Ashish Electronics Vs. Commissioner of Trade Tax and anr.

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SooperKanoon Citation : sooperkanoon.com/494689

Court : Allahabad

Decided On : Aug-21-2007

Reported in : (2008)17VST321(All)

Judge : Vikram Nath, J.

Appellant : Ashish Electronics

Respondent : Commissioner of Trade Tax and anr.

Disposition : Application allowed

Judgement :

Vikram Nath, J.

1. The applicant who is a registered dealer established a new industrial unit for manufacturing of blank video cassettes. According to the applicant the unit was established in the financial year 1986-87 and the first sale was effected with effect from January 1/28, 1987. It applied for eligibility certificate Under Section 4A of the U.P. Trade Tax Act, 1948 (hereinafter referred to as 'the Act'). The provisions of Section 4A of the Act require the manufacturer to fulfil certain conditions specified therein to be examined by the Divisional Level Committee before issuing eligibility certificate. One of the conditions is that the unit must be established on land either owned by it or taken by it on lease for more than seven years under a registered document. In the present case initially the land on which the unit was situated had

been leased out for a period of eleven months pursuant to an unregistered lease deed executed on January 15, 1987. By another deed dated December 12, 1987 the tenancy was renewed for further period of eleven months. Subsequently the dealer got a registered lease deed executed on November 5, 1988 for a period of seven years and according to the same the term of the lease was to be made effective with effect from April 1, 1986. Initially the Divisional Level Committee rejected the application of the dealer under Section 4A of the Act. There was a series of litigation and the matter was remanded time and again. Without referring to the irrelevant litigations which had taken place what is relevant to mention here is that against the order of rejection, the dealer had preferred a writ petition before this court being Writ Petition No. 1486 of 1991, which was disposed of finally vide order dated November 21, 1994 by the Division Bench of this court. This court was of the view that there was a registered lease deed dated November 5, 1988. Therefore, the dealer would at least be entitled to the benefit of the provisions of Section 4A of the Act with effect from the said date. Para No. 4 of the judgment is quoted herein:

4. In the instant case assuming that on the date of first sale, the lease-deed was not registered but admittedly lease was registered on November 5, 1988, therefore, at least from this date, i.e., with effect from November 5, 1988 certainly petitioner is entitled to the benefit of Section 4A of the Act.

2. This court had further remanded the matter to the Divisional Level Committee for considering the petitioner's application afresh in the light of the observations in the judgment. It would be relevant to state here that this court had considered the various decisions on the point and was not satisfied with the decision of the Divisional Level Committee. The observation with regard to the grant of benefit with effect from November 5, 1988 was only an aid to take into consideration by the Divisional Level Committee for considering the other factors for grant of benefit from the previous date if permitted under the law. This court had not directed that eligibility be given from November 5, 1988. Pursuant to the decision of this court the dealer filed an application before the Divisional Level Committee whereupon the Divisional Level Committee without considering the merit of the case and only relying upon the observations made in para No. 4 of the judgment of this court

issued an eligibility certificate with effect from November 5, 1988 till January 19, 1999 whereas according to the dealer it was entitled for the eligibility certificate with effect from January 28, 1987 which was the date of first sale. Aggrieved by the decision of the Divisional Level Committee granting partial eligibility, the dealer preferred an appeal before the Tribunal. The Tribunal vide order dated November 16, 1999 impugned in this revision has dismissed the appeal on the ground that the dealer had not filed the two registered lease deed before the Divisional Level Committee and filing of such documents in appeal was not covered by Section 12D of the Act for being admitted as an additional evidence. Aggrieved by the same the present revision has been filed.

3. I have heard .Sri Praveen Kumar, Advocate holding brief of Sri Ashok Kumar, learned Counsel for the dealer-applicant and the learned Standing Counsel for the department.

4. The submission of the learned Counsel for the applicant is that the Tribunal has passed the impugned order on misreading of material on record and on misconception as all the lease deeds whether registered or unregistered were already on record before the Divisional Level Committee. He has relied upon annexure 6 to the affidavit filed in support of the revision which is a review application dated December 20, 1993 filed much before the decision of the Divisional Level Committee dated March 31, 1997 granting partial eligibility certificate. In the review application both the lease deeds which were for eleven months and were unregistered have been referred to and have been annexed also. Further in any case once the registered lease deed had come on record and it referred to the previous unregistered lease deed and also relates back to the date prior to the date for sale, the unregistered lease deed would lose their efficacy and would not be of any relevance. Further it is also difficult to believe that the dealer would not have filed those unregistered lease deeds earlier when his application had earlier been non-suited on the ground that there was no existing registered lease deed.

5. The other ground mentioned in the order of the Tribunal is that the dealer in his application dated December 2, 1995 had prayed for exemption under Section 4A

of the Act with effect from November 5, 1988 as per the High Court's order. The approach of the Tribunal appears to be perverse inasmuch as instead of understanding and reading the order of the High Court correctly, it has tried to find out the ways and means to scuttle the relief to the applicant to which he was legally entitled. The decision was to be taken in accordance with law and not on the basis of the prayer made in the application. Such approach of the Tribunal is not in accordance with law.

6. It is now well-settled that where initially the unit was established over land which was taken on lease on the basis of unregistered document but subsequently rectified by a registered lease deed making it effective from earlier date, eligibility would not be denied nor could it be reduced and made effective from the date of the registered deed. The dealer would be entitled to exemption under Section 4A of the Act from the date of the first sale or otherwise as the case may be. Reliance has been placed on the various decisions of this court. One of them being Commissioner of Sales Tax v. Kothari Moulders reported in [1999] UPTC 1043 which in turn has taken into consideration various other decisions.

7. In this view of the matter the order of the Tribunal is set aside as also the decision of the Divisional Level Committee granting partial eligibility to the dealer. The Divisional Level Committee may issue revised eligibility certificate or amend the same as the case may be for the entire period admissible to the dealer with effect from the date of the first sale.

The revision is accordingly allowed.