

(2006) 08 AHC CK 0084

Allahabad High Court

Case No: None

Hawkins Cookers Limited

APPELLANT

Vs

The Commissioner of Trade Tax

RESPONDENT

Date of Decision: Aug. 29, 2006

Acts Referred:

- Uttar Pradesh Sales Tax Act, 1948 - Section 4A
- Uttar Pradesh Trade Tax Act, 1948 - Section 11

Citation: (2007) 8 VST 760

Hon'ble Judges: Rajes Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajes Kumar, J.

Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 26th May, 2006 relating to the assessment year 1996-97.

2. The following questions have been referred in the present revision:

1. Whether the benefit of exemption having been given to the goods manufactured in the new unit during the specified period, sale of such goods manufactured in the new unit even if made after specified period, is entitled for exemption ?
2. Whether the objection of Section 4A (1) of the Act as well as Notification No. 7558 dated 26-12-1985 being for promoting development of industries and increasing production of goods, object sought to be achieved by the Legislature cannot be curtailed or taken away by giving interpretation as held by the Trade Tax Tribunal
3. Whether the interpretation given by the Tribunal in respect of the goods manufactured during the period of exemption and sold thereafter is contrary to the object of the provisions of the Act and the Notification issued there under ?

4. Whether the applicant was bonafidely believing that the applicant is entitled for exemption in respect of all goods sold by the applicant which were manufactured in the new Unit during the period of seven years specified in the eligibility certificate having not realised any tax on the disputed turnover of tax from its customers there is no liability for payment of tax treating the assessed tax as admitted tax ?

5. Whether in any view of the matter the order of the Tribunal is liable to be set aside ?

3. Brief facts of the case are that the applicant is a Public Limited Company incorporated under Indian Companies Act, 1956 and is registered both under the U.P. Trade Tax Act and Central Sales Tax Act. Applicant had established a new unit at Sathariya, district Jaunpur for manufacturing of pressure cooker. The production was started on 28.02.1990. Applicant claimed for exemption u/s 4-A of the Act being a new unit on the sale of its manufactured product. Divisional Level Committee allowed the claim of exemption and issued eligibility certificate on 28.01.1992 for the period of seven years from 20.03.1991 to 19.03.1998.

4. In the present case, the dispute relates to the levy of tax on the turn over of sales made after 19.03.1998 for Rs. 91,75,055/-. Assessing authority levied the tax on the aforesaid turn over on the ground that the sales relate to the period after 19.03.1998 when the period of exemption had been expired. Assessing authority also demanded the interest u/s 8 (1) of the Act on the tax assessed treating it as admitted tax. Order of the assessing authority has been confirmed by the first appellate authority and by the Tribunal. It appears that initially in the eligibility certificate inadvertently period of exemption has been mentioned as 21.03.1991 to 19.03.1998 but subsequently, it has been rectified and exemption was granted for the period 20.03.1990 to 19.03.1997.

5. Heard Sri Bharatji Agrawal, learned Senior Advocate assisted by Sri Piyush Agrawal, learned Counsel appearing on behalf of the applicant and Sri B.K. Pandey, learned Standing Counsel.

6. With the consent of both the parties, present revision is being disposed of at this stage.

7. Learned Counsel for the applicant submitted that Section 4-A was introduced with the object to increase the production of goods and for promoting the development of the industries. Therefore, liberal interpretation should be given to the provision. He submitted that the object was to allow the exemption from tax on the manufactured product by the new unit during the period for which exemption was granted and thus, even if the manufactured product was being sold after the expiry of the period of exemption, such goods should not be liable to tax. In support of the contention he relied upon the decision of the Apex Court in the case of CST v. Industrial Coal Enterprises reported in 1999 UPTC 250 and latest decision of the Apex Court in the case of [State of Jharkhand and Others Vs. Tata Cummins Ltd. and](#)

Another, . He submitted that there may be a situation that after manufacturing of goods during the specified period dealer may not be able to sell its product due to some unavoidable reasons, in a circumstances dealer may not be denied the exemption under the notification, in case, if the goods are manufactured during the specified period. He submitted that in any view of the matter in case if the claim of exemption is held to be not admissible, the amount of tax assessed can not be treated as admitted tax and the interest u/s 8 (1) of the Act can not be demanded. He submitted that the applicant was all along bonafidely disputing the levy of tax and in the present case, the interpretation of the notification is involve and in case the notification is interpreted against the dealer and the levy of tax is upheld, the amount of tax can not be said to be admitted tax.

8. Learned Standing Counsel submitted that Section 4-A of the Act provides that the State Government by notification, declare that the turn over of sales in respect of such goods by the manufacturer thereof shall, during such period not exceeding 15 years from such date or on after the date of starting production as may be specified by the State Government in such notification for the exemption from tax on the sale of the goods. He submitted that the relevant notification is notification No. ST-7558/X-9(208)-1981-I.P. Act XV/48-Order-85, dated 26.12.1985. The aforesaid notification provides that no tax shall be payable by the manufacturer thereof on the turn over of sale of such goods for the period specified in Column-3. Period specified in Column 3 in case of the applicant unit is seven years, which expired on 19.03.1997. He submitted that the exemption was on the turn over of sales of the manufactured product and not on the production and thus, the date of production is wholly irrelevant and the date of sale is only relevant for the purpose of exemption. After the expiry of specified period any sale made thereafter would not be entitled for exemption. He submitted that the object of Section 4-A of the Act and the notification issued thereunder is very clear namely, the grant of exemption on the turn over of sales of the manufactured product during the specified period. The language is plain and simple and thus, no other interpretation or any kind of intendment is required to be considered. In support of his contention he relied upon the decision of the Apex Court in the case of State Level Committee and Anr. v. Morgardshammar India Ltd. reported in 1996 UPTC 213. He further submitted that since there was no ambiguity in Section 4-A of the Act and the notification issued thereunder in respect of the exemption and in case applicant at its own risk could not deposit the tax and claimed the exemption for which it was not entitled, it can not be said that applicant acted bonafldely. According to him, it is not a case of bonafide dispute and, therefore, the interest demanded u/s 8(1) of the Act is not justified. In support of his contention he relied upon the decision of the Apex Court in the case of CST v. Qureshi Crucible Centre reported in 1993 UPTC 901.

9. Having heard learned Counsel for the parties, I have perused the order of the Tribunal and the authorities below.

10. It is useful to refer Section 4-A of the Act and notification No. ST-II-7558/X-9(208)-1981-U.P. Act XV/48-Order-85. dated 26.12.1985:

Section 4-A. /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 any district or part of district in particular, it may on application or otherwise, [in any particular case or generally by notification,/ declare that the turn over 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:

Notification No. ST-II-7558/X-9(208)-1981-U.P. Act XV/48-Order-85, dated 26.12.1985:

Whereas, the State Government is of the opinion that it is necessary so to do for promoting the development of industry in the State generally and in certain districts and parts of districts:

Now, therefore, in exercise of the powers u/s 4-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P Act No. XV of 1948), read with Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), and in supersession of Notification No. ST_ii_604/X-9(208)-1981-U.P.Act-X\ -48-Order-1985, dated January 29, 1985, the governor is pleased to declare that, in respect of any goods manufactured in an industrial unit, which is a new unit as defined in the aforesaid Act of 1948, established in the areas mentioned in column 2 of the Table given below, the date of starting production whereof falls on or after the first day of October, 1982 but not later than the thirty-first day of March 1, 1990, no tax under the aforesaid Act of 1948 shall be payable by the manufacturer thereof on the turnover of sales of such goods for the period specified in column 3 against each, which shall be reckoned from the date of first sale, if such sale takes place not later than six months from the date of starting production or, in other cases, from the date following the expiration of six months from the date of starting production, subject to the following conditions:

1. ...

2. ...

(Emphasis provided)

TABLE

Sl.No.	Location of unit	Period of exemption	
1.	2.	3(a)	3(b)
1.	The districts of Banda, Jalaun, Hamirpur, Jaunpur, Fatehpur, Paun- Garhwal, Tehri-Garhwal, Chamoli, Uttarkashi, Sultanpur, Kanpur (Rural), Alniora, Pithoragarh, Nainital and Dehradun.	Five years.	Seven years.
2.	The districts of Azamgarh, Bahraich, Pallia, Barabanki, Basti, Budaun, Bulandshahr, Deoria, Etah, Etawah, Fzizabad, Farrukhabad, Ghazipur, Gonda, Hardoi, Jhansi, Lalitpur, Mainpuri, Mathura, Moradabad, Pilibhit, Pratapgarh, Raibareili, Rampur, Shahjahanpur, Sitapur and Unnao, and Tehsil Dadri of Ghaziabad district.	Four years.	Six years.
3.	The districts of Agra, Aligarh, Allahabad, Bareilly, Bijor, Ghaziabad (excluding Tehsil Dadri), Gorakhpur, Kanpur (Urban), Lakhimpur- Kheri, Lucknow, Meerut, Mirzaur, Muzaffarnagar, Saharanpur and Varanasi.	Three years.	Five years.

Explanation.

1. ...

2. ...

3. ...

11. Perusal of Section 4-A of the Act, it is clear that it empowers the State Government to grant the exemption by issuing the notification on the turn over of sale in respect of such goods manufactured during the period not exceeding 15 years. Notification St-II-7558/X-9(208)-1981-U.P. Act XV/48-Order-85, dated 26.12.1985, issued in exercise of powers u/s 4-A of the Act granted exemption in respect of the goods manufactured in an industrial unit as defined in the Act. It provided that no tax under the Act shall be payable by the manufacturer on the sale of such goods for the period specified in Column 3.

12. In the present case specified period was seven years from the date of first sale being established at Jaunpur. Under the aforesaid notification, the applicant unit had been treated as new unit. The eligibility certificate was issued on 28.01.1992 granting exemption for the period 20.03.1990 to 19.03.1997. Thus, undisputedly the period of exemption expired on 19.03.1997. Under the notification the exemption was available only for the specified period for which the exemption was granted. The notification does not provide exemption on the turn over of sale of goods made after the expiry of specified period, though that any goods manufactured during the specified period for which the exemption was granted. The notification clearly provides the exemption on the turn over of sales for the specified period. The exemption under the notification was on the turn over of sale and not on the production. In the present case, the specified period was from 20.03.1990 to 19.03.1997. Therefore, the claim of exemption on the turn over made after the expiry of the 19.03.1997 is misplaced and contrary to the provision of the notification. The cases CST v. Industrial Coal Enterprises, (Supra) and latest decision of the Apex Court in the case of State of Jharkhand and Ors. v. Tata Cummins Ltd. and Anr. (Supra) relied upon by the learned Counsel for the applicant are not relevant to the present case. The observation made by the Apex Court about the object and construction of Section 4-A of the Act are not relevant to the present case in view of plain and unambiguous language of Section 4-A of the Act and notification ST-II-7558/X-9(208)-1981-U.P. Act XV/48-Order-85, dated 26.12.1985.

13. In the Case of Swadeshi Polytex Limited v. Income Tax Officer reported in 1980 UPTC 1084, the Division Bench of this Court held as follows:

It is well established that where the language of a section is plain and unambiguous, it is not open to courts to read into it limitation which are not there based on a priority reasoning as to the probable intention of the legislature. Such intention can be gathered from the words actually used in the legislature and what is

unexpressed has the same value as to what is unintended.

14. In the case of Commissioner of Sales Tax, Gujarat v. Union Medical Agency reported in 1981 UPTC 520 the Apex Court held as follows:

If the meaning of the section is plain, it is to be applied whatever the result

15. In the case of Assessing Authority" cum-Excise & Taxation Officer, Gurgaon and Anr. v. East India Cotton Mfg. Co. Ltd., Faridabad reported in 1981 UPTC 1319 the Apex Court held as follows:

It is also a well settled rule of interpretation that a statute must be construed according to its plain language and neither should anything be added or subtracted unless there are adequate grounds to justify the inference that the legislature clearly so intended.

16. In the case of Commissioner of Income Tax, Orissa and Ors. v. N.C. Budharaja & Co. and Anr. reported in 1993 UPTC 1335 the Apex Court held as follows:

The principle of a liberal interpretation which advances the purpose and object underlying the provision cannot be carried to the extent of doing violence to the plain and simple language used in the enactment. It would not be reasonable or permissible for the Court to re-write the section or substitute words of its own for the actual words employed by the Legislature in the name of giving effect to the supposed underlying object. After all, the underlying object of any provision has to be gathered on a reasonable interpretation of the language employed by the Legislature.

17. In the case of [Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others](#), the Apex Court held as follows:

Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

18. In the case of State Level Committee and Anr. v. Morgadshammar India Limited, (Supra), Apex court held that the provisions providing for exemption or an exception as the case may be has to be construed strictly.

19. Similar view has been taken by the Apex Court in the case of [Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad,](#)

20. So far as demand of interest u/s 8(1) of the Act is concerned, I do not find any substance in the argument of learned Counsel for the applicant. As stated above that the notification dated 26.12.1985 issued in exercise of powers u/s 4-A of the Act provides exemption only on the turn over of sales during the period specified, which in the present case was from 20.03.1990 to 19.03.1997. There was no ambiguity in the provisions and if applicant had understood the provisions in its own way and could not deposit the tax on the turn over made after 19.03.1997, the applicant had done at his own risk. In the facts and circumstances of the case, it can not be said to be a case of bonafide dispute. Under the provisions of the Act, applicant was liable to pay the tax on the expiry of the period of exemption and in case if it had not been paid within the specified period, interest is chargeable u/s 8(1) of the Act. Reliance is placed on the decisions of the Apex Court in the case of CST v. Qureshi Crucible Center reported in 1993 UPTC 901

21. For the reasons stated above, revision has no merit.

22. In the result, revision fails and is accordingly, dismissed.