(2000) 03 AHC CK 0132

In the Allahabad High Court

Case No : Trade Tax Revision No. 283 of 2000

V.S. Polypack Pvt. Limited — APPELLANT

Vs

Commissioner of Trade Tax — RESPONDENT

Date of Decision : 29-03-2000

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

Citation : (2000) 120 STC 85

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Bharat Ji Agarwal and Piyush Agrawal, for the Appellant; B.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—The revisionist applied for grant of eligibility certificate u/s 4-A of the U.P. Trade Tax Act, 1948 (hereinafter called as, "the Act") in respect of total investment of Rs. 73,25,000. The revisionist claimed that its unit was a new one. The Divisional Level Committee granted eligibility certificate on June 10, 1995 which was effective from May 6, 1995 only with regard to the investment of Rs. 9,40,000. Aggrieved by the order of the Divisional Level Committee rejecting the claim in respect of remaining fixed capital investment the dealer filed appeal before the Tribunal. The Tribunal has dismissed the appeal, hence this revision is filed by the dealer.

2. It is not disputed that the unit which the dealer claims to be a new unit was purchased by it from U.P. Financial Corporation in 1994. The dealer''s claim is that the date of first sale by the revisionist was June 10, 1994. The dealer claimed that fixed capital investment in respect of land and building was Rs. 25,97,000 and in respect of plant and machinery it was Rs. 47,28,000. The Divisional Level Committee allowed the claim in respect of land and building only to the extent of Rs. 9,25,000 on the ground that up to the date of first sale the dealer had paid only Rs. 8,81,000 for the land and balance for registration of the

land and building in favour of the dealer. It appears that total amount of Rs. 1,75,000 was paid as registration charges ; but the exemption in respect of the entire registration charges was not allowed on the ground that part of it related to plant and machinery installed in the premises. The balance amount of fixed capital investment in respect of land and building was not allowed on the ground that the payment was to be made in instalments after the date of first sale. As regards the fixed capital investment of Rs. 47,28,000 the Divisional Level Committee as well as the Tribunal were of the view that these were old plant and machinery and in view of the definition of the new unit investment with regard to such old plant and machinery cannot be included in fixed capital investment.

3. Submission of Sri Bharat Ji Agrawal, learned Senior Counsel, is that both the Divisional Level Committee as well as the Tribunal has misdirected itself so far as the question of "new unit" is concerned. Explanations (1) and (2) to Section 4-A define "new unit" and make a distinction between the new units which were established during the period ending with March 31, 1990 and new units established after March 31, 1990. Definition of the new units which were established on or before March 31, 1990 provided that such unit means a unit using machinery, accessories, components not already used or acquired for use in any other factory or workshop in India whereas the. definition of new unit after March 31, 1990 though states that the new unit does not include any factory or workshop using machinery, plant or equipment, apparatus, components already used or acquired for use in any other factory or workshop in India ; but it includes factory, workshop, etc., sold to it by any Government company or any corporation owned or controlled by the Central or State Government. Submission of Sri Bharat Ji Agrawal is that the unit in question was established after March 31, 1990 and was purchased by the revisionist in the year 1994 from the U.P. Financial Corporation which is controlled by the State Government. Therefore, the exclusion clause as provided in Explanation (2)(a) in respect of machinery, etc., already used or acquired for use in any other factory shall not be applicable to the case of the revisionist. Both the Tribunal as well as the Divisional Level Committee have not considered the distinction of the two definitions of the new units contained in Explanation (1)(d) and Explanation (2)(a) of Section 4-A. Sri B.K. Pandey, learned Standing Counsel, has submitted that so far value of fixed capital investment in building is concerned, only part payment was made till the date of first sale. In view of provisions contained in Section 4-A only the investment made till the date entitlement to grant of facility can be considered. In respect of the balance amount the exemption cannot be granted. He has also submitted that so far as the question of grant of exemption in respect of plant and machinery is concerned, the matter requires to be reconsidered by the Tribunal in the light of distinction between the two definitions of Explanation (1)(d) and Explanation (2)(a).

4. Sub-section (1) of Section 4-A provides that the State Government by notification, may declare that turnover of sales in respect of sales by the manufacturer thereof shall, during such period not exceeding fifteen years from

such date on or after the date of starting production...............and where no date is so specified from the date of first sale by such manufacturer, if such sales takes place within six months from the date of production and in other case from the date following the expiration of six months from the date of starting production..........be exempt from trade tax whether wholly or partly. The revisionist claimed benefit of exemption in view of Notification No. S.T.-2-1093/ XI-7(42)-68-U.P. Act XV-48-Order-90 dated July 27, 1991 issued by the State Government u/s 4-A(l) of the Act. Clause (1-A) of the notification provided that the period of facility shall be reckoned from the date of the first sale, or the date following the expiration of six months from the date of starting production, whichever is earlier. Clause (4) of the notification provides that in determining the fixed capital investment........... the investment in only such land, building, etc., shall be taken into account as were acquired on or before relevant date of commencement of the period of facility notified under Sub-section (1) of Section 4-A of the Act.

5. Admittedly, on the date of first sale the revisionist had invested only a sum of Rs. 8,81,000 towards land and building and Rs. 1,75,000 towards registration charges. The balance amount of land and building was to be paid in instalments after the date of first sale. The amount which was to be paid by the dealer after the date of first sale with regard to purchase of land and building cannot be treated as fixed capital investment on the date of first sale. Therefore, the authorities below rightly rejected the claim of the revisionist in this regard.

6. Explanation (1)(d) of Section 4-A and Explanation (2)(a) of Section 4-A read as follows :

Explanation (1)(d).--

"(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)....................

(b)...................

(c)....................

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

Explanation (2)(a)--

(2) ''new unit'' after March 31, 1990 means a factory or workshop set up by a dealer after such date and satisfying the conditions laid down under this Act or Rules or notifications made thereunder with regard to such factory or workshop and includes an industrial unit manufacturing the same goods at any other place in the State or an industrial unit manufacturing any other goods on or adjacent to the site of an existing factory or workshop, but does not include--

(a) any factory or workshop using machinery, plant, equipment, apparatus, or components, already used in other factory or workshop in India other than boilers, generators, moulds and dyes and other than any machinery, plant, equipment, apparatus or components sold to it by any Government company or any corporation owned or controlled by the Central or State Government :

Provided ...."

7. It is thus evident that the definition of the "new unit" given in Explanation (1) relates to the units set-up during the period ending March 31, 1990 whereas the Explanation (2) defines a "new unit" set up after March 31, 1990. Under clause (d) to Explanation (1) a unit using machinery, accessories or components not already used, or acquired for use, in any other factory or workshop in India is to be treated as a new unit provided other conditions given in Explanation (1) are fulfilled. The units set up after March 31, 1990 for the purposes of being treated as new units are covered by Explanation (2). Clauses (a) to (c) to Explanation (2) are exclusionary clauses. Clause (a) provides that any factory using the machinery, plant, equipment, apparatus or components already used in other factory or workshop in India shall not be included in the definition of the "new unit". However, latter part of clause (a) works as proviso to the exclusionary clause and this provides that the equipments, apparatus like boilers, generators, moulds and dyes or components purchased from any Government company or any corporation owned or controlled by the Central or the State Government shall be exempt from the exclusion clause. It is not disputed that the revisionist claimed exemption in view of the notification dated July 27, 1991 and the authorities below have accepted this claim of the revisionist by granting benefit of exemption to the extent of Rs. 9,40,000. Thus admittedly the revisionist''s unit was a new unit after March 31, 1990. The distinction given in clause (d) of Explanation (1) and clause (a) of Explanation (2) as reproduced above has not been considered by the Tribunal as well as by the Divisional Level Committee. Once the revisionist''s unit is covered by the definition of the "new unit" as contained in Explanation (2) its case shall have to be considered in the light of clause (a) of Explanation (2) and not in the light of clause (d) of Explanation (1). Both the Divisional Level Committee as well as the Tribunal fell in error in holding that the purchase of the plant and machinery by the revisionist from U.P. Financial Corporation was acquired for use by another factory and therefore, the revisionist was not entitled to exemption in respect of fixed capital investment in such plant and machinery, etc. The matter therefore, deserves to be remanded to the Tribunal for reconsideration in this light and in the light of the observations made above.

8. The revision is, therefore, allowed. The Tribunal''s order dated January 19, 2000 is set aside to the extent stated above and the Tribunal is directed to redecide the appeal in the light of the directions made above.

