

(2014) 05 AHC CK 0114
In the Allahabad High Court
Case No : Writ Tax No. 1491 of 2007

Yamaha Motors India Pvt. Ltd.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 4A

Citation : (2014) 74 VST 163

Hon'ble Judges : Shashi Kant, J;Rajes Kumar, J

Bench : Division Bench

Advocate : Bharat Ji Agrawal, Senior Advocate, Nikhil Agrawal and Piyush Agrawal, Advocate for the Appellant; C.B. Tripathi, Special Counsel and Chief Standing Counsel, Advocate for the Respondent

Judgement

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Rajes Kumar, J.—By means of the present writ petition, the petitioner is seeking the following reliefs:

"(i) To issue a writ, order or direction in the nature of mandamus directing the respondents to grant the benefit of exemption to the petitioner-unit to the extent of 200 per cent instead of 100 per cent of its fixed capital investment.

(ii) To issue a writ, order or direction in the nature of mandamus be issued directing the respondents to modify the eligibility certificate issued to the petitioner by granting exemption to the extent of 200 per cent instead of 100 per cent of the fixed capital investment in respect of which the eligibility certificate has been issued to the petitioner.

(iii) To issue a writ, order or direction be issued directing respondent No. 1 to modify the notification dated July 19, 1996 in conformity with Industrial Policy of 1994.

(iv) To issue any other suitable writ, order or direction as this honourable court

may deem fit and proper in the circumstances of the case.

(v) To award costs throughout to the petitioner."

The brief facts of the case are that the petitioner had an industrial unit at A3, Surajpur Industrial Area, Dadri Road, Greater Noida, District Gautam Budh Nagar, for the manufacturing of two wheelers.

2. It appears that the petitioner had entered into a new foreign collaboration agreement for the manufacturing of 4-stroke two wheeler motorcycles, which was a different kind of motorcycle than two wheeler motorcycles being manufactured earlier. The petitioner had made an additional investment of Rs. 96,41,67,155 up to March 31, 1998. In such unit, the manufacturing of 4-stroke two wheeler motorcycles was started on February 13, 1998, first sale was made on August 14, 1998 and an exemption application under section 4A of the U.P. Trade Tax Act (hereinafter referred to as ("the Act")) was moved on August 13, 1998. In the application, the exemption has been claimed under the Notification dated July 19, 1996 under the Diversification Scheme. The copy of the exemption application has not been annexed along with the writ petition, however, the same has been provided by Sri C.B. Tripathi, learned special counsel for the State of U.P. during the course of argument and the same is being kept on record.

3. The exemption application has been processed and an eligibility certificate was issued on June 17, 1999. Under the eligibility certificate, the petitioner had been granted exemption under the Notification Nos. T.T.-2-1711/XI-9(460)/94-U.P. Act 15-48 Order 96 dated July 19, 1996 and T.T.-2-1712 dated July 19, 1996 to the extent of 100 per cent on the capital investment made up to March 31, 1998, i.e., on Rs. 96,41,67,155 for the period February 13, 1998 to February 12, 2006, whichever has expired earlier with the further condition that in the last four years the petitioner may be entitled for exemption on the additional capital investment on the application being made. The petitioner started availing of exemption under the said eligibility certificate. However, filed the present writ petition on October 23, 2007. When the period of exemption has expired on February 22, 2007, however, the Notification Nos. 1711 and 1712 had been amended on April 12, 2005 and in place of the words "eight years", the words "fifteen years" were substituted and accordingly, the unit became entitled for exemption for the period of 15 years. It appears that the petitioner had made an additional capital investment of Rs. 74,67,65,000 during the period April 1, 1998 to March 31, 2000.

4. Heard Sri Bharat Ji Agrawal, learned senior advocate, appearing on behalf of the petitioner and Sri C.B. Tripathi, learned special counsel for the State of U.P.

5. The learned counsel for the petitioner submitted that notification dated July 19, 1996 is not in conformity with the Industrial Policy of 1994, which provides special incentive to large industrial units having investment of more than Rs. 50 crores in addition to general exemption provided under the notification.

Accordingly, the petitioner is entitled for exemption to the extent of 200 per cent on the capital investment instead of 100 per cent. The notification dated July 19, 1996 provides only 100 per cent exemption on the capital investment. The submission is that sub-clause (vi) of clause 4 of the notification dated July 19, 1996 is liable to be modified to the extent providing 200 per cent exemption. He submitted that the notification should be in conformity with the industrial policy and if it is not so, it should be made in accordance with industrial policy. Reliance is placed on the decision of the apex court in the case of *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, .

6. Sri C.B. Tripathi, learned special counsel for the State of U.P., submitted that section 4A of the Act provides exemption to the new units and to the units undergone for expansion, diversification or modernisation and gives power to the State Government to issue notification in this regard. In exercise of power under section 4A of the Act, a general notification has been issued on March 31, 1995 granting exemption to the new units established between April 1, 1995 to March 31, 2000 or has undergone for expansion, diversification or modernisation during the aforesaid period. This notification was applicable to all the goods and to the units where capital investment is less than Rs. 50 crores or more than Rs. 50 crores. The percentage of capital investment and the period of exemption had been fixed having regard to the place of the unit. However, on the representation of the manufacturers of the two wheelers, a special notification had been issued on July 19, 1996 providing exemption to the manufacturers of the new units and to the units undergone for expansion, diversification or modernisation having fixed capital investment of Rs. 50 crores or more. In this notification, the exemption not exceeding the amount fixed capital investment is provided. It further provides exemption on the further investment in addition to fixed capital investment in an assessment year to that extent. Sub-clause (ii) of clause 4 provides that the facility of exemption of tax under this notification shall not simultaneously be available to a unit availing of any tax facility under any other notification issued under section 4A of the Act. The petitioner after making the capital investment of Rs. 94 crores and odds up to March 31, 1998 had moved an application on August 13, 1998, claimed exemption under the notification dated July 19, 1996 under the diversification scheme. On consideration of the application, the eligibility certificate has been issued on June 19, 1999 granting exemption under the Notification Nos. 1711 and 1712 dated July 19, 1996, both, under the U.P. Trade Tax Act and under the Central Sales Tax Act on capital investment of Rs. 96,41,67,155. The petitioner has not raised any plea that he was entitled for exemption to the extent of 200 per cent on capital investment. The petitioner continued to avail of the exemption year after year and filed the present writ petition on October 23, 2007 after the expiry of 8 years, thus such claim could not be entertained at this belated stage. He submitted that exemption under section 4A of the Act is available on the basis of the notification. For the manufacturers of two wheeler automobiles, specific notification had been issued on July 19, 1996 providing number of such special

benefits which were not available to the manufacturers of other items under the notification dated March 31, 1995. He submitted that, in fact, the notification dated July 19, 1996 had been issued at the instance of the representation being made by two wheelers manufacturers association. He submitted that the U.P. Industrial Policy of 1994, which is annexure 4 to the writ petition, was prepared by the Udyog Bandhu, a State Government Agency for Industrial Promotion, published by Information and Public Relations Department, U.P., Lucknow. There is nothing to suggest that such industrial policy had been approved by the cabinet of the State Government and a Gazette publication has been made. He further submitted that the alleged U.P. Industrial Policy, 1994 provides special incentive to large industrial units. It clearly provides that this facility shall be given on a case to case basis to the units which have an investment of more than Rs. 50 crores. It shall be dependent on the benefit that will accrue to the State as a consequence of setting up of such a unit. Decisions shall be taken on the basis of location of the unit, employment potential and the possibilities of down stream projects, apart from the contribution to the general economic development of that area. Such policy does not contemplate 200 per cent exemption on the capital investment to the units where capital investment is more than Rs. 50 crores and, therefore, the notification dated July 19, 1996 cannot be said to be repugnant to the U.P. Industrial Policy, 1994. He submitted that a general notification had also been issued on February 21, 1997 granting exemption to the units having fixed capital investment of Rs. 50 crores or more providing exemption contemplated therein. It provides exemption to the new units and to the units undergone for expansion, diversification or modernisation during the period December 1, 1994 to March 31, 2000. In this notification also, the percentage of exemption and the period of exemption has been provided having regard to the location of the area. When the application was moved in the year 1998, all the three notifications, namely, Notification No. TT-2-780/XI-9(226)/94-U.P. Act-15/48-Order- 95, dated March 31, 1995, Notification No. T.T.-2-1711/XI-9(460)/94-U.P. Act 15-48 Order 96 dated July 19, 1996 and Notification No. TT-2-640/XI- 9(640)/94-Act-15-48-Order-97 dated February 21, 1997 were available, but the petitioner preferred to seek exemption under the Notification No. 1711, dated July 19, 1996, which is specifically for two wheeler automobiles and provides certain other benefits which were not available to other units under the notification dated March 31, 1995 and notification dated February 21, 1997. On consideration of the application, eligibility certificate has been issued, therefore, the claim of the petitioner that exemption of 200 per cent should be granted, has no substance. He submitted that the decision of the apex court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, relied upon by the learned counsel for the petitioner, is not applicable and is clearly distinguishable. In the said case, there was industrial policy issued by the State Government, after such policy was approved by the Cabinet itself. Under the said industrial incentive policy, certain exemption was provided. Clause 10.4(i)(b) of the Policy provided exemption on the turnover of sale of the manufactured goods as well as on the purchase of raw materials on

concessional rate of tax. By a notification issued under section 7 of the Bihar Finance Act, which has been issued to carry out the objectives and the policy decisions taken in the industrial policy itself, the benefit of exemption on the purchase of raw materials has been taken away. The validity of that part of the notification has been challenged in the High Court being repugnant to sub-clause (b) of clause 10.4(i) of the Industrial Incentive Policy. The Patna High Court allowed the writ petition and granted benefit of clause 10.4(i)(b) of the policy. The order of the Patna High Court has been affirmed by the apex court. Such situation is not present in the present case.

7. We have heard rival submissions and perused the records.

8. Initially the State Government vide Government Order No. 8244 dated September 30, 1982 has provided exemption from payment of tax to the new units for the period specified therein. A new industrial policy has been announced by the State Government on May 3, 1990. Accordingly, section 4A of the Act has been amended. For the purposes of the writ petition, the amended section 4A of the Act is relevant and reads as follows:

"4A. Exemption from trade tax in certain cases.--(1) Notwithstanding anything contained in this Act, where the State Government is of the opinion that it is necessary so to do for increasing the production of any goods or for promoting the development of any industry in the State generally or in any districts or parts of districts in particular, it may on application or otherwise, in any particular case or generally, by notification, declare that the turnover of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding (twelve years) from such date on or after the date of starting production as may be specified by the State Government in such notification which may be the date of the notification or a date prior or subsequent to the date of such notification and where no date is so specified from the date of first sale by such manufacturer, if such sale takes place within six months from the date of starting production and in any other case from the date following the expiration of six months from the date of starting production, and subject to such conditions as may be specified, (be exempt from trade tax on sale of goods) whether wholly or partly or be liable to tax at such reduced rate as it may fix:

Provided that no exemption shall be granted where the facility of concession or exemption has been availed of under section 4AAA.

(2) It shall be lawful for the State Government to specify in the notification under sub-section (1) that the exemption from, or reduction in the rate of tax, shall be admissible--

(a) generally in respect of all such goods manufactured subsequent to the date of such notification; or

(b) in respect of such of those goods only as are manufactured in a new unit, the date of starting production whereof falls on or after the first day of October,

1982; or

(bb) in respect of those finished goods which are manufactured in a unit which has undertaken backward integration; or

(c) in respect of those goods only which are manufactured in a unit which has undertaken expansion, diversification or modernisation on or after April 1, 1990 and which, in the case of diversification, are different from the goods manufactured before such diversification, and in the case of expansion or modernisation are additional production as a result of such expansion or modernisation; and

(d) only if the manufacturer furnishes to the assessing authority an eligibility certificate granted by such officer, in accordance with such procedure as may be specified;

(e) With effect from a date prior to the date of the notification.

..."

9. In exercise of power under section 4A of the Act, a Notification No. 1093 dated July 27, 1991 has been issued granting exemption from payment of tax, based upon the fixed capital investment both to the new units as well as to the existing units which have undergone for expansion, diversification or modernisation between the period April 1, 1990 to March 31, 1995. Further, a notification has been issued on March 31, 1995 granting exemption to the new units as well as to the existing units undergone for expansion, diversification or modernisation during the period April 1, 1995 to March 31, 2000. This notification was applicable to the units making investment less than Rs. 50 crores and more than Rs. 50 crores. This was applicable to all the goods. The period and percentage of exemption was fixed having regard to the place of the units. A specific notification has been issued granting exemption to the manufactures of two wheeler automobiles with the view to increase the production. The exemption has been granted to the new units as well as to the units undergone for expansion, diversification or modernisation which had started production after December 1, 1994 up to March 31, 2000. Clause (vi) provides exemption not exceeding the amount of fixed capital investment.

10. The Notification No. T.T.-2-1711/XI-9(460)/94-U.P. Act 15-48 Order 96 (Extraordinary Gazette dated July 19, 1996) reads as follows:

"1. Whereas the State Government is of the opinion that it is necessary for increasing the production of two wheeler automobiles in the State, to grant exemption from tax to new units having a fixed capital investment of fifty crore rupees or more as also to units which may make additional fixed capital investment of fifty crore rupees or more in expansion, diversification, or modernisation of the existing unit engaged in the manufacture of two wheeler automobiles in the State.

2. Now, therefore, in exercise of powers under section 4A of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948), hereinafter referred to as the Act, the Governor is pleased to declare that the turnover of sales in respect of two wheeler automobiles by the manufacturers thereof shall subject to the conditions and restrictions specified hereafter in this notification be exempt from payment of tax.

3. No tax shall be payable in respect of turnover of sales of such goods,--

(1) If such goods are manufactured by such a new unit as has fixed capital investment of fifty crore rupees or more and has fulfilled the conditions specified in this notification.

(2) If such goods are produced in excess of base production by an existing unit under foreign collaboration approved by the Government of India or any authority designated by it and making additional fixed capital investment of at least twenty five per cent of the original fixed capital investment without providing for depreciation or fifty crore rupees, whichever is higher during a period of three years starting on or after December 1, 1994 and the production capacity whereof after such investment has increased by twenty-five per cent

Explanation.--For the purposes of this sub-paragraph, the turnover of sales of goods produced in excess of base production with reference to any assessment year shall also include the turnover of sale of stock of such goods as was in excess of base production in previous assessment year and had been carried forward in that assessment year.

(3) If such goods are manufactured by a unit, under new foreign collaboration approved by the Government of India or any authority designated by it for the purpose after December 1, 1994 and such unit intends to make an additional fixed capital investment of at least fifty crore rupees during the period of four years starting on or after December 1, 1994.

4. The facility of exemption from tax to the units mentioned in paragraph 3 above shall be subject to the following conditions in addition to the conditions referred to in section 4A of the Act,--

(i) that the date of starting production of such goods by the unit falls on or after December 1, 1994 and not latter than March 31, 2000;

(ii) that the facility of exemption of tax under this notification shall not simultaneously be available to a unit availing any tax facility under any other notification issued under section 4A of the Act;

(iii) that the unit is licenced 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 such units;

(iv) that the new unit is established on land or building or both owned or taken

on lease for a period of not less than fifteen years by such unit or allotted to such unit by the Central or the State Government or any Government Company or any Corporation owned or controlled by the Central or the State Government;

(v) that the turnover of sales of two wheeler automobiles for the purposes of exemption under this notification shall include the turnover of sales of such by-products and waste products of a unit as are mentioned in the eligibility certificate issued to such unit under section 4A of the Act;

(vi) that the total amount of tax exemption under the Act as also under the Central Sales Tax Act, 1956 (Act No. 74 of 1956) shall not exceed the amount of fixed capital investment of the unit made during the period referred to in paragraph 3 of this notification but the amount of tax exemption under both the aforesaid Acts up to the end of any assessment year shall not exceed the additional fixed capital investment made up to the end of that year;

(vii) that the facility of exemption from tax shall be available only for a period of eight years to be reckoned--

(a) in the case of a unit falling under sub-paragraph (1) of paragraph 3 from the date of the first sale or the date following the exemption of six months from the date of starting production, whichever is earlier;

(b) in other cases from the first date of production--

(i) of goods manufactured by a unit under new foreign collaboration approved by the Government of India or any authority designated by it for the purpose after December 1, 1994;

(ii) of goods of a nature different from those manufactured earlier by the unit if it be a case of diversification; and

(iii) of goods manufactured in excess of the base production if it be a case of a unit undertaking expansion or modernisation;

(viii) that the exemption from tax under the notification shall be available to a unit falling under sub-paragraph (ii) or (iii) of paragraph 3 only when additional fixed capital investment of at least fifty crore rupees is made by it within the time specified in this notification. If the investment is not so made by a unit, it shall be liable to pay penalty, if any, imposed and the entire tax benefit availed by the unit together with interest thereon shall become due and be payable by the unit as admitted tax. Such unit shall, however, before it starts availing facility under this notification create first or second charge on its property in favour of the State Government sufficient to cover its aforesaid liability;

(ix) that the unit shall continue to avail tax exemption even if the foreign collaboration has ceased to exist;

(x) that the unit shall after close of every assessment year during which exemption is admissible but not later than 30 days of the approval of its balance

sheet by its board of directors submit to the assessing authority a certificate from a chartered accountant for the purposes of sub-paragraphs (ii) and (iii) of paragraph 3 in respect of each assessment year. Such certificate shall contain the following details:

- (a) additional fixed capital investment made during the assessment year; and
- (b) cumulative additional fixed capital investment made from or after December 1, 1994 up to the close of the assessment year; and
- (c) amount of tax exemption availed by the unit from or after December 1, 1994 up to the close of the assessment year; and
- (d) that the said unit furnishes to the assessing authority concerned an eligibility certificate granted in this behalf, as the case may be, by the General Manager, District Industries Centre or Area Development Officer (Industries) of the concerned Industrial Development Authority or Additional Director or Joint Director of Industries of the range of Additional or Joint Director Industries of the concerned Industrial Development Authority."

11. Further, a notification had been issued on February 21, 1997 granting exemption to the units making an additional fixed capital investment of Rs. 50 crores or more to the new units and to the units undergone for expansion, diversification or modernisation wherein the production had been started after December 1, 1994 to March 31, 2000. This notification was also almost in terms of the notification dated March 31, 1995.

12. The petitioner had entered into an agreement with New Foreign Collaboration agreement and made an investment up to March 31, 1998 to the extent of Rs. 94 crores and odds for the manufacturing of 4 stroke two wheeler motorcycles. The production had been started on February 13, 1998. The petitioner moved an application claiming exemption under the Diversification Scheme under the notification dated July 19, 1996. The copy of the application has not been annexed along with the writ petition, but the same has been provided by Sri C.B. Tripathi, learned special counsel for the State of U.P. and is made part of the record. When the petitioner moved the application in August, 1998, all the three notifications, namely, Notification No. TT-2-780/XI-9(226)/94-U.P. Act-15/48-Order-95, dated March 31, 1995, Notification No. T.T.-2-1711/XI-9(460)/94-U.P. Act 15-48 Order 96 dated July 19, 1996 and Notification No. TT-2-640/XI-9(640)/94-Act-15-48-Order-97 dated February 21, 1997 were available. However, the petitioner preferred to claim exemption under the notification dated July 19, 1996 which relates to the manufacturer of two wheeler automobiles and provides some additional benefit to two wheelers manufacturing which were not available under the notifications dated March 31, 1995 and February 21, 1997. In any view of the matter, the petitioner claimed exemption under the notification dated July 19, 1996 which was examined by the Greater Noida Industrial Development Authorities and the eligibility certificate was issued on June 17, 1999 granting 100 per cent exemption on the capital investment as provided

under the notification dated July 19, 1996.

13. We are of the view that after having claimed exemption under the notification dated July 19, 1996, which has been availed for more than eight years, it was not open to the petitioner to raise a claim that he was entitled for 200 per cent exemption after eight years by filing present writ petition. The claim is highly belated and barred by laches.

14. Section 4A of the Act provides exemption as per notification. Thus, exemption is to be granted on the issue of the notification and not otherwise. It is open to the State Government to provide exemption in a manner in which it desires. This court cannot issue any mandamus to the State Government to provide more exemption. If under the notification, 100 per cent exemption has been provided, the court cannot issue any mandamus to provide 200 per cent exemption. Perusal of the U.P. Industrial Policy, 1994, which has been heavily relied upon by the learned counsel for the petitioner, it appears that this Policy has been published by the Information and Public Relations Department, U.P., Lucknow, prepared by the Udyog Bandhu, a State Government Agency for Industrial Promotion. The relevant part of the policy on which much emphasis has been placed reads as follows:

"Special incentive to large industrial units:

In order to attract large industrial units to the State, it is proposed to provide special incentive to such units. This incentive shall be in addition to the ones listed in the policy. This attraction would be in the form of concessions/incentive with reference to land or its value, trade tax, etc. This facility shall be given on a case to case basis to the units which have an investment of more than Rs. 50 crore. It shall be dependent on the benefit that will accrue to the State as a consequence of setting up of such unit. Decisions shall be taken on the basis of location of the unit, employment potential and the possibilities of down stream projects, apart from the contribution to the general economic development of that area. These facility shall include declaration of functions of such units as "essential/service" in the interest of production. In all such cases, decisions shall be taken by the cabinet on the basis of recommendation of empowered committee under the Chairmanship of the Chief Secretary."

15. There is nothing to suggest that such industrial policy has been approved by the cabinet of the State Government. However, it does not provide exemption to the extent of 200 per cent on the capital investment in a case where the unit has made an additional investment of Rs. 50 crores or more. It only provides that in order to attract large industrial units to the State Government, it is proposed to provide special incentive to such units. This incentive shall be in addition to the ones listed in the policy. This attraction would be in the form of concessions/incentive with reference to land or its value, trade tax, etc. This facility shall be given on a case to case basis to the units which have an investment of more than Rs. 50 crore. It shall be dependent on the benefit that will accrue to the State as

a consequence of setting up of such unit. Decisions shall be taken on the basis of location of the unit, employment potential and the possibilities of down stream projects, apart from the contribution to the general economic development of that area.

16. From the aforesaid, it is clear that it was only a proposal and the facility would be provided on a case to case basis depending upon various circumstances. It does not provide exemption itself. Having regard to such policy, the State Government issued notification providing exemption. Such exemption cannot be said to be, not in consonance with the industrial policy inasmuch as it is always open to the State Government while issuing the notification relating to exemption to examine that how much exemption is to be granted.

17. The decision of the apex court in the case of State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, , relied upon by the learned counsel for the petitioner, is not at all applicable to the present case and is clearly distinguishable on the facts and on law. In the said case, exemption has been provided under clause 10.4(i)(b) of the Industrial Incentive Policy, issued by the State Government and approved by the cabinet itself on the sale of manufactured goods as well as on purchases of raw materials. A notification has been issued by the State Government in exercise of power under section 7 of the Bihar Finance Act, by which the exemption on the purchases of raw materials had been taken away. That part of the notification has been challenged, which has been held repugnant to the industrial incentive policy. Such situation is not available in the present case. The U.P. Industrial Policy, 1994 on which much emphasis has been placed is not an industrial policy, issued by the State Government and approved by the cabinet itself. Under the said policy, no specific exemption has been provided. A special incentive to large industrial unit has only been proposed to be granted on a case to case basis depending upon various factors inasmuch as there is nothing in the industrial policy which provides 200 per cent exemption in additional capital investment making Rs. 50 crores additional investment and the same has been taken away by the notification. Thus, in view of the above discussions, we do not find any merit in the present writ petition. The writ petition is dismissed.