(2002) 07 AHC CK 0001

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1947 of 2002

Swastik Tubes (P) Ltd. APPELLANT

Vs

Trade Tax Tribunal RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 4A

Citation : (2003) 132 STC 173

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Bharatji Agrawal and Piyush Agrawal, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

R.B. Misra, J. 1. In the present writ petition the impugned order dated June 19, 2002 passed by the Trade Tax Tribunal on stay application in appeal No. 50 of 2002 has been challenged.

2. Heard Sri Bharatji Agrawal, Senior Advocate, along with Sri Piyush Agrawal, learned counsel for the petitioner and Sri B.K. Pandey, learned Standing Counsel for the respondents. With the consent of the parties, the writ petition is being disposed of at this stage in the light of second proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

3. The petitioner, registered under the U.P. Trade Tax Act, 1948 (in short called as "the Act") and under the Central Sales Tax Act, 1956, as manufacturer of PVC pipes and fittings was granted exemption u/s 4-A of the Act and was issued eligibility certificate dated March 26, 1998 (annexure 1) from payment of tax for the period of ten years, w.e.f. September 25, 1995 to September 24, 2005 or to the extent of 200 per cent of the fixed capital investment whichever is earlier. In the eligibility certificate the date of starting production has been mentioned as July 31, 1995 and the date of first sale was mentioned as September 25, 1995

from which date the period of exemption of ten years was given. The petitioner undertook expansion of the existing unit by making additional fixed capital investment of Rs. 21,22,470 which was much more than 25 per cent of the original fixed capital investment of Rs. 54,45,000. The production capacity of the petitioner-unit was increased from 1,450 MT to 3,000 MT which was more than 100 per cent of the original installed production capacity. For coming within the field of eligibility of expansion the increase of 25 per cent of the original installed production capacity is required.

4. The petitioner''s application applied for exemption for grant of eligibility certificate in respect of the expansion undertaken was rejected by order dated March 27, 1998 by the Divisional Level Committee on the ground that since the base production under the scheme of expansion has crossed on August 30, 1996 while the original production was started on July 31, 1995, hence the petitioner has made the expansion within one year and has not completed five years for undertaking the expansion. The review application, on the report of the Assistant Commissioner, was forwarded by the Deputy Commissioner to the Divisional Level Committee which granted the eligibility certificate in respect of the expansion undertaken by the petitioner by the order dated December 8, 1999 granting the benefit of expansion for a period of ten years.

5. A notice u/s 4-A(3) of "the Act" was issued by the Commissioner, Trade Tax, U.P., Lueknow, for cancelling the said eligibility certificate dated December 8, 1999. In a detailed reply dated November 14, 2000 it was specifically mentioned that no proceeding u/s 4-A(3) could be legally taken on the two grounds, namely, (1) the date of initial production being July 31, 1995 and the date of crossing the base production under the scheme of expansion being August 30, 1996 and (2) the exemption granted to the extent of 200 per cent of the additional fixed capital investment, both were not sustainable (annexure 5).

6. Aggrieved by the aforesaid order, the petitioner has filed an appeal before the Trade Tax Tribunal, Lueknow, along with stay application and along with an affidavit for staying the operation of the order dated April 23, 2002.

7. The Section 10(2) of the U.P. Trade Tax Act provides for an appeal against an order passed under Sub-section (3) of Section 4-A of the Act as below :

"(2) Any person aggrieved by an order passed u/s 9 (other than an order referred to in Sub-section (4-A) of that section), Section 10B, Sub-section (2B) or Sub-section (3) of Section 4-A, a decision u/s 35, a direction under the proviso to Sub-section (6) of Section 13-A or an order granting or refusing to grant an eligibility certificate within the meaning of Clause (d) of Sub-section (2) of Section 4-A may, within ninety days from the date of service of the copy of such order, decision or direction on him, prefer an appeal to the Tribunal."

Section 10(6) of the U.P. Trade Tax Act provides as follows :

"(6) Where an appeal under this section has been filed, the Tribunal may, on the application of the appellant moved along with the memorandum of such appeal after giving the parties a reasonable

opportunity of being heard, stay the operation of the order appealed against or the recovery of the disputed amount of any tax, fee or penalty payable, or refund of the amount due, or proceeding for reassessment under the order appealed against till the disposal of the appeal."

8. The appeal was filed u/s 10(2) against the order passed u/s 4-A(3), hence the petitioner filed a stay application u/s 10(6) for staying the operation of the order appealed against.

9. However, by order dated June 19, 2002 the Trade Tax Tribunal has rejected the application on the ground that the expansion has been made by the petitioner-unit before the completion of one assessment year, even though there was no disputed amount of tax.

10. I have gone through the contents of the Trade Tax Tribunal and the record. The expansion has been made before the expiry of one year. The field of eligibility under explanation (5) to Section 4-A is one thing and the grant of exemption under the scheme of explanation after crossing the base production is another thing. In the report of the Assistant Commissioner it has been indicated that the petitioner is not a defaulter as stated under Clause (a) and have also made investment of more than 25 per cent of the original fixed capital investment, without providing for depreciation on account of which the production capacity of the petitioner unit has also increased by much more than 25 per cent, hence the petitioner comes within the field of eligibility having fulfilled the requirement of the field of eligibility as mentioned in explanation (5) to Section 4-A of the Act. Inasmuch as the base production of the petitioner undertaking expansion falls after March 31, 1990 and before March 31, 2000, therefore, the petitioner was covered within the field of eligibility and the definition of the word "base production" is only relevant for determining the date from which the exemption can be availed of in accordance with the Notification No. 780 dated March 31, 1995.

11. Learned counsel for the petitioner has referred and relied upon the judgment dated May 24, 2002 passed by this Court in Revision No. 38 of 2002 (Paswara Petrochem Limited v. Commissioner of Trade Tax, U.P., Lucknow Reported in [2003] 132 STC 159) wherein the eligibility certificate has been allowed for the expansion made within a year.

12. In view of the above observations, the order dated June 19, 2002 passed by the Trade Tax Tribunal is set aside and the order dated April 23, 2002 passed by Commissioner, Trade Tax, U.P. (annexure 6) is stayed and the Appeal No. 50 of 2002 is allowed to be proceeded with and the learned Tribunal is directed to decide the appeal afresh in accordance with law after hearing the parties on merits after considering the submissions made by the parties.

13. The writ petition is allowed.

