaziabad v. The Commissioner of Trade Tax reported in 1999 NTN (Vol. 14), 181, M/S Protec Coating Pvt. Ltd., Noida was holding the eligibility certificate u/s 4-A of the Act. At the time of survey made in a Firm M/S Bird Paints which was alleged to be the sister concern the packing material in the name of M/S Protec Coating Pvt. Ltd., Noida was found and on the basis of the said material it was inferred that the goods manufactured by M/S Bird Paints were being sold in the packing of M/S Protec Coating Pvt. Ltd., Noida to avail the exemption and, accordingly, the eligibility certificate was cancelled u/s 4-A(3) of the Act on the ground that M/S Protec Coating Pvt. Ltd., Noida was misusing the eligibility certificate. This Court held as follows:

As stated above the eligibility certificate has been cancelled on the ground that it has been misused by the dealer i.e. the revisionist. The eligibility certificate entitles the dealer to claim exemption from sales tax in respect of the goods manufactured by it and in respect of which, it holds the eligibility certificate. As is evident from the orders passed by the Commissioner, as well as the Tribunal, there is no finding that any goods manufactured by M/S Bird Paints or any goods

manufactured by any one other than the dealer revisionist have been sold by the dealer and exemption by virtue of the eligibility certificate has been claimed. Unless a dealer claims exemption from sales tax on the basis of the eligibility certificate, it cannot be held that it has misused the certificate. The only circumstances found during the surveys was that the packing material showing both the aforesaid companies as the manufacturer of goods was found at the premises of Bird Paints. That would show that Bird Paints might be selling the goods manufactured by it but the packed in the packing material showing the present revisionist as the manufacturer. Bird paints could not claim any exemption on such sales. No material was discovered at any of the surveys to show that any goods manufactured by Bird Paints were actually sold in the name of the present revisionist. During the survey, no bill, books etc. or other material was found which could indicate that Bird Paints was the actual manufacturer and sells the goods in the name of the present revisionist and such sales are or were likely to be shown as sales of the present revisionist. The provision of Sub-section (3) of Section 4-A requires that actual misuse of the eligibility certificate by its holder should be reasonably established. A mere likelihood of its misuse will not be a ground for cancellation.

In the case of Birla Jute and Industries Ltd. v. State of M.P. and Anr. reported in (2000) 119 STC, 14, the eligibility certificate was issued for the period 21st October, 1982 to 20th October, 1987. On 25th March, 1991 after a long period notice for reviewing the exemption was issued and thereafter vide order dated 30th October, 1991 exemption was withdrawn. The Apex Court held as follows:

There was, in our view, no justification for reviewing the said certificate long after the term thereof had expired and, therefore, long after its benefit had been availed by the appellant or at all.

7. In view of the above, in my view, the order passed by the commissioner of Trade Tax u/s 4-A(3) of the Act and the impugned order of the Tribunal are not sustainable and liable to be quashed. In the result, revision is allowed. The orders of the Commissioner of Trade Tax and the Tribunal are quashed.