

**Reserve Judgment****Court No. - 8****AFR****Case :- SALES/TRADE TAX REVISION No. - 2 of 2005****Revisionist :- M/S Bindal Smelting Pvt. Ltd. Thru Director Sunil Kumar****Opposite Party :- Commissioner Of Trade Tax Lucknow****Counsel for Revisionist :- P. Agrawal****Counsel for Opposite Party :- C.S.C.****Hon'ble Alok Mathur,J.**

1. Heard Sri Pradeep Agrawal, learned counsel for the revisionist as well as Sri Rohit Nandan Shukla, learned counsel for the opposite party.

2. Present revision under Section 11 of the U.P. Trade Tax Act, 1948, has been preferred assailing order dated 05.11.2004, passed by the Commercial Tax Tribunal, U.P., Lucknow (*hereinafter referred to as "the Tribunal"*), on the following questions of law :-

i) Whether the learned Tribunal was justified in not considering the decision of this Hon'ble Court in the case of Kanhaiya Beverages Pvt. Ltd. wherein it has been specifically held that the ownership of the land in the name of the Promotor Director can be considered to be the land of the unit and the grant of eligibility certificate can not be refused.

ii) Whether the learned Tribunal was justified in not considering the fact that the final registration with the Industries Department was in continuation of the provisional registration granted in 1996 and 2001.

iii) Whether the learned Tribunal was justified in twisting the fact of the case and without proper appreciation of fact has recorded the perverse finding which has vitiated the law.

iv) Whether the learned Tribunal was justified in holding that the plot no.F-63 allotted in favour of Ajay Kumar Gupta Promotor Director in 1994 will not be deemed to be the plot of the unit until it is registered in the name of unit.

v) Whether the learned Tribunal was justified in holding that the registration of the plot in the name of unit and the amendment in the registration certificate of the Industries Department are the material dates and as such the applicant is not entitled to exemption under Section 4-A of the Act in view of notification no. 3867 dated 22.12.2001.

vi) Whether the Tribunal was justified in not considering the basic legislative intent of the provisions of Section 4-A granting incentives for promoting growth and development should be liberally construed.

vii) Whether the learned Tribunal was justified in ignoring the law laid down by the Apex Court as well as by this Hon'ble Court and passed the impugned order on the basis of extraneous consideration which has vitiated the findings recorded in the impugned order.

3. The revisionist is a smelting unit being run on Plot number 64 Industrial Area Surajpur Site B Greater Noida and had applied under Section 4 [a] of the UP Trade Tax Act (*hereinafter referred to as "the Act"*) for grant of exemption from payment of trade tax under facility available to a newly set up industry. The said application was duly considered by the Divisional Level Committee constituted in this regard, and rejected on the ground that the applicant did not fulfill the conditions laid down in the notification dated 22/12/2001. The application for review was also rejected and consequently the revisionist approached the Full Bench of the Tribunal which rejected the appeal by means of the order dated 05/11/2004, which has been assailed before this court in the present revision.

4. Sri Pradeep Agarwal counsel for the revisionist submitted that the application for exemption under Section 4 of the Act was rejected on two grounds, firstly that the adjacent plot number F 63 was

transferred to the revisionist after the due date prescribed in the exemption notification dated 22.12.2001, and also that Sri Ajay Kumar Gupta who was the director of the revisionist and also lessee of plot number 63 did not have any right to transfer the same in favour of the revisions and hence the land was illegally and improperly transferred in name of the revisionist, and secondly the machinery used by the revisionists was not new machinery as prescribed in the exemption notification but old machinery which had been used thereby dis-entitling them for the benefit of the said exemption.

5. The first ground for rejection of the application for exemption was that plot number F 63 was allotted in favour of Sri Ajay Kumar Gupta who was the promoter Director of the revisionist firm on 17/01/1994 by U.P. State Industrial Development Corporation (*hereinafter referred to as "the UPSIDC"*) and subsequently it was said to have been transferred to the revisionist by means of an agreement to sell dated 25/11/99. The UPSIDC granted permission to Sri Ajit Kumar Gupta to transfer the plot number F 63 by means of its letter dated 17/12/2001 In favour of the revisionist and it was subsequently registered with the Industries Department on 25/03/2002.

6. The above facts were considered by the Tribunal and while dismissing the appeal, recorded a finding that Sri Ajay Kumar Gupta could not have transferred the said land in favour of the revisionist prior to 17.12.2001 as the lease agreement clearly stipulated In clause 4(j) that “licensee will not directly or indirectly transfer, assign, sale, encumber or part with his interest under or benefit of this agreement or any part thereof in any manner whatsoever without the previous consent in writing of the grantor and it shall be open for the grantor to refuse such consent or grant the same subject to such conditions and may be laid down by the grantor in that behalf”

7. The Tribunal was of the considered view that in light of the aforesaid restrictions the land could not have been transferred in favour of the revisionist. It also rejected the existence and validity of the agreement to sell and that Sri Ajay Kumar Gupta was not the owner of the said land and therefore could not have executed an agreement to sale, which was also an unregistered document, and the original was never brought on record, and the same was never

produced before the Divisional Level Committee along with the application for exemption and its very existence was therefore held to be doubtful. In light of the above facts the Tribunal rejected the contention of the applicant holding that plot number F 63 was not validly transferred to the revisionist and hence the conditions mentioned in the notification Dated 22.12.2001 were not fulfilled and therefore did not find any fault with the findings recorded by the division level committee rejecting the application of the revisionist.

8. Sri Pradeep Agarwal assailing the findings of the Tribunal submitted that according to the notification dated 22.12.2001, Clause (b) all the conditions provided that the “unit has obtained land from any source”.

9. The notification dated 22nd December, 2001 is reproduced hereinafter:-

*"UTTAR PRADESH SHASAN KAR AVAM NIBANDHAN ANUBHAG-2 The Governor is pleased to order the publication of the following English translation of Government Notification No. KA.NI. -2-3867/XI -9(116)/94 - U.P. Act -15-48 - Order -(74)- 2001 dated : December 22, 2001, for general information:*

*NOTIFICATION No. KA.NI. -2-3867/XI -9(116)/94 - U.P. Act -15-48 - Order -(74)- 2001 Dated : Lucknow : December 22, 2001 WHEREAS the State Government is of the opinion that for promoting the development of certain industries in the State, it is necessary to grant exemption from, or reduction in rate of, tax to new units and also to units which have undertaken expansion or diversification:*

*NOW, THEREFORE, in exercise of the powers under Section 4-A of the Uttar Pradesh Trade Tax Act, 1948 (Act No.XV of 1948), the Governor is pleased to declare that subject to the conditions and restrictions referred to in Section 4-A of the said Act and in notifications issued from time to time thereunder and subject to the fulfilment on March 31, 2000, by the concerned unit the conditions specified in this notification,-*

*(a) in respect of any goods manufactured in a new unit whose date of starting production falls on or after April 1, 2000 but no later than December 31, 2001, no tax shall be payable, or as the case may be, the tax shall be payable at the reduced rate, by the manufacturer thereof on the turnover of sales of such goods from the date of first sale or the date following the expiration of six months from the date of starting production whichever is earlier.*

*(b) in respect of any goods manufactured in a unit which has undertaken expansion and the date of production in excess of the base production falls on or before March 31, 2000, no tax shall be payable, or as the case may be, the tax shall be payable at the reduced rate, by the manufacturer thereof on the turnover of sales of the quantity of goods manufactured in excess of the base production.*

*(c) in respect of any goods manufactured in a unit which has undertaken diversification and the date of production of goods of a nature different from those manufactured earlier by such units falls on or before March 31, 2000, no tax shall be payable, or as the case may be, the tax shall be payable at the reduced rate by the manufacturer thereof on the turnover of sales of goods, which are of a nature different from those, manufactured by the unit earlier:*

*Provided that the unit intending to claim tax relief under this notification shall intimate in writing accordingly to the assessing authority within 20 days from the date of this notification.*

#### **CONDITIONS**

*(a) the unit is registered/licensed under Industry Department or unit has obtained letter of intent or letter of will from Government of India;*

*(b) the unit has obtained land from any source;*

*(c) the unit has applied for a term loan from any regular Financial Institution.*

*By order (T. George Joseph) Pramukh Sachiv"*

10. Admittedly the provisions for exemption from Sales Tax have been introduced in the Act for the purpose of increasing the production of goods and for promoting the development of industries in the State. In fact, when the scheme called "Grant of Sales-tax Exemption Scheme 1982 to industrial units under Section 4-A of the Sales-tax Act" was originally framed, it was expressly stated that the Government granted the facility of exemption in order to encourage the capital investment and establishment of industrial units in the State. The Scheme contained various rules for grant of such exemption. The Section itself has referred to the purpose for which the Government could grant such exemption. Sub-Section (1) of Section 4-A prescribes the maximum period for which the exemption could be granted as 7 years. As per the section, such exemption should commence from the date of first sale by such manufacture 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. The expression "date of starting production" has been defined in the explanation as the date on which any raw material required for use in the manufacture or packing of the goods is purchased for the first time. The term "new unit" used in the Section has also been defined in the explanation. The revisionist has submitted that it fulfilled the relevant conditions at the time when it applied for exemption. Such period was to be reckoned from the date of first sale if such sale took place not later than six months from the date starting production and in other cases from the date following the expiration of six months from the date of starting production subject to the condition that the unit had not discontinued production of such goods for a period exceeding six months at a stretch in any assessment year.

11. Sri Pradeep Agarwal, learned counsel for the revisionist submitted that the provision of the exemption notification deserve liberal consideration and the revisionist was validly transferred the land, which was already allotted to its Director-Promotor and there is no illegality in the same. He relied on the agreement to sell and submitted

that the plot was transferred prior to the cut off date prescribed in the exemption notification, and hence he fulfilled all the conditions as laid down in the said notification. With regard to the old machinery, it was submitted that the same was not used in the manufacturing process and hence has assailed the findings recorded by the authority below and urged this Court to set aside the judgment of the Tribunal.

12. Learned counsel appearing for the Revenue has supported the findings recorded by the authorities below and prayed that the revision deserves to be dismissed.

13. Considering the above submissions, it is necessary to interpret the exemption notification and to analyze its provisions in order to determine as to whether the conditions laid down would be directory or mandatory.

14. In **Commissioner of Income-tax, Amritsar v. Straw Board Manufacturing Co. Ltd.**, [1989] Supp. 2 S.C.C. 523, the Supreme Court held that in taxing statutes, provision for concessional rate of tax should be liberally construed. So also in **Bajaj Tempo Ltd. Bombay v. Commissioner of Income-tax, Bombay City - III, Bombay**, [1992] 3 S.C.C. 78, it was held that provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

15. We find that the object of granting exemption from payment of sales tax has always been for encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the development of industry in the State.

16. The exemption notification dated 22.12.2001, was also subject to consideration before this Court in the case of **Akross Synthetics Private Limited Vs. Commissioner of Trade Tax, U.P., Lucknow**, (2008) 13 VST 504 (All), where this Court has held as follows :-

*"13. Perusal of the Notification No. KA-NI-2-2591, dated August 24, 2000 and the Notification No. KA-NI-2-3867, dated December 22, 2001 reveals that in both the notifications there was a condition that the unit should*

*apply for term loan from any regular financial institution: As per notification dated August 24, 2000 this condition was to be fulfilled on January 17, 2000 and as per Notification No. KA-NI-2-3867, dated December 22, 2001 this condition was to be fulfilled on March 31, 2000. Admittedly, the applicant had not applied for term loan prior to March 31, 2000. The term loan was applied after May 26, 2000 by the applicant-company much after March 31, 2000. In the circumstances, the applicant could not fulfil the requirement of the notification for the grant of exemption. It is nobody's case that the term loan was sanctioned in pursuance of the applications moved in the year 1994. The term loan was sanctioned in pursuance of the application moved by the company much after March 31, 2000.*

*14. The “new unit” established after March 31, 1990 is defined by the Explanation II to section 4A of the Act, which says that the 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.*

*15. The above definition provides that only those units which fulfil the conditions laid down in the notifications issued under the Act or Rules are said to be “new units” and eligible for exemption under section 4A of the Act. Thus, fulfilment of” conditions mentioned in the notifications is mandatory and to be strictly complied with.*

*16. In the case of Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad reported in 1994 Supp (3) SCC 606, apex court held as follows:*

*“16. We are, however, of the opinion that, On principle, the decision of this court in Mangalore Chemicals, [1991] 83 STC 234 (SC); 1992 Supp (1) SCC 21 and in Union of India v. Wood Papers Ltd., [1991] 83 STC 251 (SC); 1990 SCC (Tax) 422 referred to therein— represents the correct view of law. The principle that in case of ambiguity, a taxing statute*



*should be construed in favour of the assessee— assuming that the said principle is good and sound— does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals, [1991] 83 STC 234 (SC); 1992 Supp (1) SCC 21 and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this court in Hansraj Gordhandas v. H.H. Dave, [1969] 2 SCR 253; AIR 1970 SC 755, that such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption.”*

17. *In the case of State Level Committee v. Morgardshammar India Ltd. reported in [1996] 101 STC 1 (SC); [1996] UPTC 213; the apex court held that section 4A of the Act provides for exemption from tax and is to be construed strictly.*

18. *In the case of Kartar Rolling Mills v. Commissioner of Central Excise, New Delhi reported in (2006) 4 SCC 772, apex court held that the exemption notification is to be construed strictly.*

19. *In view of the above, for the claim of exemption it is necessary to comply with the conditions mentioned under the provisions of section 4A of the Act and the notifications issued thereunder. It is on the dealer; who claims the exemption to establish that the conditions of the notifications are fulfilled. If any of the condition is not fulfilled, the exemption cannot be allowed. As referred hereinabove dealer was not able to fulfill the*

*conditions of the notifications on the day on which it was required to be fulfilled and, therefore, the exemption has rightly been refused: In the circumstances, no interference is called for.*

*20. In the result, revision fails and is accordingly, dismissed."*

16. Considering the aforesaid judgments with regard to the manner of interpretation of the Exemption Notification, it is noticed that the Eligibility Notification lay down conditions for seeking benefit of Exemption Notification, which have to be fulfilled and are mandatory in nature and have to be strictly complied with by the dealer if he wishes to claim exemption. In case any of the conditions are not fulfilled, same would dis-entitle the dealer from being granted benefit under the said notification.

17. Applying the aforesaid to the facts of the present case, it is noticed that even though the land did not belong to the Promotor/Director of the revisionist firm, but the same was sought to be transferred to the revisionist and that transfer can be said to have been completed on 17.01.2001, when UPSIDC directed for transfer of plot no. F-63 in favour of the revisionist firm. It cannot be said that prior to 17.01.2001, the land was transferred in favour of the revisionist. The validity of the agreement to sell dated 25.11.1999, has been doubted by the Tribunal as the original copy was never produced before the Tribunal nor were the documents produced before the Divisional Level Committee, which was considering the case of the revisionist firm. Even before this Court no material has been placed so as to doubt the correctness of findings recorded by the Tribunal and hence there is no material before this Court to interfere with the concurrent findings of authorities below that the condition required for transfer of land was not completed prior to last date i.e. 31.01.2000.

18. In this view of the matter, for the reasons recorded above, no interference is required with the findings recorded by the Tribunal that the land was not transferred prior to cut off date prescribed in the exemption notification dated 22.12.2001.

19. The second contention raised by learned counsel for the revisionist that old machinery was not used in the process of

manufacture and it is only 'accessories', and on this basis has assailed the findings recorded by the Tribunal.

20. It is noticed that findings of the Tribunal were based upon the spot inspection report, where the manufacturing process was carefully observed and it has been recorded that 'cranes' were used for lifting of boxes and was also used in the process of manufacture. Hence it cannot be said that findings of the Tribunal are perverse or without any material.

21. Per contra in this regard it has only been submitted on behalf of revisionist that transformer, voltage stabilizer, motor and blower and EOT Crane are not used in the process of manufacture. The said spot inspection report has not been disputed by the revisionist at any stage of the proceedings and categorical finding has been recorded in the spot inspection with regard to use of old machinery which was found to be used in the manufacture process, hence revisionist would not be entitled for the benefit of the Exemption Notification.

21. It is also noticed that one of the condition required for grant of exemption was that the unit should be registered with the Industries Department and both the plots were jointly registered with the Industries Department on 21.03.2001, which is clearly beyond 31.03.2000, which is cut-off date, and consequently for all the aforesaid reasons, it is noted that revisionist did not fulfill the conditions before the cut-off date fixed and hence is not entitled for exemption.

22. No question of law arise for adjudication in this revision. Accordingly present revision is **dismissed**.

**Order Date :- 04.07.2022**

A. Verma

(Alok Mathur, J.)