
(2007) 10 AHC CK 0174
In the Allahabad High Court

Unirex Moulds Private Limited (Now known as Unirex Electronics Ltd.)

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 24-10-2007

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A, 4A(3)

Citation : (2009) 20 VST 227

Hon'ble Judges : Bharati Sapru, J

Bench : Single Bench

Judgement

Bharati Sapru, J.—Heard learned Senior Counsel Shri Bharatji Agrawal assisted by Shri Piyush Agrawal for the revisionist and Shri B.K. Pandey, learned Standing Counsel for the State.

2 This revision petition has been filed by the revisionist against the order of the Trade Tax Tribunal dated December 26, 2002 by which the Trade Tax Tribunal dismissed the appeal of the revisionist before the Trade Tax Tribunal, being Appeal No. 120 of 1998 and has confirmed the order of the Commissioner, Trade Tax dated March 23, 1998 by which the eligibility certificate granted to the revisionist u/s 4A(2) has been cancelled by the authority under the provisions of Section 4A(3) of the U.P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act").

3. The revisionist is a public limited company under the Indian Companies Act, 1956 and had established a new unit at C-4, Industrial Area, Sikanderabad, District Bulandshahar for the manufacture of television sets. This unit was established by the revisionist in view of the incentive scheme announced by the State Government for the grant of exemption from the payment of tax u/s 4A of the U.P. Trade Tax Act, 1948.

4. Since the revisionist fulfilled the eligibility criteria for the grant of exemption certificate u/s 4A(2) of the aforesaid Act, it was granted eligibility certificate on

January 11, 1985 for a period of six years beginning from May 14, 1984 to May 13, 1990. This exemption was granted to the revisionist in respect of the manufacture and sale of colour television sets as well as black and white television sets. In pursuance to the grant of exemption certificate, the revisionist did not either realise any tax nor deposited any tax during the said period.

5. On May 10, 1988 the Commissioner of Trade Tax initiated proceedings u/s 4A(3) of the Act for withdrawal of the eligibility certificate on allegations of misuse of the eligibility certificate. Against the order dated May 10, 1988, the present revisionist filed an appeal u/s 10 of the U.P. Trade Tax Act and the Trade Tax Tribunal, Lucknow by its order dated July 21, 1989 allowed the appeal and set aside the order of the Commissioner u/s 4A(3) and remanded the case to the Commissioner of Trade Tax for decision afresh after giving to the revisionist a proper opportunity of hearing.

6. Thereafter, another order was passed on January 5, 1992 u/s 4A(3) by which the eligibility certificate was cancelled. The revisionist again filed an appeal, which was allowed on August 21, 1995.

7. Thereafter, another order was passed on March 23, 1998 u/s 4A(3) cancelling the eligibility certificate on the ground of misuse. The order dated March 23, 1998 has been placed on record by the revisionist as annexure 1 to the paper book. The order dated March 23, 1998 records two grounds for the cancellation of the eligibility certificate. The first ground recorded is that the manufacturer was not in the production of television sets at some times. The second finding recorded for misuse is that because the revisionist was importing television sets from outside, it cannot be said that he was a manufacturer.

8. Learned Counsel for the revisionist Shri Bharatji Agrawal has argued that this order of cancellation does not record anywhere that the revisionist was not in production continuously for a period of six months as was stipulated in the eligibility certificate itself, which was also a requirement under the Notification No. ST-II-6468/X-9(208) 1981-U.P. Act XV/48-Order-84 dated August 27, 1984 under which the eligibility certificate itself has been granted. Condition No. 3 of the notification is quoted hereunder below:

(3) That the said unit has not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year.

9. The second argument of the learned Counsel for the revisionist is that although the order of cancellation records that television sets were being imported from outside, no allegation of misuse of the exemption certificate has been made against the revisionist as the order of cancellation dated March 23, 1998 does not record that the revisionist had claimed any exemption on the T.V. sets which had been imported from outside.

10. Learned Counsel for the revisionist also argued that the grant of exemption certificate to the manufacturer, i.e., the revisionist did not preclude it from

indulging any trading activity and, therefore, the mere fact that the revisionist had imported T.V. sets from outside, would not result in the misuse of the eligibility certificate unless there was a clear allegation that the exemption had been availed by the revisionist on the import of these television sets.

11. In reply to the argument of learned Counsel for the revisionist, learned Standing Counsel Shri B.K. Pandey has argued that in fact, the revisionist was not engaged in the production of T.V. sets at all because the order of cancellation records that the production manager of the company Shri Ajit Kumar admitted that there was no production on August 1, 1984 and secondly, on the date of service, which was September 26, 1984, two other employees of the company, Shri Naveen Rai and Shri Harish Chand accepted that production had not been made. He further argued that on another date, i.e., on May 19, 1984, no cabinet sets were available to the revisionist and, therefore, there was no production on that date also.

12. In reply, learned Counsel for the revisionist Sri Bharatji Agrawal argued that record itself shows that the company was in production. It is only on some dates that the production would not take place but it would not mean that there was no production or that the manufacturer was not in production continuously for a period of six months. He has argued in rejoinder that if the production ceased for a continuous period of six months then alone, the eligibility certificate could be cancelled as stipulated in the notification under which, the grant of exemption had been made.

13. Secondly, he has argued once more in reply that it is nowhere on record that the company has ceased to be in production for a period of six months. Learned Counsel for the revisionist has also argued that even the Tribunal, while passing this order, has not come to the conclusion that the revisionist has ceased to be in production for a period of six months and that is why, in the concluding portion, the Tribunal has recorded that even if it were to accept the version of the learned Counsel for the revisionist that the unit was not closed for a continuous period of six months, there was evidence before the Tribunal to come to the conclusion that the revisionist has misused the eligibility certificate by making imports of T.V. sets.

14. In effect, learned Counsel has argued that in so far as the first finding of the order of cancellation is concerned, there could be no dispute about it because even the Tribunal has accepted that the revisionist was in production and has not closed its production for a continuous period of six months.

15. On the second finding, learned Counsel has argued that mere import of T.V. sets did not mean that the revisionist was indulging in misuse of its eligibility certificate because there is no allegation, whatsoever, either in the order of cancellation of the eligibility certificate or in the order of the Tribunal that the revisionist had availed exemptions on the import of these T.V. sets. In support of this contention, learned Counsel for the revisionist has placed reliance on a

decision of this Court in the case of Protek Coating Pvt. Ltd., Ghaziabad v. Commissioner of Trade Tax reported in [1999] UPTC 138 in which this honourable court held that:

An eligibility certificate does not debar a dealer from manufacturing other goods or from trading in other goods.

16. Such dealings and transactions of the dealers are of course subject to assessment proceedings but the mere fact of manufacture of some other goods or trade in some other goods could not result in coming to the conclusion that the eligibility certificate granted for a certain product has been misused.

17. I have heard learned Counsel for both sides at length and I have also perused the material on record as well as the order of cancellation of the exemption certificate and the impugned order of the Tribunal dated December 26, 2002. There is substance in the argument made by the learned Counsel for the revisionist.

18. Two things are clear. Firstly, there is no finding against the revisionist that he has ceased production for a continuous period of six months so as to withdraw the eligibility certificate in view of the stipulation of the notification under which, it was granted.

19. Secondly, there is no allegation against the revisionist whereunder findings have been recorded against the revisionist that the revisionist had availed exemptions on the T.V. sets, which were imported by him from outside.

20. Such being the case, I come to the conclusion that the impugned order passed by the Tribunal is not justified. The Tribunal has not returned any finding of clear misuse against the revisionist in order to withdraw or cancel the eligibility certificate granted to him. In the absence of any such finding that the revisionist had availed exemptions from tax on the T.V. sets that had been imported, it was not justified on the part of the Tribunal to cancel the eligibility certificate granted to the dealer. The impugned order fails to record any reason that would justify the cancellation of the eligibility certificate.

The order of the Tribunal dated December 26, 2002 is hereby set aside. This revision is allowed. No order as to costs.