(2012) 03 AHC CK 0288

In the Allahabad High Court

Case No : Writ Tax No. 833 of 1993

Vaishma Plastic Industries APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 27-03-2012

Acts Referred:
Factories Act, 1948 — Section 2(m), 6(1), 6(1)(a)(b)

Citation : (2013) 58 VST 389

Hon'ble Judges : Prakash Krishna, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Ashok Kumar, for the Appellant; U.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri Ashok Kumar, learned counsel for the petitioner and Sri U.K. Pandey, learned standing counsel appearing for the respondents. By this petition, the petitioner has prayed for quashing the order dated 11th of March, 1993, annexure 5, to the writ petition by which the petitioner''s review application for amending the eligibility certificate granted to the petitioner''s industrial unit u/s 4A of the Trade Tax Act, 1948 has been rejected.

2. The petitioner established a new industrial unit and was granted an eligibility certificate on October 21, 1989 for the period from 2nd of June, 1988 to 1st of June, 1993. The petitioner claimed first sale on 2nd of June, 1988. In the eligibility certificate although the date of first sale was mentioned as 2nd of June, 1988, however, the actual benefit of exemption was made effective from October 15, 1988 to 1st of June, 1993. Feeling aggrieved, the petitioner filed review application on September 21, 1990. The review application being not decided, the petitioner came to this court by filing a writ petition which was disposed of on January 27, 1992, directing the Divisional Level Committee to dispose of the petitioner''s review application within a month. After the order of this court dated January 27, 1992, the petitioner''s application was considered and rejected by the impugned order dated 11th of March, 1993, against which order the

petitioner has come up in the present writ petition.

3. A counter-affidavit as well as a supplementary counter-affidavit has been filed by the State supporting the impugned order.

4. The learned counsel for the petitioner challenging the order referred to the notification dated 26th of December, 1985, issued by the State Government in exercise of power u/s 4A of the Act and has placed reliance on the paragraph (1) of the notification which defined the "industrial unit". The said paragraph of the notification is as follows:

(1) ''Industrial unit'' means an industrial unit holding permanent registration with the Directorate of Industries, Uttar Pradesh, as a small, handloom or handicraft industry or an industrial licence/registration granted by the Iron and Steel Controller or the Textile Commissioner or the Director, Sugar or the Director-General of Technical Development of the Government of India, and--

(a) registered under the Factories Act, 1948 or established after obtaining a term loan from the U.P. Financial Corporation or from a Scheduled Commercial Bank, in the case of units with a capital investment not exceeding three lakh rupees ; or

(b) registered under the Factories Act, 1948 or having applied for registration under the said Act and deposited the required fee for the purpose, in the case of units other than those referred to above.

5. The submission which has been pressed by the learned counsel for the petitioner is that in view of the notification''s paragraph (1) the industrial unit who has applied for registration and deposited the required fee is entitled for consideration and the petitioner having applied for registration on September 22, 1988, was entitled for the benefit of exemption at least from that date. He submits that the respondents committed error in not granting the benefit at least from 22nd of September, 1988.

6. His submission is that the order impugned having already accepted 2nd of June, 1988 as first date of sale, the petitioner was entitled for the benefit from that date.

7. The learned standing counsel Sri U.K. Pandey referring to the supplementary counter-affidavit, paragraphs 4 and 5, submitted that the provisions of section 4A were amended by the U.P. Act No. 28 of 1991 with effect from October 12, 1983, under which where unit has made an application for registration under the Factories Act, 1948 and registration is granted on a later date, the new unit shall be deemed for entitlement to the facility of exemption for part of the period which shall be computed from the date such registration becomes effective.

8. The learned counsel for the petitioner in rejoinder submits that the said provision could not be applied on the petitioner since the petitioner had already applied for registration much before the above amendment came in to effect by the U.P. Act No. 28 of 1991.

9. We have considered the submissions of learned counsel for the parties and perused the record.

10. The learned counsel for the petitioner has placed reliance on a Division Bench judgment of this court reported in Sahu Stone Crushing Industries Vs. Divisional Level Committee and Another, .

11. We have considered the submission of the learned counsel for the parties and perused the record.

12. The basis of the submission of the petitioner is that clause (1) of Notification dated 26th of December, 1985 as stated above defines the "industrial unit". The notification provided that the industrial unit as referred to shall be entitled to the benefit of no liability of tax on the turnover of sale of such goods for the period specified in column 3.

13. It is true that according to the notification the entitlement of benefit is from the date of first sale. However, the amendments which have been made by the U.P. Act No. 28 of 1991 in section 4A has to be considered and their effect be noticed. Section 4A as was amended by the aforesaid amendment and the definition of new unit which was in Explanation to section 4A was substituted as follows:

(e) for the Explanation, the following Explanation shall be substituted and be deemed to have been substituted on October 12, 1983, namely:

Explanation.--For the purposes of this section:

(1) ''New unit during the period ending with March 31, 1990'' means an industrial undertaking set-up by a dealer on or after October 1, 1982 but not later than March 31, 1990,--

(a) which is licensed or in respect whereof a letter of intent has been issued or which is registered, permanently or otherwise by the appropriate authority in accordance with any law for the time being in force relating to licensing or registration of industrial undertakings ;

(b)(i) which is registered under the Factories Act, 1948 ; or

(ii) an application for registration in respect whereof has been made under that Act ; or

(iii) after making an application for a term loan from the Uttar Pradesh Financial Corporation or a Scheduled Commercial Bank whether such term loan is sanctioned and disbursed before or after the undertaking is set-up (where the capital investment in the undertaking does not exceed three lakh rupees) ;

(c) on land or building or both owned or taken on lease for a period of not less than seven years by such dealer or allotted to such dealer by any Government, company or any corporation owned or controlled by the Central or the State Government ;

(d) using machinery, accessories or components not already used, or acquired for use, in any other factory workshop in India ;

(e) fulfilling all the conditions specified in this Act or the rules ; or notifications made thereunder in regard to grant of facility under this section on the date from which such facility may be granted to him ;

...

(c) the unit in relation to which the application for registration under the Factories Act, 1948 is made on and the registration is granted with effect from, a date later than the date of commencement of the period of facility notified under sub-section (1), shall be deemed to be new unit for entitlement, to the facility of exemption from or reduction in the rate of tax notified under sub-section (1) only for part of the period, notified under sub-section (1), be computed from the date from which such registration becomes effective, till the end of the period of such facility.

14. The statutory provision defining the "new unit" clearly contemplates in sub-clause (c) that the benefit be computed from the date from which such registration becomes effective. In the present case, the date of registration of the petitioner''s unit is indisputably October 15, 1988. Thus, the benefit which has been given to the petitioner from October 15, 1988 cannot be said to be arbitrary. The submission of the petitioner is that the said provision was not available at the time when he applied for grant of eligibility certificate as well as for registration, hence the said provision cannot be applied on the petitioner. The U.P. Act No. 28 of 1991 reproduced above clearly mentions that the Explanation shall be substituted and be deemed to have been substituted on October 12, 1983. Therefore, the provision having been statutorily made retrospective shall apply with effect from October 12, 1983. The Legislature is within its legislative competence and legislative power to make a law either prospective or retrospective. When consciously a provision has been retrospectively made effective, the fact that the law came subsequently making retrospective effect shall not take out the petitioner''s case out of its ambit.

15. In view of the law as deemed to exist with effect from 12th of October, 1983 the new unit is entitled for the actual benefit from the date when registration is made effective, the eligibility certificate cannot be faulted.

16. We do not find any error in the order rejecting the review application filed by the petitioner on March 11, 1993. It is relevant to notice that on the date when the review application was rejected the law was already amended and made effective from October 12, 1983. In the case which has been relied upon by the petitioner, namely, Sahu Stone Crushing Industries Vs. Divisional Level Committee and Another, , the registration certificate was granted for a period 3rd of December, 1986 to 2nd of December, 1993, on the date of obtaining registration under the Factories Act. The Division Bench was considering the definition of "factory" under sections 2(m), 6(1) and 6(1)(a)(b) of the Factories

Act, 1948 and made the following observation in paragraphs 17 and 18 (page 220 in 52 VST):

... where a unit employs less than 10 workers at the time, when it goes on production, the unit would not be required to be registered under the Factories Act and in respect of such unit insistence of the registration under the Factories Act or the making of application as condition precedent would not apply. . .

17. The said judgment was on its own fact. The present is not a case where the petitioner pleads that it had 10 workers in its factory. The said case was on its own fact and does not help the petitioner in the present case. In view of the foregoing discussion, no relief can be granted to the petitioner. The writ petition is dismissed.