(2015) 07 AHC CK 0143

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) No. 1681 of 2011

Sunny Packagers Pvt. Ltd. APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 10(2), 21(2), 4A, 4-A, 4A(3)

Citation : (2015) 7 ADJ 352 : (2015) 85 VST 253

Hon'ble Judges : Tarun Agarwala, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; C.B. Tripathi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J—The petitioner has filed the present writ petition praying for the following reliefs :

"i. issue a writ, order or direction in the nature of certiorari quashing the order dated 25.10.2011 passed under Section 4-A(3) by the Commissioner of Commercial Tax, U.P., Lucknow, respondent No. 2.

ii. issue a writ, order or direction in the nature of certiorari quashing the order dated 24.8.2011 passed by the respondent No. 3 and the consequential notices issued by respondent No. 4 dated 3.9.2011 and 22.11.2011 under Section 21(2) for the assessment year 1998-99.

iii. issue a writ, order or direction in the nature of mandamus commanding the respondent No. 4 not to pass an assessment order for the assessment year 1998-99 both under the U.P. Trade Tax Act and Central Sales Tax Act in pursuance of the permission granted under Section of the Act.

iv. issue a writ, order or direction in the nature of mandamus commanding the respondent No. 2, Commissioner of Commercial Tax, U.P., Lucknow to pass an appropriate order on the application filed by petitioner under Section 4-A(3) of the Act.

v. issue a writ, order or direction in the nature of mandamus commanding the respondent Nos. 3 and 4 and their subordinates not to proceed further against the petitioner in pursuance of the order/notice passed/issued by the respondent Nos. 3 and 4.

vi. issue any other writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case.

vii. Award cost of the petition to the petitioner throughout."

The facts leading to the filing of the writ petition is, that the petitioner is a private limited company and is registered under U.P. Trade Tax Act as well as under the Central Sales Tax Act. The petitioner is carrying on the business of manufacture and sale of printed plastic materials as well as printed, plain low density polyethylene/high density polyethylene (LDPE/HDPE) Poly Poplin Film Bags and wrappers. The State Government in order to promote industrialisation in the State of Uttar Pradesh introduced a scheme by granting certain subsidies/ exemptions/concessions in the rate of tax. For the said purpose, Section 4A was introduced. The petitioner moved an application under Section 4A of the Act before the appropriate authority claiming concession in the rate of tax on the goods manufactured by them. In the application, the petitioner claimed exemption on the turnover of sales on the following goods manufactured by them, namely :

"1. Printed LDPE, HDPE, PP, LLDPE Bags/Wrappers, 2. Plain LDPE, HDPE, PP, LLDPE Bags/Wrappers, 3. Wastage Scrap of Plastics."

2. The Divisional Level Committee after considering the matter issued an eligibility certificate dated 6th September, 2000 under Section 4A of the Act for a period of 8 years to the extent of 175% of fixed capital investment of Rs. 41,48,940/-. The eligibility certificate was made effective with retrospective effect i.e. from 10th July, 1998. The eligibility certificate was for the following manufacture goods, namely :

"Printing of plastic material, Printing (Printed-Plain-LDPE/HDPE/PP Film, Bags, Wrappers only."

3. Prior to the aforesaid grant of eligibility certificate, the petitioner also applied for a permanent registration from the Directorate of Industries, Government of Uttar Pradesh. The certificate of permanent registration was granted certifying that the petitioner''s unit is registered for the manufacture of items, namely :

"1. Printing of Plastic Material, 2. Printed-Plain LDPE/HDPE/PP Film Bags, Wrapper."

4. The petitioner also applied for registration under the U.P. Trade Tax Act and Central Sales Tax Act before the assessing authority. The registration certificate

was issued under Section 4-B of the Act permitting the petitioner to be eligible to manufacture packing material. A perusal of the registration certificate indicated that the petitioner was eligible for manufacture of the following products, namely:

"1. Printing on plastic material, 2. Printed and Plain LDPE/HDPE/PP Film Bags, wrapper."

5. The first assessment of the petitioner was for the year 1998-99. An assessment order dated 30th January, 2001 was passed wherein the books of accounts of the petitioner was accepted both under the U.P. Trade Tax Act as well as Central Sales Tax Act. Assessment orders were passed for the year 1999-00 and 2000-01. In these assessment orders, the exemption claimed by the petitioner for manufacture of "printed plastic material" was accepted.

6. It transpires that the assessing authority sought permission from the Commissioner Trade Tax for initiating reassessment proceedings under Section 21(2) of the Act, which was granted. These reassessment proceedings were initiated on the sole basis that the eligibility certificate granted under Section 4A of the Act was with regard to an item known as "printing of plastic material" whereas the petitioner had wrongly claimed exemption on sale of "printed plastic material". It was this stage that the petitioner realised that there was a typographical error in the eligibility certificate. According to the petitioner, he had neither applied for exemption on the process of "printing of plastic material" and had only applied exemption on "printed plastic material". The petitioner being aggrieved by the initiation of reassessment proceedings filed Writ Petition No. 626 of 2004, which was allowed by a judgment dated 1st July, 2009. The order of the Additional Commissioner sanctioning reassessment proceedings was quashed on the sole ground that it did not contain any reasons. The Court while quashing the order remitted the matter again to the Additional Commissioner, Grade I, Trade Tax Kanpur Zone, Kanpur to pass a fresh order in the light of the observation made above keeping in mind the decision of the Court in S.K. Traders Vs. Additional Commissioner, Grade-I, Trade Tax and Assistant Commissioner (Assessment), Trade Tax, (2009) 26 VST 601 .

7. Pursuant to the aforesaid order, the competent authority issued a fresh notice dated 30th July, 2011 after a period of two years. The petitioner filed his objections. The competent authority, namely, the Additional Commissioner by an order dated 24th August, 2011 granted permission to reinitiate assessment proceedings for the assessment year 1998-99 under the U.P. Trade Tax Act as well as under the Central Sales Tax Act. The petitioner, being aggrieved by the said sanctioning order, again filed Writ Petition No. 1378 of 2011. In these proceedings, the petitioner contended that its application for correction of the eligibility certificate was pending consideration before the Commissioner under Section 4-A(3) of the Act. In this background, the writ Court by its judgment dated 21st September, 2011 disposed of the matter directing the Commissioner to pass an order on the application of the petitioner under Section 4-A(3) of the Act and further directed that the assessing authority would abide by the orders of

the Commissioner, Commercial Tax in proceedings under Section 21(2) of the Act. For facility, the operative portion of the order passed by the writ Court dated 21st September, 2011 in Writ Petition No. 1378 of 2011 is extracted hereunder:

"The writ petition is accordingly disposed of with direction that the Commissioner of Commercial Tax, U.P. will, if application has been filed under Section 4A(3) of the Act and has been heard, pass order on it within a period of one month from the receipt of this order. The orders to be passed under Section 21(2) of reassessment will abide by the orders passed by the Commissioner of Commercial Tax, U.P. on the application under Section 4A(3) of the Act."

8. Based on the aforesaid direction, the Commissioner passed the impugned order dated 25th October, 2011 rejecting the application on the ground that it had no jurisdiction to modify the eligibility certificate under Section 4-A(3) of the Act and that the District Level Committee was the competent authority. The petitioner, being aggrieved by the said order, has filed the present writ petition.

9. In this backdrop, we have heard Sri Ashok Kumar, the learned counsel for the petitioner and Sri C.B. Tripathi, the learned Special Counsel for the State.

10. Exemption from trade tax is granted under Section 4-A of the Act. The short question which is involved in the present writ petition is, whether the Commissioner of Trade Tax has the power and jurisdiction to amend the eligibility certificate, which was granted by the District Level Committee under Section 4-A(3) of the Act. For ready reference, the provisions of Section 4-A(3) is extracted hereunder:

"4A(3). Where the Commissioner is of the opinion that the facility of exemption from, or reduction in the rate of tax obtained on the basis of an eligibility certificate referred to in Clause (d) of sub-section (2) or on the basis of any eligibility certificate issued under any executive orders of the Government issued before or after September 13, 1985 has been misused in any manner whatsoever or there is any legal or factual error in issuing such eligibility certificate or that the new unit has committed breach of any of the conditions, subject to which the facility of exemption from, or reduction in the rate of tax was granted or that the new unit to which the eligibility certificate has been granted in accordance with the provisions of this Act, is not entitled for a lesser period or from a different date, he may, by order in writing passed before or after the expiration of the period of exemption or reduction, cancel or amend the eligibility certificate from a date specified in the order and such date may be prior to the date of such order, so however, that in cases of misuse or breach, the cancellation of eligibility certificate shall have effect not before the date of such misuse or breach

Provided that no order under this sub-section shall be passed without giving the dealer a reasonable opportunity of being heard."

11. The aforesaid provision underwent a change by Uttar Pradesh Trade Tax Amendment Act, 1998, wherein the following words was inserted with

retrospective effect from 13th September, 1985, namely, "in any manner whatsoever or there is any legal or factual error in issuing such Eligibility Certificate''''.

12. Prior to the aforesaid amendment, the Commissioner had the power to cancel or amend the eligibility certificate, if he found that the certificate had been misused in any manner whatsoever. After the amendment, the Commissioner was given the power under Section 4-A(3) of the Act to correct or amend any legal or factual error in the eligibility certificate.

13. In Mansarovar Bottling Company Limited, Maza Division Vs. Commissioner of Trade Tax , a learned Single Judge while considering the provision of Section 4-A(3) of the Act as amended by the U.P. Trade Tax Amendment Act, 1998 held that the Commissioner could correct a legal or factual error and that such correction was restricted to clerical or arithmetical errors, which are patent and apparent from the record and not errors about which there can be a rational debate.

14. We find that Section 10(2) of the Act provides that where any person is aggrieved by an order granting or refusing to grant a eligibility certificate under Section 4A could file an appeal under Section 10(2) of the Act before the Tribunal. This provision clearly indicates that an assessee, if aggrieved by the grant of an eligibility certificate could file an appeal and that the Tribunal was competent to modify the eligibility certificate, namely, that if the eligibility certificate contained some errors, the same could be rectified in an appeal by the Tribunal. If the Tribunal was competent to amend the eligibility certificate, we are of the opinion that there is no reason why clerical and arithmetical errors, which are apparent on the face of the record for which no debate exists could not be corrected by the Commissioner under Section 4-A(3) of the Act. Consequently, we are entirely in agreement with the decision of the learned Single Judge in the case of Mansarovar Bottling Company (supra).

15. In the light of the aforesaid, we find that the Commissioner committed a manifest error in holding that it has no power to amend the eligibility certificate under Section 4-A(3). We are of the opinion that the Commissioner has the limited power to correct clerical or arithmetical errors, which are apparent on the record.

16. For the reasons stated aforesaid, the impugned order passed by the Commissioner cannot be sustained and is quashed.

17. The writ petition is allowed.

18. The matter is remitted again to the Commissioner to decide the petitioner''s application afresh in the light of the observation made aforesaid within six weeks from the date of production of a certified copy of this order after giving opportunity of hearing to the petitioner. Since during the pendency of the writ petition a reassessment order has al ready been passed. It will be open to the

petitioner to file an appeal against the said reassessment order. If such an appeal is filed within four weeks from today, the same shall be entertained by the appellate authority without going into the period of limitation. We also direct that no recovery pursuant to the reassessment order shall be made till the disposal of the application by the Commissioner.