(2001) 11 AHC CK 0129

Allahabad High Court

Case No: Trade Tax Revision No. 1219 of 2000

Commissioner of Trade Tax	APPELLANT
Vs	
Precise Laboratories Ltd.	RESPONDENT

Date of Decision: Nov. 26, 2001

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 15A, 4A, 4A(3)

Citation: (2006) 146 STC 398

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

Bench: Single Bench

Advocate: S.D. Singh, for the Appellant; Bharat Ji Agrawal, for the Respondent

Final Decision: Dismissed

Judgement

P.K. Jain, J.

This revision is directed against the order dated May 24, 2000/June 12, 2000 passed by the Trade Tax Tribunal, Ghaziabad, allowing second appeal of the opposite-party granting remission with regard to the tax liability as claimed by the dealer.

2. Brief facts giving rise to present revision are that the dealer was granted eligibility certificate by the Divisional Level Committee for a period of five years from March 28, 1990 to March 27, 1995. However, on March 15, 1994, the dealer made application to Tahsildar-Dadari, District-Ghaziabad, stating that unit of the dealer is situated at Plot No. A-13/2, Industrial Area, Tahsil-Dadari. A prayer was made that a certificate in this regard may be issued. Tahsildar-Dadari issued relevant certificate. On the basis of the said certificate an application dated March 28, 1994 was moved by the opposite-party for amendment in the eligibility certificate for extending the period of exemption from five years to six years. The Divisional Level Committee, vide its order dated April 28, 1994 modified the eligibility certificate and granted exemption u/s 4-A of the U.P. Trade Tax Act, 1948 for a period of six years from the date of first sale. However, subsequently, it was found that the unit of the

opposite-party was not situated within the limit of Tahsil-Dadari and it was situated within the limit of Tahsil-Ghaziabad. Therefore, the eligibility certificate was again amended reducing the period of exemption to five years holding that exemption for six years was not in accordance with law. The order dated January 8, 1996 amending the eligibility was served upon the dealer on February 6, 1996. The assessing authority made assessment for the year 1995-96 and levied tax of Rs. 6,25,17,375 but granted remission in respect of Rs. 5,25,91,650, vide demand letter dated January 6, 1998 in view of G.O. No. T.T-2-1042/ll-94-9(6)/94 dated May 26, 1994 and demand of Rs. 99,25,725 was raised. The dealer filed appeal against the order dated January 6, 1998 which was dismissed as being not maintainable. Second appeal was also dismissed by the Tribunal. Thereafter, the dealer approached the High Court by filing a revision under the Trade Tax Act. The High Court vide its judgment dated September 9, 2000 held that the demand letter issued to the dealer was an order and it was appealable. The matter was remanded to the first appellate authority for decision afresh on merit. A submission was made before the first appellate authority that in view of Government Order No. T.T. 1642/II/94-9(6)/1994 dated May 16, 1994 and circular No. 254 dated May 26, 1994 and 18/261 dated May 16, 1994 issued by the Commissioner, the dealer was entitled to remission on the entire amount of tax till March 27, 1996 since no tax was realised by the dealer till that period and the dealer had not committed any fraud or misrepresented the facts in obtaining the eligibility certificate. This claim of the dealer was not accepted by the assessing authority as well as the first appellate authority. Therefore, the dealer filed second appeal before the Tribunal. The Tribunal vide its order dated May 24, 2000/June 12, 2000 allowed the appeal accepting the claim of the dealer.

3. Aggrieved by the order of the Tribunal, this revision has been filed by the department.

4. Sri S.D. Singh, learned Standing Counsel appearing for the department and Sri Bharat Ji Agrawal, learned Senior Counsel appearing for the opposite-party have been heard at length.

5. Sri S.D. Singh, learned Standing Counsel, has submitted that it is amply clear from the material on record that the amendment in the eligibility certificate enhancing benefit of exemption from five years to six years was obtained by misrepresentation of facts and on the basis of false certificate issued by the Tahsildar. This is evident from subsequent enquiries made by the trade tax authorities. It is further submitted that the finding of the Tribunal that there was no fraud or "Jalsaji" is perverse and is without any material on record. The order dated November 10, 1997 that the unit is situated in Tahsil, Ghaziabad, has become final as it has not been challenged anywhere by way of filing an appeal, revision or writ petition. Therefore, the opposite-party was entitled to the benefit of exemption for a period of five years. It is next submitted that a survey of the unit of the assessee was conducted when the M.D. had categorically stated that from that date onwards the tax shall be realised

and shall be deposited. If the tax was not realised thereafter, it is the fault of the A assessee and remission cannot be granted on the ground that no tax has been realised by the dealer. It is next submitted that the question of remission could be decided by the assessing authority and the Tribunal had no jurisdiction to decide this question and make a direction to the assessing authority to grant remission. Shri Bharat Ji Agrawal, learned Senior Counsel appearing for the opposite-party, has submitted that from annexure-2 of the compilation filed by the revisionist it is quite evident that before moving an application for enhancing the period of exemption from five years to six years enquiry was made by the dealer from the various authorities. Only when it was certified that the unit is situated in Tahsil-Dadari, the application for amendment in the eligibility certificate was moved. Therefore, the assessee acted bona fidely and there was no question of playing any fraud or misrepresentation of facts. It is also submitted that it is nowhere pointed out that the certificate given by the Tahsildar-Dadari was given in collusion with the unit. It is also argued that the unit of the assessee is situated in industrial area developed by U.P.S.I.D.C. which is located on part of the land of Tahsil-Gaziabad and on part of the land of Tahsil-Dadari. Therefore, there was no other manner for verification of the fact whether the unit of the revisionist is situated in Tahsil-Dadari or in Tahsil-Gaziabad except by obtaining a certificate from Tahsildar concerned. If ultimately it turned out that the unit was situated in Tahsil-Gaziabad and by mistake a wrong certificate was granted by the Tahsildar-Dadari, no finding of "Jalsaji" could have been recorded nor the same has been recorded by the D.C. It is also submitted that it is true that at the time of survey the M.D, had made a statement that the tax would be realised in accordance with law and shall be deposited but it was not collected under bona fide belief that the eligibility certificate was still operating and the dealer was exempt from payment of tax. In these circumstances, if ultimately it was found that the dealer had wrongly realised the tax, even though exemption was granted u/s 4-A of the Act, the dealer would have been liable to penalty u/s 15-A(qq) of the Act which could have extended to three times of the amount wrongly realised. It is also submitted that the assessing authority had already granted remission to the tune of Rs. 5,25,91,650 and remission in respect of the balance amount was not granted which would amount to implied refusal to grant remission in respect of Rs. 99,25,725. Hence, the Tribunal was justified in determining the question whether the revisionist was entitled to remission as claimed by him and directing the assessing authority to pass appropriate order after holding that the assessee was entitled to remission.

6. There is no dispute about the factum that the unit of the dealer/manufacture/opposite-party is situated in industrial area situated South of the G.T. Road which was developed by the U.P.S.I.D.C. The developed industrial area falls both within the local limit of Tahsil-Dadari and Tahsil-Gaziabad. Therefore, without obtaining a certificate from the revenue authorities it would not have been possible for the opposite-party to have claimed benefit of exemption for six years if

its unit was within local limits of Tahsil-Dadari. There is material on record showing that besides the unit of the opposite-party, there were eight other units in that area which were also granted exemption for a period of six years. Therefore, the contention of opposite-party that it bona fidely believed that its unit is situated within the local limits of Tahsil-Dadari and, therefore, it approached the revenue authorities, viz, Tahsil-Dadari to issue a certificate in this regard, appears to be true. Tahsildar Dadari issued certificate to the dealer certifying that its unit was situated within the local limits of Tahsil- Dadari, There is no material on record to substantiate the argument of Sri S.D. Singh, learned Standing Counsel, that the amendment in the eligibility certificate was claimed on misrepresentation of facts and the Tribunal''s finding that there was no fraud ("ncmrft), is perverse. M/s. Surpal Bikes (Pvt.) Ltd., M/s. Mahabeer Thermo-insulation (Pvt.) Ltd., M/s. Mridula Detergent (Pvt.) Ltd., M/s. Bhagwari Detergent (Pvt.) Ltd., M/s. Monark Paints Industries, M/s. Maxwell Shop and Detergents and M/s. Bahati Rotoplast Pvt. Ltd. were situated in the vicinity of the factory of the opposite-party and all of them were granted eligibility certificate for six years on the assumption that their units were situated within the local limits of Tahsil-Dadari, Subsequently, it was found that except in the case of M/s. Bahati Rotoplast Pvt. Ltd., all other units were not situated within the local limits of Tahsil-Dadari. Hence, their exemption period was reduced from six years to five years. However, the reduction of the period of exemption was done after the eligibility certificate of the opposite- party was modified and exemption for six years was granted. Therefore, at the time of applying to the Tahsil-Dadari for obtaining a certificate whether the unit of the opposite-party was situated within the local limits of Tahsildar-Dadari or Tahsil-Gaziabad, the opposite-party acted bona fidely. There is no finding of any authority below that the certificate that the unit of the opposite-party was situated in the local limits of Tahsil-Dadari was obtained in collusion with Tahsildar or other revenue authorities or by misrepresentation of facts. None of the authorities below has recorded any finding that there was any fraud played by the dealer. The Commissioner, Trade Tax, U.P., while passing order dated January 4, 1996 amending the eligibility certificate by exercising his powers u/s 4-A(3) of A the U.P. Trade Tax Act also did not record any finding that the modification in the eligibility certificate was obtained by playing fraud. The finding was that the dealer was not legally entitled to exemption for a period of six years and the exemption granted for six years by modification of the certificate was against law. Therefore, in my view, in the circumstances, the submission of Sri S.D. Singh, learned Standing Counsel that modification in the eligibility certificate was obtained by misrepresentation of facts, cannot be sustained. The observation of the Tribunal that there was no fraud or "^TSRnxsfr" committed by the dealer, cannot be said to be perverse.

7. The next submission of Sri S.D. Singh, learned Standing Counsel, is that order dated November 10, 1997 whereby exemption was reduced from six to five years only has become final and has not been challenged anywhere. Therefore, the dealer

was not entitled to exemption for period more than five years. There is no doubt that the order dated November 10, 1997 has become final and dealer was not entitled to exemption for more than five years. However, remission was granted by the assessing authority in view of the G.O. No. T.T.- 2-1042/ll-94-9(6)/1994 dated May 26, 1994 referred to above. It is not the case of the department that under the said Government Order remission could not have been granted or the remission was granted in excess or in violation of the said Government Order.

8. It has next been submitted by Sri S.D. Singh, learned Standing Counsel, that the survey of the unit of the assessee was made on March 29, 1995 when the M.D. of the unit made a statement that from the date onwards tax has been realised and shall be deposited. The dealer did not realise the tax after making statement dated March 29, 1995. The remission has been granted on one of the grounds that the dealer has not realised tax, therefore, tax was not liable to be deposited. It is submitted that if the dealer has not realised the tax on account of his own fault then the dealer cannot G be entitled to remission on this ground. It would appear from the material on record that when the dealer made the statement the eligibility certificate was still operative. The statement was given by the M.D. that the unit shall realise the tax in accordance with law. There is substance in the submission of Sri Bharat Ji Agrawal, learned Senior Counsel appearing for the dealer, that since the eligibility certificate was still effective, the dealer bona fidely believed that he could not realise the tax. Undisputedly, the order u/s 4-A(3) of the U.P. Trade Tax Act was passed on January 8, 1996 and was served upon the dealer on February 6, 1996. Therefore, on the date of survey (making of the statement, i.e., March 29, 1995), the eligibility certificate was effective and in operation. The dealer could not have realised the tax from its customers in view of the penal provisions u/s 15-A of the Act. The statement given by the M.D. was that the tax shall be realised in accordance with law. The eligibility certificate being operative, the dealer could not have realised the tax. Therefore, it cannot be said that the dealer acted against law. The submission was that the tax shall be realised in accordance with law. Had the dealer realised the tax, despite exemption having been granted or being effective, the dealer would have been liable for penalty u/s 15-A(l)(qq) and the penalty as provided by Clause (8) could not have been less than the amount of tax realised and it could have been extended to three times of the excess of tax realised. Therefore, the submission that the tax would be realised in accordance with law, does not in any manner substantiate the claim of the revisionist that despite making statement the dealer did not realise the tax and it cannot be benefited for its own fault. therefore, in my view, there is no substance in the submission of learned Standing Counsel.

9. The last submission on behalf of the revisionist is that the question of punishment could be decided by assessing authority and the Tribunal has committed error in directing the assessing authority to pass a fresh order granting remission to the tune claimed by the dealer. I do not find any illegality committed by the Tribunal in this regard. The question of remission was considered by the assessing authority.

The dealer claimed remission to the tune of Rs. 6,25,17,375 but the assessing authority granted remission only in respect of Rs. 5,25,91,650. Thus, the question of granting of remission was finally decided by the assessing authority. Part of claim of remission was impliedly rejected by the assessing authority, which could be corrected only in appeal before the appellate authority. It may be pointed out that the Tribunal has itself not granted remission. It has simply held that the assessee was entitled to remission and directed the assessing authority to pass fresh order granting remission. Therefore, there is no error of law in the order passed by the Tribunal.

10. Having carefully considered the arguments advanced by the learned Counsel for the revisionist and material on record, I am of the view that the present revision is devoid of any merit. Therefore, it is hereby dismissed.