
(2010) 04 AHC CK 0212
In the Allahabad High Court
Case No : Writ Petition No. 10494 of 2009

Surapur Rice Complex & Anr.	Vs	APPELLANT
State of U.P.& Ors.		RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21(2)

Citation : (2010) 04 AHC CK 0212

Hon'ble Judges : Rajiv Sharma, J and Satish Chandra, J

Final Decision : Allowed

Judgement

Heard Sri Mohd. Arif Khan, Senior Advocate for the petitioner and Sri H.P.Srivastava, Addl. Chief Standing Counsel.

Draped in brevity, the facts arising out of the instant writ petition are that the Petitioner no.1M/s Surapur Rice Complex, a registered partnership firm set up a New Industrial Unit in the backward area of Faizabad [now in Ambedkarnagar]. Petitioner no.2 is one of the partners of the Firm. The firm is engaged in the purchase of paddy which later on is converted into rice through milling process. M/s Surapur Rice Complex [in short referred to as the "Firm"] was registered under the provisions U.P. Sales Tax Act [later on known as U.P. Trade Tax Act] on 15.7.1985 and was also registered with the Industries Department as a Small Scale Industrial Unit. In order to avail the benefit of the exemption under Section 4A of the U.P. Sales Tax Act, the firm applied for grant of Eligibility Certificate to the Regional Level Committee of the District Industries Centre, Faizabad and during pendency of the petitioners" application for grant of Eligibility Certificate, the Sales Tax Officer issued assessment notice. The said notice dated 16.10.1986 was assailed by the petitioners in writ petition no. 6446 (MB) of 1987 before this Court. A Division Bench of this Court while entertaining the writ petition passed an ad interim order to the effect that the opposite parties will not refuse to issue FormC, Form37 and Form 3B to the petitioners for claiming exemption merely on the ground that exemption has not been granted to it and so far as proceedings

for assessment are concerned, they may go on but final orders shall not be passed. On an application, the Division Bench further clarified that opposite parties shall not refuse to issue Forms 3(C)2 and Form 3(C)5 to the petitioners.

As averred above, the petitionerFirm applied for grant of exemption from payment of tax being a new unit in the backward area under Section 4A of the Act before the competent authority on 14.3.1986. When the application for exemption was pending, on 16.10.1986, notices under Section 3B of the Act were sent to the petitionerfirm requiring therein to pay tax and refused to issue Form 31, FormC, Form 3(C)2 and Form 3(C) 5 to the petitionerfirm. Being aggrieved, a writ petition no. 6446(MB) of 1987 was filed wherein this Court passed an ad interim order dated 16.9.1987 and provided " that the opposite parties will not refuse to issue FormC, Form37 and Form 3B to the petitioners merely on the ground that exemption has not been granted to it by paying the Sales Tax and so far as proceedings for assessment are concerned, they may go on but final orders shall not be passed". In the meantime, the application of the petitioner firm for grant of exemption from payment of sales tax and issuance of Eligibility Certificate was rejected vide orders dated 20.9.1988 and 22.9.1988. As a consequence, notices were issued to the petitioner firm for the assessment years 198586, 198687 and 198788.

The aforesaid orders dated 20.9.1988 and 22.9.1988 were assailed in writ petition no. 8068(MB) of 1988, wherein by way of an ad interim order dated 12.10.1988, it was provided that the assessment proceedings may continue but final orders shall not be passed. Ultimately the aforesaid writ petitions were disposed of by the judgment and order dated 21.12.2005 and the orders passed by the Regional Level Committee dated 30.9.1988 and 22.9.1988 were setaside. The relevant portion of the order dated 21.12.2005 reads as under:

" In our considered opinion the rejection of the application for exemption under Section 4A of the Act on the ground that since the petitioners have deposited the Trade Tax for sometime and had got issued form 3C(2) etc, therefore, they have become ineligible for the grant of exemption does not flow from the provisions of the aforesaid Act and the Rules, nor the State counsel has been able to place before us any such provision which makes the petitioners ineligible for the purpose. The provisions of Section 3B, which has been put into service cannot be said to be applicable for the reasons already disclosed above.

We, therefore, set aside the order passed by the Regional Level Committee dated 30.9.1988 and 22.9.1988 and remand the matter for deciding afresh after taking into consideration the relevant law and the Rules. This shall be done expeditiously say within a maximum period of two months from the date of receipt of the certified copy of the order. On the outcome of the aforesaid application for grant of exemption or issuance of eligibility certificate, and if the same is granted, it will be open to the petitioners to approach the appropriate authority for refund of the amount, who shall consider the question of refund of the amount in accordance with law as per Rules."

At this juncture, it is relevant to point out that the respondents did not avail the liberty granted to them by this Court vide order dated 12.10.1988, which was to the effect that assessment proceedings may continue but no final orders shall be passed. Neither, the respondents did continue with the proceedings nor did they provisionally assess the petitioner Firm.

After grant of Eligibility Certificate in the year 2008, the petitioner firm, while giving reference to its earlier letters and notices dated 01.05.2006, 11.05.2006, 13.09.2006 and 28.07.2009, claimed for the refund of the amount deposited under protest during the exemption period. Instead of making refund of the amount deposited under protest, the Deputy Commissioner after receiving the letter of the petitioner dated 30.10.2009, issued Notices for the Assessment Years 8586, 8687, 8788, 8889, 8990, 9091 and 9192. Petitioner vide letter dated 30.10.009 replied to the Deputy Commissioner (Tax Assessment) that it has already been issued an Eligibility Certificate for exemption from tax by the competent authority, and therefore, the tax deposited under protest is to be refunded. In paragraph 11 of the writ petition, the petitioners have given the details of amount deposited on various dates alongwith the details of the payment. It may be clarified that notices for the Assessment Years 8990, 9091 and 9192 issued for the first time, therefore, the Petitioner Firm filed the instant Writ Petition challenging the Notices dated 30.10.2009 and claimed for the refund of the amount deposited under protest during the exemption period.

A Division Bench of this Court passed an order dated 22.12.2009 providing therein that "it will be open for the authorities to pass appropriate orders, as provided under law, but the said orders will be subject to further orders of this Court" and the petitioner was also directed to cooperate in the proceedings. Thereafter the authorities passed the assessment order, which has also been impugned by way of amendment in the writ petition.

From the facts averred in the preceding paragraphs it would be evident that the present Writ petition is a sequel to the two earlier Writ petition Nos. 6446 (MB) of 1987 and 8068 (MB) of 1988 which were disposed off by a Division Bench of this Court by a common Judgment and Order dated 21.12.2005 by which a direction was given to the Regional Level Committee to reconsider the petitioner's application for grant of Eligibility Certificate, and if the Eligibility Certificate was granted, the amount of tax deposited under protest would be refunded as per law and rules.

Sri Arif Khan, Senior Advocate appearing on behalf of the petitioners has contended that the action of the Deputy Commissioner, in issuing notices under Rule 41(8) of the Trade Tax Rules to the petitioner firm is not only contrary to the spirit of the decision of the High Court dated 21.12.2005 but also wholly in supersession of the Eligibility Certificate granted in the year 2008 to the petitioner firm by the Regional Level Committee. As per provision of Section 3(1) Act, the liability of the dealer to pay tax for each assessment year on his turnover of sales or purchases or both is subject to other provisions of the Act.

Section 4A of the Act provides for exemption from the trade tax in certain cases. As averred above, the petitionerfirm has already been granted exemption under Section 4A of the Act as the Regional Level Committee has issued the Eligibility Certificate for the period i.e. 23.1.1986 to 22.1.1992. Thus, it is obvious that in respect of the said period which comprises six years, no tax can be assessed, levied or recovered.

In the backdrop of the aforesaid facts, it has been vehemently argued that the action of the opposite parties in issuing illegal, incomprehensible, blank and confusing notices for initiating assessment proceedings is highly derogatory of the judgment dated 21.12.2005 passed by a Division Bench of this Court and the exemption granted to the petitionerfirm by means of the Eligibility Certificate issued under Section 4A of the Act.

Learned Counsel for the petitioners further submitted that instead of refunding the amount deposited under protest by the petitioners" firm during the exemption period, the Deputy Commissioner (Assessment) Trade Tax, Ambedkarnagar proceeded to assess the tax for the exemption period, simply to harass the petitioner which is evident from the letter dated 21.10.2009 issued by the Deputy Commissioner (Tax Assessment) Ambedkarnagar. The contents of the said letter of Deputy Commissioner, Trade Tax dated 21.10.2009 are totally baseless and an absolutely incorrect fact has been mentioned that no information about the decision of the High Court was available in the Department. According to the learned Counsel, the petitioner had duly informed the Department about the Judgment and Order dated 21.12.2005 vide its letters dated 01.5.2006 and 13.9.2006 and correspondence was also exchanged between the Joint Commissioner, (Executive), Trade Tax, Faizabad Region, Faizabad and Joint Director Industries, Faizabad by means of letter dated 20.9.2006.

Elaborating his arguments, Sri Arif Khan, Senior Advocate further submitted that this Court, as pointed out above, vide its judgment and order dated 21.12.2005 had remanded the matter to the Regional Level Committee for reconsideration of the petitioners application for grant of Eligibility Certificate and the Regional Level Committee in its turn after considering all the relevant factors came to a positive conclusion that the petitionerfirm was fully entitled for the tax exemption for the period 23.01.1986 to 22.1.1992 under section 4A of the Act and therefore, granted the Eligibility Certificate which was addressed directly to the Deputy Commissioner, Trade Tax, Ambedkarnagar with copies to Commissioner Trade Tax, Uttar Pradesh, Lucknow, Joint Commissioner (Executive) Trade Tax, Faizabad Region, Faizabad, Commissioner & Director Industries, Section14, Uttar Pradesh, Kanpur and General Manager, District Industries Centre, Ambedkarnagar including the petitioner. On the face of these findings, the Deputy Commissioner still had the courage and audacity to issue notices for framing assessment of the period for which exemption had been granted to the petitioner from payment of Tax.

Pointing out the defects in the notice, it has been urged that surprisingly, for the

years 19851986, 19861987, 19871988, 19881989, 19891990, 19901991 and 19911992 notices have again been issued on 24.12.2009 fixing 26.12.2009 as a date for appearance of the petitioner firm. On 26.12.2009, the petitioner no.2 appeared before the Deputy Commissioner (Tax Assessment) and filed his reply. In his reply, the petitioner had categorically taken a stand that the notices issued against the petitioner firm were time barred in view of the provisions of Section 21 of the Act. Shockingly, on 29.12.2009, an order dated 26.12.2009 was served upon the petitioner firm in which the reply of the petitioner firm against the show cause notice dated 26.12.2009 was rejected and the impugned Assessment orders dated 31.12.2009 have been passed .

On the strength of the aforesaid facts, it has been contended with vehemence that the Assessment orders dated 31.12.2009 are arbitrary,illegal and time barred in view of the provisions of section 21(2) of the U.P. Sales Tax Act, which provides that no order of assessment or reassessment under any provision of the Act shall be made after the expiration of two years from the end of such year or March 31, 1998 whichever is later.

Even otherwise, the issuance of notice and passing of assessment order is a time barred action, which would be evident from the fact that the judgment and order dated 21.12.2005 was served upon the opposite parties on 05.05.2006 and as such, even assuming but not admitting that the assessment was stayed by this Court and even after excluding the period of the stay as per the provisions of section 21 (6) of the Act, the time period for assessment expired on 05.05.2008 whereas the notices were issued on 31.10.2009 and 24.12.2009.

Sri Arif Khan next contended that the benefit of Section 21(6) of the Act, is not available to the respondents as they were never restrained from assessing the petitioner firm by the interim orders of this Court dated 16.09.1987 and 12.10.1988 but the opposite parties never proceeded with the assessment proceedings as such the assessment proceedings became time barred in the year 1990 itself.

It has also been argued by the petitioners' Counsel that not only the assessment of the petitioner is time barred but the Assessing Officer has deliberately and due to bias and prejudice has done wrong assessment of the petitioner firm. For the year 198586 the amount of Government Levy Rice, which is tax free has been included in the assessment and tax has been imposed upon the petitioner firm in the assessment order dated 31.12.2009 for the year 198586, wherein at page7 it is mentioned that petitioner has declared his sale of rice amounting to Rs. 1548334.42 and based upon it the petitioner firm has been assessed. The correct position is as under:

January 1986 Govt. Levy Rice Rs. 3,06,998.51

Non Levy Rs. 28,036.80

February 1986Govt. Levy Rice Rs. 6,94,459.11

Non Levy Rs. 5,18,840.00

Total Rs.15,48334.42

The said information is available with the opposite parties in Form4 which has been submitted by the firm from time to time. The above wrong assessment of the petitioner firm clearly shows that tax had been imposed upon the petitioner firm illegally so that it does not claim the refund of the tax deposited under protest during the exemption period.

Lastly, it has been submitted that as per policy decision of the State Government, the exemption has to be given for a period of six years, however in the Eligibility Certificate dated 10.04.2008 though it has been admitted by the opposite parties that the petitioner firm is entitled for exemption from 23.01.1986 but the actual benefit would be given from 06.03.1986. However the period of six year has been calculated from 23.01.1986 and not from 06.03.1986 thus reducing the period of exemption from six year to five years ten months.

On behalf of the State, Additional Chief Standing Counsel has submitted that the petitionerrice mill started its production on 11.1.1986, and the date of first sale had been on 23.1.1986. As per records, the petitioners had submitted its application for registration under the Factories Act and the registration certificate was issued to the petitioner w.e.f. 6.3.1986. The Eligibility Certificate had been issued to the petitioner under Section 4A of the U.P. Trade Tax Act, 1948 for a period of six years w.e.f. date of first sale i.e. 23.1.1986 to 22.1.1992; however, in the Eligibility Certificate, the exemption from sales tax had been allowed to the petitioner w.e.f. 6.3.1986, the date of its registration under Factories Act.

Explanation provided under Section 4A of the U.P. Sales Tax Act, 1948 [now the U.P. Trade Tax Act, 1948] and the clause (1),(2) and (3) of the amended explanation under Section 4A had given effect w.e.f. 6.3.1986. Provisions as amended in Clause (1)(b)(i) and (ii) specifically provides that a Unit set up by a dealer on or after October 1,1982 but not later than March 31,1990 would be treated as a new unit under Section 4A of the Act, if it has been registered under the Factories Act, 1948, or, an application for registration in respect whereof has been made under that Act.

Inviting our attention towards subsection 5(C) of the Section 4A of the Act, Standing Counsel submitted that where the application for registration under the Factories Act, 1948 is made and the registration is granted with effect from, a date later than the date of commencement of period of facility notified under subsection(1) then only for a part of the period shall be computed from the date from which such registration become effective, till the end of the period of such facility and accordingly, the eligibility certificate has been issued in favour of the petitioner from 23.1.1986 in accordance with law for a period of six year, but actual exemption from tax has been allowed for a part of period from 6.3.1986 to 22.1.1992.

Clarifying the position, it has been stated that the petitioner had submitted its application for registration under Factories Act on 6.3.1986 and the registration under the Factories Act was issued to the petitioner w.e.f. 6.3.1986; therefore, the Eligibility Certificate had been issued according to the aforementioned provisions of Section 4A, and accordingly the actual exemption from sales tax had been allowed to the petitioner w.e.f. 6.3.1986.

As regard the question of limitation and time barred notices, Additional Chief Standing Counsel submitted that the petitioner had earlier filed writ petition no. 6446(MB) of 1987 and Writ Petition No. 8068(MB) of 1988 and this Court passed interim orders dated 16.9.1987 and 12.10.1988 whereby it was provided that the proceedings for the assessment may go on but no final order of assessment shall be passed. In compliance of the said orders, the answering respondents have not passed the final assessment order, which does not mean that the proceedings for assessment have been barred by time, as alleged by the petitioner but as soon as the copy of the order dated 21.12.2005 passed in the aforementioned petition was served on 5.5.2005, the Assessing Authority issued notices to the petitioner in order to pass final order of assessment under Rule 41(8) of the U.P. Trade Tax Rules and under section 9(2) of the Central Sales Tax Act. The assessment order cannot be termed as time barred in view of the provisions of Section 21(2) of the Act. The order of assessment has been passed on 31.12.2009, after providing due opportunity of hearing to the petitioners and the facts submitted by the petitioner have fully been incorporated in the aforesaid assessment orders dated 31.12.2009 for the assessment years 198586, 198687, 198788, 198889, 198990, 199091 and 199192. State Counsel has submitted that the assessment proceeding starts from the issuance of the notice under Rule 41(8) and ends with the passing of assessment order and issuance of notice of demand. He also submitted that after excluding the period of stay granted by this Court, the Assessing Authority has sufficient time to pass an order of assessment within the time limit prescribed under Section 21(2) of the Act. This contention gains strength from the decision rendered in Commissioner of Sales Tax, U.P. vs. Bharat Oil & Rice Mills; 2004 NTN (Vol25) 779 wherein it is held that in view of the provisions contained under Section 21(6) the period during which proceedings remain stayed under the order of the High Court, has to be excluded for counting the period of limitation.

Thus, the Assessing Authority was within time to pass the order of assessment under the provisions of Section 21(2) of the Act. The proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment years, and now in view of the amended proviso to Section 21(2) of the Act, it is eight years. As per amendment of Section 21(2) of the Act as amended by U.P. Act No. 11 of 1987 w.e.f. 7.8.1997, no order of assessment or reassessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later. Therefore, the time for passing the order of

assessment for the Assessment Years 198586,198687, 198788, 198889, 198990,199091 and 199192 would be up to 31.3.1998 and after excluding the period for which the interim order remained in operation, the time will be available.

For computation of limitation period for any assessment year,the limitation of time for the purposes of order of assessment starts since the end of that particular assessment year.

For example, for the assessment year 198586,the limitation of time starts since 01.4.1986. As provided in Section 21 (2) of the U.P. Trade tax Act, the order of assessment can be passed up to 31.3.1998. Therefore, the time period for limitation for 198586 would be from 01.4.1986 to 31.3.1998 i.e., a time period of 12 years. Now the stay period start on 16.9.1987. Up to 16.9.1987, the time period of limitation for 198586, which starts on 01.4.1986, has been passed "1 year, 05 months, 15 days" and remaining time of limitation is "10 years, 06 months, 15 days." In the instant matter, the order of stay operated till judgment and order dated 21.12.2005, a copy whereof was received in the office of Assessing Authority on 05.5.2006, therefore as provided in Section 21(6) of the U.P. Trade Tax, after excluding the time period of stay, the remaining time of limitation i.e., "10 years, 06 months, 15 days" would be available after 5.5.2006 i.e., the order of assessment of 1985 86 could be passed up to 20.11.2016. In the aforementioned manner, the date of expiry of limitation time for the different assessment years 198586 to 199192 have been computed by the Assessing Authority vide orders dated 31.12.2009, the details whereof are shown as follows:

Assessment Year

Time limit to pass the order of assessment

Time passed till interim order dated 16.9.1987

Remaining time after order dated 05.5.2006

Date of expiry of limitation time

198586

01.4.1986 to 31.3.1998

12 years

1 year

5 months

15 days

10 years

6 months

15 days

20/11/2016

198687

01.4.1987 to 31.3.1998

11 years.

5 months

15 days

10 years

6 months

15 days

20/11/2016

198788

01.4.1988 to 31.3.1998

10 years.

10 years

04/05/16

198889

01.4.1989 to 31.3.1998

9 years

9 years

04/05/15

198990

01.4.1990 to 31.3.1998

8 years.

8 years

04/05/14

199091

01.4.1991 to 31.3.1998

7 years.

7 years

04/05/13

199192

01.4.1992 to 31.3.1998

6 years.

6 years

04/05/12

Adding further, State Counsel submitted that the computation of the limitation time can still be calculated in another manner also e.g. for the assessment year 198586, the order of assessment can be passed till 31.3.1998. In the instant matter, the time period of stay is w.e.f. 16.9.1987 to 5.5.2006 i.e. 18 years 7 months and 20 days. Now the exclusion of aforesaid stay period means a period of 18 years 7 months and 20 days would be available after 31.3.1998 i.e. upto 20.11.2016 in view of the provisions provided in Section 21(6) of the U.P. Trade Tax Act. In support of the aforesaid contentions reliance has been placed on Commissioner (Legal) and another vs. M/s Jyoti Traders & another; 1999 UPTC 45, Indodan Milk Products Ltd. Vs. State of U.P. and another, 1983 UPTC 583.

It has also been argued on behalf of the respondents that the contention of the petitioner that after grant of Eligibility Certificate, the Assessing Authority has no jurisdiction to pass assessment order is contrary to the view taken by the High Court in the case of M/s Gola Gokaran Nath Mahadev Dal Mill, Moradabad vs. State of U.P. and others; 1998 UPTC 964.

Our attention was also drawn by the the respondents" Counsel towards the U.P. Vat Act, 2008 which repealed the Trade Tax Act, 1948. Section 81 of the said Act deals with the repeal of saving of U.P. Trade Tax Act, 1948. In view of Section 81 of the U.P. Vat Act, 2008 as well as Section 6 of the U.P. General Clauses Act, 1904; the Commissioner, Commercial Tax, Lucknow issued a circular letter dated 2.4.2008 mentioning therein that if any proceeding is pending or initiated under the erstwhile U.P. Trade Tax, 1948, then it would be concluded under the same Act, as if it has not been repealed. Therefore, the claim of refund of the tax deposited by the petitioner alongwith interest @ 18% per annum cannot be granted and the writ petition being devoid of merits, is liable to be dismissed.

Controverting the assertions of the State Counsel as regard to availability of limitation period, Sri Arif Khan, Senior Advocate, in reply, submitted that the limitation as calculated and shown by the State Counsel in the aforesaid chart is based on imagination and not on the basis of limitation as provided by the various amendments in the Trade Tax Act. When the Writ Petitions were finally allowed in favour of the petitioner on 21.12.2005, the date "31.03.1998" had already expired and the respondents could only claim the benefit of period of 2 years as section 21(2) says "period of two years or 31.03.1998, whichever is later". Therefore as per section 21(2) the period of limitation has to be

determined as under:

Assessment Year

Date of Notice

Time within which Assessment

was to be made after end of such

Assessment Year

Remaining time to make Assessment (after excluding the period from end of Assessment Year to Date of Notice)

Date of Service of Judgment on Opposite Parties

Date on which remaining time ended (after excluding the period of Stay)

198586

28.09.1988

(Given after 2 years 5 months 27 days)

2 years from the date of expiry of the A.Y. e.g.31.03.1986

Time had expired

05.05.2006

Time had already expired

198687

28.09.1988

(Given after 1 years 5 months 27 days)

2 Years from the date of expiry of the A.Y.

e.g.31.03.1987

6 months

3 days

05.05.2006

08.11.2006

198788

28.09.1988

(Given after 5 months 27 days)

2 Years from the date of expiry of the A.Y.

e.g.31.03.1988

1 Year 6

Months

3 Days

05.05.2006

08.11.2007

198889

23.03.1993

(Given after 4 years 9 months and 21 days)

2 Years from the date of expiry of the A.Y.

e.g.31.03.1989

Time had

expired

05.05.2006

Time had already expired

198990

No Notice was ever given before

(given for the first time on 30.10.2009)

2 Years from the date of expiry of the A.Y.

e.g.31.03.1990

Time had expired

05.05.2006

Time had already expired 199091

No Notice was ever given before (given for the first time on 30.10.2009)

2 Years from the date of expiry of the A.Y. e.g.31.03.1991

Time had expired

05.05.2006

Time had already expired 199192

No Notice was ever given before (given for the first time on 30.10.2009)

2 Years from the date of expiry of the A.Y. e.g.31.03.1992

Time had expired

05.05.2006

Time had already expired.

Placing reliance on the aforesaid chart, it has been submitted that the limitation as claimed by the respondent is based on presumption but is not supported by the provisions of the Act as it stood at the relevant time. Question of limitation is a procedural aspect of the a Fiscal Law as is in the instant case and therefore, it has to be strictly construed. Reliance in support of the aforesaid contention has been placed on K.M.Sharma vs. ITO (2002) 4 SCC 339, Krishi Utpadan Mandi Samiti and others vs. Pilibhit Pantnagar Beej Ltd. and another; (2004)1 SCC 391 and District Registrar and Collector Hyderabad and another vs. Canara Bank and other; (2005) 1 SCC 496. In K.M.Sharma's case[*supra*], the Apex Court observed in paragraph 13 as under:

Fiscal statute more particularly on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality."

As regard the payment of interest, it has been urged that the petitioner firm is also entitled to be paid interest on the refund amount as the department has not refunded the amount deposited during the exemption period for more than 23 years, since the sales tax under protest was deposited in the year 1997. In support of this contention reliance has been placed on a Division Bench judgment of this Court passed in writ petition no. 1615 of 2002; M/s Reva Enviro Systems (P) Limited vs. State of U.P. and others, Manjula Srivastava vs. Government of Uttar Pradesh; (2008) 8 SCC 652 and Sandvik Asia Limited vs. Commissioner of Income Tax (2006) 2 SCC 508.

Taking up the question of Eligibility Certificate and its consequences, first, it may be stated that petitioner had setup a Rice Mill at District Faizabad (now District Ambedkarnagar) which is most backward area of Uttar Pradesh. The State Government in order to encourage industrialization of backward areas of the State had drawn up a Policy of providing benefits to the new industrial units which also included exemption from payment of Sales Tax (now Trade Tax) on its transaction of sale and purchase for a period specified in the Policy, which was subsequently incorporated in the Act by an Amendment.

In order to avail the benefit of Tax Exemption as contemplated by section 4A, the Firm applied for grant of an Eligibility Certificate which was refused on the information supplied by the Trade Tax Officer, Ambedkarnagar that since the

petitioners" themselves were depositing Trade Tax and utilizing Forms 3 (c) 2 etc, the Firm could not be granted the Eligibility Certificate vide their letters dated 12.09.1988 and 20.09.1988.

It may be noted, as averred above, that the notice dated 16.10.1986 was assailed by the petitioners in writ petition no. 6446(MB) of 1987 before this Court and the aforesaid orders were challenged in Writ Petition No. 8068 (MB) of 1988. As indicated above, a Division Bench of this Court passed an Interim Order that assessment proceedings may go on but final order would not be passed. In spite of this Interim order the Opposite Parties instead of scrutinizing the petitioner records and taking other relevant steps to determine the Tax liability slept over the matter in as much as they did not call for the records nor did they hold any proceeding.

The aforesaid two Writ Petitions were allowed vide judgment and order dated 21.12.2005 and the Order of the Regional Level Committee rejecting the Firm's application for grant of Eligibility Certificate was set aside and The Regional Level Committee was directed to reconsider the petitioner application for grant of Eligibility Certificate with the result that Interim Order of this Court merged in the final Judgment and Order dated 21.12.2005 passed by this Court, the impact being that in case the Eligibility Certificate was granted, and the petitioner got exemption from tax liability.

It may further be noticed that though the Division Bench of this Court on earlier occasion had directed the whole matter to be disposed off within a period of two months, the Opposite Parties, true to their habits, slept over the matter for over a period of about three and a half year on the lame excuse that they had no knowledge of the disposal of the Writ Petitions by this Court vide order dated 21.12.2005. This plea of the respondents is wholly incorrect and fallacious in as much as the Regional Level Committee itself had directly addressed its Order dated 10.04.2008 to Deputy Commissioner, Tax Assessment, Trade Tax Department, Ambedkarnagar with the clear endorsement at the foot of the Order that this decision was in accordance with the Trade Tax Department. Furthermore, as averred above, the petitioner had duly informed the Department about the judgment and order dated 21.12.2005 vide its letter dated 1.5.2006 and 13.9.2006 and even the correspondence, admittedly, was also exchanged. It is for this reason that an application for taking appropriate action against Sri Hiralal Verma, Deputy Commissioner, Ambedkarnagar for filing false affidavit under Section 340 read with S. 195 CrPC was also filed by the petitioners. Although the respondents tried to mislead the court but under the circumstances, were are not making any observations on the merit of the said application.

Period of Limitation claimed by the respondents, as averred above, is based on the presumption that the amendment in section 21(2) of the Act under which a specific date namely March 31,1998 is mentioned, is available for all time. This concept is wrong which would be evident from the facts stated herein. The legislature first fixed a period of 2 years as the limitation for making the

assessment order but since the period of limitation had been curtailed, it was provided that the assessment orders could be made by March 31,1998.

Before dealing with the rival arguments, the preamble of the Act, certain definitions and a few provisions which have relevance need to be noted. They are as under:

The preamble of the Act provides that the Act has been made to provide for the levy of a tax on the sale or purchase of goods in Uttar Pradesh. The Act defines Trade Tax as a tax payable under the Act on sales or purchases of goods. The word "Dealer" has along definition. It, interalia, means any person who carries on in Uttar Pradesh(where regularly or otherwise) the business of buying,selling,supplying or distributing goods directly or indirectly for cash or deferred payment etc.

The Act also defines "Goods", "Declared Goods","Manufacture", "Manufacturer", "Purchase Price" and "Turnover" besides other definitions.

"Turnover" has been defined as the aggregate amount for which goods are supplied or distributed by way of sale or are sold by a dealer either directly or through another on his account or on account of others whether for cash or deferred payment or other variable consideration.

"Assessment Year" has been shown to mean 12 months ending on March 31.

Section 3 creates the liability to tax under the Act. It provides that every dealer shall, for each assessment year, pay a tax at the rate provided by or under section 3A or 3D on his turnover of sales and purchases or both,as the case may be, which shall be determined in such manner as may be prescribed.

Section 3A provides for the "Rates" of tax. Section 3AA provides for levy of tax on all points of sale or purchase. Section 4,4A provides for exemption from tax in certain cases.

Section 7 of the Trade Tax Act, 1948 deals with the normal procedure for determination of turnover and assessment of tax and is reproduced herein.

7. Determination of turnover and assessment of tax.

(1)Every dealer who is liable to pay tax under this Act shall submit such return or returns of his turnover at such intervals, within such period, in such form and verified in such manner, as may be prescribed; but Assessing Authority may in its discretion, for reasons to be recorded, extend the date for the submission of the return by any person or class of persons.

(1A)Before submitting the return under subsection (1) or along with such return the dealer shall deposit, in such manner as may be prescribed the amount of tax due on the turnover shown in such return.

(1B)Where as a consequence of the date for the submission of return being extended under subsection (1) on the application of any person, the deposit of

tax under subsection (1A) is deferred, there shall be payable interest at the rate of fourteen percent per annum on such deposit from the date immediately following the last date prescribed for the submission of the return.

(1C) If any dealer discovers any omission or other error in any return submitted by him he may, at any time, before the time prescribed for submitting the next return, submit a revised return. If the revised return shows a greater amount of tax to be due than was shown in the original return, the dealer shall also deposit separately the difference of tax due and the interest payable under subsection (1B) as if the time for submitting original return had been extended on the application of the dealer to the date of submission of the revised return. If, however, the revised return shows lesser amount of tax to be due than was shown in the original return the dealer may adjust the excess amount towards the tax due for the subsequent periods.

(1D) If the goods sold or purchased by a dealer are returned within six months of the date of sale or purchase and assessment for the year to which such sale or purchase relates is as yet to be made he may within thirty days of the expiry of the month in which such goods are returned submit for that purpose only a revised return for the period during which such sale or purchase was made.

(2) If the Assessing Authority, after such enquiry as he considers necessary is satisfied that any returns submitted under subsection (1) are correct and complete, he shall assess the tax on the basis thereof .

(3) If no return is submitted by the dealer under subsection (1) within the periods prescribed in that behalf or if the return submitted by him appears to the Assessing Authority to be incorrect or incomplete, the Assessing Authority shall, after making such inquiries as he considers necessary, determine the turnover of the dealer to the best of his judgment and assess the tax on basis thereof :

Provided that before taking action under this section the dealer shall be given a reasonable opportunity of proving the correctness and completeness of any return submitted by him.

(4) Every person to whom section 28B applies and for whom a presumption under the said section exists that the goods have been sold within the State by such person shall, in the manner prescribed, be assessed to tax at the check post on the goods covered by each authorization for the transit of goods separately.

(5) The provisions of subsection (4) shall apply to all the cases for assessment whether arising before or after the date of the commencement of Uttar Pradesh Sales tax (Amendment) Act, 1995

(6) No order of assessment under subsection (4) and (5) shall be passed until the owner or person in charge of the vehicle, as the case may be, is given a reasonable opportunity of being heard.

Explanation In this section and in sections 7A, 7B, 7C, 7D, 7E, 8A, 14, 15A, 18,

21 and 24 the expression, ""turnover" means the turnover of sales or of purchases or both, as the case may be.

Section 7 provides for determination of turnover and assessment of tax by the Assessing Authority. Under sub section (1) of section 7 every dealer who is liable to pay tax under the Act is required to submit such return or returns of his turnover at such intervals within such period, in such form and verified in such manner as may be prescribed.

Sub section (2) of section 7 spells out that if the Assessing Authority, after such inquiry as he consider necessary, is satisfied that the returns submitted under sub section 1 of section 7 are correct and complete, he shall assess the tax on the basis thereof.

Sub section (3) of section 7 gives power to the Assessing Authority to determine the turnover of the dealer to the best of his judgment and assess the tax on the basis thereof but this power can be exercised either if the return is not filed by the dealer or the return appears to the Assessing Authority to be incomplete or incorrect.

This provision read with section 21(2) would indicate that the normal period of limitation for making an order of assessment is 2 years from the end of the assessment year. The words " or March 31,1998 whichever is later" indicate that this one time grace provided to the Authorities to make the assessment order as the period of limitation was twice curtailed from 4 years to 3 years and from 3 years to 2 years, so that the files which might have accumulated may be cleared by March 31, 1998. If not already cleared within 2 years. This will also clear from the fact that in the next year, that is to say, in 1999 the period of limitation would only be 2 years as "31 March,1998" will not be available in 1999. Similarly in the next year following 1999 the period of limitation would be 2 years.

Section 21 contemplates different situations enabling the Assessing Authority to pass orders of assessment. The first proviso to section 21(2) contemplates if the Commissioner on his own or on the basis of reasons recorded by the Assessing Authority, is satisfied that would be just and expedient so to do authorize the Assessing Authority to make assessment or reassessment even after the expiration of the period of 2 years but not after the expiration of 6 years from the end of such year or March 31, 2002, whichever is later.

Another situation contemplated by the third proviso to section 21 is the amendment or cancellation of the Eligibility Certificate granted under section 4A of the Act. In this situation the order of assessment or reassessment could be made within 1 year from the date of receipt by the Assessing Authority of the copy of the order amending or canceling the Certificate or by March 31,1995, whichever is later.

Regarding assessment or reassessment for the assessment year 8788, it has been provided that it may be made by March 31,1993. Similarly in respect of

assessment year 198990 it has been provided that assessment or reassessment may be made by March 31, 1995.

It is also provided by sub section (4) that if an order of assessment is set aside and the case is remanded for reassessment either by an Authority under the Act or by a competent Court, the order of reassessment may be made within 1 year from the date of receipt by the Assessing Authority of the copy of the order remanding the case or by December 31, 1982, whichever is later.

Section 4A contemplates a situation where order of assessment is quashed on the ground of want of jurisdiction of the Assessing Authority either by the Court or a competent authority under the Act. In such a situation the order of reassessment can be made by the Assessing Authority having jurisdiction but within 1 year from the date of receipt of the order of such authority or Court or by March 31, 1993, whichever is later.

Subsection 5 and 5A of section 21 contemplate two situations;

1. Where the order of assessment or reassessment for any assessment year is set aside under section 30, a fresh order for that year may be made within 6 months from the date on which such earlier order was set aside.

2. The other situation contemplated by subsection 5A is that an exparte order of assessment or reassessment or penalty passed against a sick unit is set aside by State Government under section 38, a fresh order of assessment or reassessment or penalty may be made for that year within 1 year from the date of receipt of the order of the State Government by the Assessing Authority.

Subsection 6 of section 21 on which reliance has been placed by the respondents provides that if the assessment proceedings have been stayed by an order of the Court and the stay order is vacated subsequently that the entire period from the date of the stay order till the date on which the order vacating the stay order is served on the Assessing Authority.

The respondents are relying upon section 21(2) of the Act to claim that they had the period of limitation to pass the assessment order in the matter. Section 21(2) is quoted below:

"Except as otherwise provided in this section, no order of assessment or reassessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:"

When the Writ Petitions were finally allowed in favour of the petitioner on 21.12.2005, the date 31.03.1998 had already expired and the respondents could only claim the benefit of period of 2 years as section 21(2) says "period of two years or 31.03.1998, which ever is later".

At the time when notices were issued to the petitioner firm on 28.09.1988 for the Assessment year 8586, 8687, and 8788, the limitation period was prescribed 4

years. The period of 4 years of limitation was reduced to 3 years vide Sales Tax Amendment Act 31 of 1995 which came into force on 25.8.1994. Subsequently, another amendment vide U.P. Act No.11 of 1997 was made and came into force w.e.f. 07.08.1997 in section 21(2) and the period of 3 years of limitation was reduced to 2 years or till 31.3.1998 whichever is later. Since, the period of 3 years was being reduced to 2 years, it was anticipated that many cases which could not be disposed of would have accumulated and unless time was allowed for their disposal, great injustice was likely to result to the State Government. It is in these circumstances that it was provided as one time grace that such cases could be disposed of by 31.03.1998.

At this juncture it would be apt to reproduce Section 32 of the U.P. Sales Tax (Amendment) Act, 1995 by which section 21 was amended;

"32. Amendment of Section 21. In section 21 of the principal Act,

(a) in subsection (2),

(i) for the words "Four years from the end of such year" the words "three years from the end of such year or March 31, 1996, whichever is later", shall be substituted;

(ii) in the first proviso, for the words "on being satisfied on the basis of reasons recorded by the Assessing Authority" the words "on his own or on the basis of reasons recorded by the Assessing Authority, is satisfied," shall be substituted and be deemed to have been substituted on February 19, 1991;

(iii) after the second proviso, the following provisos shall be inserted, namely:

"Provided also that if the eligibility certificate granted under Section 4A has been amended or cancelled by the Commissioner under subsection (3) of Section 4A the order of assessment or reassessment may be made within one year from the date of receipt by the Assessing Authority of the copy of the order amending or canceling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or reassessment for the assessment year 1989-90 may be made by March 31, 1995.";

for subsection (5), the following subsection shall be substituted, namely:

"(5) If an order of assessment or reassessment for any assessment year is set aside under Section 30, a fresh order of assessment, or reassessment for that year may be made within six months from the date on which such earlier order was set aside.";

for subsection (6), the following subsection shall be substituted, namely:

"(6) Where the proceedings of assessment or reassessment for any assessment year remains stayed under the orders of any court or authority, the period commencing on the date of stay order and ending with the date of receipt by the Assessing Authority concerned of the order vacating the stay, shall be excluded

in computing the period of limitation provided in this section:

Provided that if no such computing, the period of limitation comes to less than six months, such assessment or reassessment may be made within six months from the date of receipt by the Assessing Authority of the order vacating the stay."

From the perusal of the aforesaid provisions, it will be evident that while reducing the period of limitation from four years to three years, the different dates have been indicated in different clauses in addition to the normal period of limitation. Similarly, when U.P. Trade Tax(Amendment) Act 1997 amended Section 21 of the principal Act, it was provided as under;

Amendment of Section 21. In Section 21 of the principal Act, in subsection (2) for the words and figures " three years from the end of such year or March 31, 1996, whichever is later" the words and figures " two years from the end of such year or March 31, 1998 whichever is later" shall be substituted.

It will thus be seen that while reducing the period of limitation from three years to two years, a specific date namely March 31, 1998 was mentioned by which date the assessment proceedings should be completed.

Thus, the contention raised by the respondents on the question of limitation is not borne out by any provisions of the Sales Tax Act or for that matter Trade Tax Act and lastly Uttar Pradesh Value Added Tax Act. Therefore, the case law relied upon by the respondents" are of no avail to them.

The period of 2 years became the substantive period of limitation for the subsequent years for making the assessment orders. The date "31.03.1998" is not available in any subsequent year. Admittedly, the writ petition preferred by the petitioner was allowed vide judgment and order dated 21.12.2005 and the copy of the Judgment and Order was served upon the opposite parties on 05.05.2006. Even if, the period of stay is excluded then also the opposite parties have to proceed in accordance with the provisions of section 21(2) as it stood on 05.05.2006. On 05.05.2006 the limitation period to complete the assessment was 2 years and counting it from 05.05.2006 (even foregoing the period already expired in issuing notices), the period of 2 years came to an end on 04.06.2008. Hence it would be seen that proceedings initiated by the department are time barred.

In respect of Assessment year 8889, 8990, 9091 and 9192 notices were never issued within prescribed time and when Sales Tax Act was repealed by U.P. VAT Act it cannot be said that any proceeding was pending and therefore the benefit of the saving clause of U.P. VAT and Section 6 of the General Clauses Act is of no help to the Opposite Parties. Our view is strengthened by the Judgment of the Hon"ble Supreme Court reported in 2008(15) SCC 617; S/s Kanpur Edibles Pvt. Ltd. v. Commissioner, Trade Tax, U.P.

The Opposite Parties have claimed that the entire period of time beginning from

the date on which the Interim Order was passed by the High Court and the date on which it was vacated, is liable to be excluded in computing the period of limitation prescribed under the Act for making the Assessment Order. Reliance for this purpose has been placed by the Opposite Parties on the provisions contained in subsection (6) of section 21 of the Sales Tax Act (subsequently enacted as Trade Tax Act).Section 21 (6) provides as under:

"Where the proceedings for assessment or reassessment for any assessment year remain stayed under the orders of any Court or authority, the period commencing on the date of stay order and ending with the date of receipt by the Assessing Authority concerned of the order vacating the stay, shall be excluded in computing the period of limitation provided in this section:

Provided that if in so computing, the period of limitation comes to less than six months, such assessment or reassessment may be made within six months from the date of receipt by the Assessing Authority concerned of the order vacating the stay."[emphasis added]

A perusal of the provisions of section 21(6) quoted above indicates that there are two aspects;

The first is the date on which the Interim Order is passed and the second is the date on which the order vacating the Interim order is received by the Assessing Authority.

In order to claim the benefit of this provision, the Opposite Parties have to show that the ingredients/ requirements of section 21(6) stand complied with but they miserably failed to prove it.

It may be stated here that the Sales Tax Act (Trade Tax Act) falls within the category of Fiscal Statute and, therefore, it has to be strictly construed unlike other statutes on which liberal construction can be placed as per the ratio laid down by this Court in the case of CIT vs. Swadeshi Cotton Mills. Co. Ltd. 232 ITR 618 All.

Keeping this principle in view, it will be seen that though the requirement of first terminal is satisfied in as much as the date on which the Interim Order was passed by this Court, is known and has been specifically pleaded by both the parties, the requirement of the second terminal point, namely, the date, on which the order vacating the Interim Order was served on the Assessing Authority is not satisfied in as much as this Court, during the pendency of the Writ Petition till its final disposal, did not, at any stage, vacate the Interim order. The second condition of section 21(6) is not satisfied and therefore there cannot be any exclusion of time under section 21(6) of the Act with the result that the limitation having expired long before, there cannot be any Assessment Proceeding or Assessment Order on the basis of the impugned Notices.

It may be mentioned that in the instant case the Writ Petition nos. 6447 (MB) of 1987 and W.P. 8068 (MB) Of 1988 were allowed and the Interim Order passed

therein merged in the final order in view of the settled position of law [See: Jaipur Municipal Corpn. C.L.Mishra (2005) 8 SCC 423]. Since the Interim Order had not been vacated at any stage the entire period during which the Writ Petition were pending in this Court cannot be excluded as explained above. But it makes much difference as respondents are entitled to exclude the entire period of pendency of the petitions in the High Court under clause (6A) of Section 21 of the Act. Even if this period is excluded, although respondents wrongly rely on clause (6) of Section 21, it will still be evident that the time for making an assessment order has run out inasmuch as, the writ petitions were decided on 21.12.2005 of which intimation, admittedly, was received by the Assessing Authority on 5.5.2006 and the period of two years had expired on 4.5.2008. Therefore, the entire period beginning from the date on which the Writ Petitions were filed and ending on the date on which the Writ Petitions were allowed is liable to be excluded, under Section 21 (6A) but even then, the limitation will be run out, as the the order by which the Writ Petitions were allowed, was already served upon the Assessing Authority on 05.05.2006 and, therefore, the Assessing Authority was supposed to complete the assessment proceedings within two years ending on 04.05.2008. This having not been done, cannot now be done as the limitation does not subsists.

If the period of time consumed by the Assessing Authority in issuing the notices for the assessment, the period of limitation would be found to have ended much earlier as the assessment proceedings had to be completed within the remaining period of two years.

The period of limitation set out by the respondents in their chart is ridiculously misleading. The U.P. Sales Tax Act 1948, (subsequently U. P. Trade Tax Act, 1948) has undergone amendments several times including the period of limitation originally prescribed for making the order of assessment in as much as the period of four years was reduced to three years by amendment and by another amendment it was reduced to two years. At the time of each amendment, by which the limitation was affected, beside the period of limitation, another specific date was also mentioned by which date, though it was later in time, the proceedings could be completed.

Suppose, if the Writ Petition had not been filed or if there was no Interim Order, what period of limitation would have been applied? Obviously, the normal period prescribed in the Act. Further, even accepting that under section 6 of the U.P. General Clauses Act, pending proceedings would continue to be governed by the old law as laid down in that section on account of saving clause.

Obviously, under the old Act, the original period of limitation of 4 years had been reduced to 2 years by successive amendments. Therefore, even on the principle that the old provision would apply and not the new Act or the new provision, the proceedings would be found to have been barred by time on account of limitation having been reduced to 2 years. Thus, the impugned notices dated 30.10.2009, letter/notice dated 21.10.2009, impugned order dated 26.12.2009(Annexure18

to the writ petition) and the impugned assessment order dated 31.12.2009 are not legally sustainable and liable to be quashed.

For the reasons aforesaid, the writ petition is allowed and impugned notices dated 30.10.2009, letter/notice dated 21.10.2009, impugned order dated 26.12.2009(Annexure18 to the writ petition) and the impugned assessment order dated 31.12.2009 (Annexure19 to the writ petition) are hereby quashed. The opposite parties are directed to refund the amount deposited by petitioner under protest alongwith simple interest @ 8% per annum within a maximum period of six weeks failing which interest @ 10% would be payable on the entire amount payable.

76. Costs easy.