
(2000) 08 AHC CK 0123
In the Allahabad High Court
Case No : Trade Tax Revision No. 446 of 2000

Sumara Industries

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2001) 123 STC 357

Hon'ble Judges : R.K. Agrawal, J

Bench : Single Bench

Advocate : S.D. Singh, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Partly Allowed

Judgement

R.K. Agrawal, J.—Sumara Industries, Kanpur, have filed the present revision against the order dated January 29, 2000, passed by the Trade Tax Tribunal, U.P., Lucknow, in Appeal No. 78 of 1997 (under Section 4-A).

2. The facts of the case in brief are that the applicant claims itself to be a new unit established for the manufacture and sale of welding electrodes and wire cables, etc. It applied for grant of exemption from payment of sales tax u/s 4-A of the U.P. Sales Tax Act (now "Trade Tax Act") (hereinafter referred to as "the Act") on April 10, 1992. It claims exemption with effect from November 26, 1991 for a period of 8 years on the total investment of Rs. 28,56,165.76 and the amount of tax to the extent of exemption claimed was 125 per cent of the aforesaid investment. The Divisional Level Committee vide order dated December 26, 1995 had granted exemption to the applicant for a period up to November 26, 1991 only on the ground that the applicant had purchased five old wire drawing machines from Nahata Cosmetics and Chemicals Limited, Kanpur, on September 30, 1992. The said machinery were purchased for a sum Rs. 1,31,000. According to the Divisional Level Committee Nahata Cosmetics and Chemicals Limited is neither manufacture nor a dealer of wire drawing machines, therefore, said machines have been acquired for use by another person which

disentitled the applicant from claiming as a new unit. It appears that on the directions of this Court the matter was decided by the State Level Committee which held that the applicant is not entitled for extension in the exemption period. The order was communicated to the applicant by the Divisional Level Committee on March 31, 1997. The applicant filed an appeal against the said order before the Tribunal. The Tribunal has allowed the appeal but has remanded the matter to the Divisional Level Committee for deciding afresh in accordance with law in the light of the decision of this Court in the case of Mansarovar Bottling Company Limited v. Commissioner of Trade Tax, U.P. [1999] 115 STC 530 ; 1999 UPTC 864.

3. I have heard Sri S.D. Singh, learned counsel for the applicant and Sri B.K. Pandey who has put in appearance on behalf of the respondent.

4. Learned counsel for the applicant submitted that all the materials were available before the Tribunal at the time of the hearing of the appeal, therefore, the Tribunal ought to have been decided the appeal on merit instead of remanding the matter to the Divisional Level Committee. He further pointed out that various reports submitted by the Industries Department and the Sales Department, it is clear that five old wire drawing machines even though installed, but have not been used in the production/manufacture of finished goods and in fact in the survey made on August 28, 1995, they were found lying outside. He submitted that in the background of the aforesaid if the principles laid down by this Court in the case of Mansarovar Bottling Company Limited [1999] 115 STC 530 ; 1999 UPTC 864 is applied then there was no justification for the Tribunal to remand the matter to the Divisional Level Committee.

5. Learned Standing Counsel, however, submitted that whether or not the machines in question have been actually used by the applicant can only be examined by the Divisional Level Committee and, therefore, the order passed by the Tribunal is fully justified.

6. Having heard learned counsel for the parties, I find that the stand taken by the Industries Department and the Sales Tax Department is very specific that in the survey made on August 28, 1995 the machines in question were found lying outside, whereas in a survey dated July 23, 1994 they were found to have been installed. No finding has been recorded by the surveying officer as to whether the machineries have been put in use or not. At this stage, it would be impossible of the authority to take a decision as to whether the said machineries are utilised or not as more than 8 years have passed. The Tribunal being the last fact-finding authority ought to have been decided the appeal on merit on the basis of the material available on record. The order of remand passed by the Tribunal cannot be sustained and is hereby set aside. The Tribunal is directed to decide the appeal in accordance with law in the light of the directions made above. In the result the revision succeeds in part and is allowed. However, the parties shall bear their own costs.