

(2007) 10 UK CK 0020

Uttarakhand High Court

Case No: None

Uttaranchal Iron and Ispat Ltd.

APPELLANT

Vs

Trade Tax Tribunal, Dehradun
Bench and Others
 Sumo
Steels Pvt. Ltd. Vs Commissioner
of Trade Tax

RESPONDENT

Date of Decision: Oct. 8, 2007

Acts Referred:

- State Financial Corporations Act, 1951 - Section 18, 29, 4A

Citation: (2008) 1 UD 308 : (2008) 13 VST 245

Hon'ble Judges: P.C.Verma, J; B.C.Kandpal, J

Bench: Division Bench

Final Decision: Allowed

Judgement

P.C. Verma, J.

This revision u/s 11 of the Uttaranchal Trade Tax Act, 1948 (hereinafter referred to as, "the Act") has been filed against the judgment and order dated April 21, 2005 passed by respondent No. 1 in Appeal No. 2 of 2004, by which the appeal filed by the appellant/revisionist was rejected and the order of the Commissioner, Trade Tax cancelling the eligibility certificate granted to the applicant by the Joint Director, Industries, Pauri Garhwal through office memorandum dated 4384/90 dated December 31, 2002, was affirmed.

2 The facts of the case, in brief, are that the erstwhile manufacturer M/s. R.L. Steels Pvt. Ltd., established a new unit on April 26, 1997 by taking a term loan from U.P. Finance Corporation (UPFC) at Jashodharpur Industrial area, Kotdwara (District Pauri Garhwal). The Divisional Level Committee granted the exemption to the said unit under Notification No. 780 dated March 31, 1995 for a period of twelve years from the date of first sales, i.e., May 15, 1997. Since the unit M/s. R.L. Steels Pvt. Ltd., was closed on May 13, 1998 and the UPFC took possession of the unit as the said unit

failed to repay its term loan, the period of exemption was reckoned from May 15, 1997 to May 13, 1998. The applicant purchased the composite unit comprised of land, building and plant and machineries in auction by UPTFC for a sum of Rs. 142 lacs u/s 29 of the State Finance Corporation Act, 1951. The UPFC sold the land and buildings under the sale deed dated September 21, 2002 and the plant and machineries were handed over to the applicant, vide possession memo dated September 4, 2002. The applicant filed an application before the General Manager, District Industries Centre, Kotdwara, u/s 4A(2B) read with Section 18(1) on November 14, 2002. The Joint Director of Industries, who is the convener of the Divisional Level Committee and the competent authority to issue/amend the eligibility certificate under Rule 25(3)(f), amended the eligibility certificate granted to the erstwhile manufacturer M/s. R.L. Steels Pvt. Ltd., vide his office memorandum dated December 31, 2002. The applicant was granted exemption u/s 4A(2B) of the Act for the unexpired period from November 14, 2002 to May 14, 2009. Respondent No. 2 issued show cause notice to the applicant dated October 8, 2003 proposing to deny the exemption u/s 4A(3). The applicant submitted reply to this show cause notice on October 30, 2003. Respondent No. 2 failing to appreciate the reply of the applicant, cancelled the eligibility certificate, vide order dated June 15, 2004.

3. The applicant filed an appeal before the Uttaranchal Trade Tax Tribunal against the order of the Commissioner, Trade Tax, dated June 15, 2004. The Tribunal rejected the appeal, vide impugned order dated April 21, 2005 and held that the Divisional Level Committee should de novo consider the eligibility of the applicant in accordance with the provisions of law.

4. Feeling aggrieved by the order of the Tribunal dated April 21, 2005 the applicant has come up in this revision. While admitting the revision, following questions of law were framed by this Court for consideration:

(1) Whether, respondent No. 1 was justified in holding that the eligibility certificate was wrongly issued by respondent No. 3, who could not unilaterally decide the benefit of exemption and ignored the factual position that the convener of the DLC is respondent No. 3, who can issue the certificate using the powers vested with him under Rule 25(3)(f) of the Uttaranchal Trade Tax Act, 1948?

(2) Whether respondent No. 1 was justified in passing orders holding that the eligibility certificate contained legal and factual errors and they were competent to negate such certificate, especially when respondent No. 3 was impleaded as a party and especially when respondent No. 1 had allowed the applicant to cross-examine him in person and respondent No. 3 did not present himself to be cross-examined, but represented himself through a subordinate staff not conversant with the decision on eligibility certificate?

(3) Whether respondent No. 1 erred in not appreciating the factual position that it was a case of a composite plant and, the applicant was a successor-manufacturer

and rightly granted the exemption for the unexpired period as would have been applicable to the former manufacturer and whether respondent No. 1 erred in remanding the matter back to the DLC, when it could itself decide the issue on merits?

5. By way of supplementary affidavit the revisionist has filed the photostat copy of loan agreement-cum-hypothecation deed executed on March 15, 1997 between earlier unit M/s. R.L. Steels Pvt. Ltd. and U.P. Finance Corporation, Kanpur, in the month of April, 2002 between Director, M/s. Sumo Steels and UPFC, photostat copy of sale deed dated executed on September 21, 2002 between UPFC and revisionist ♦Uttaranchal Iron and Ispat Ltd., for the land and building.

6. We have heard the learned Counsel for the parties and perused the record. The undisputed facts are that land, plants and machineries were purchased by the revisionist in the auction proceedings held by U.P. Finance Corporation (UPFC) in totality, evidence of which is on record, i.e., the sale deed and document of transfer of possession. These documents clearly show that there was a complete transfer of title and ownership of entire unit.

It is also not disputed that the transferor-manufacturer was granted exemption u/s 4A from the date of its production for 12 years. The unit was sold and transferred in entirety and the revisionist succeeded the former manufacturer after the execution of sale and transfer of possession.

7. We may proceed to examine Sub-section (2B) of Section 4A of the Act and Rule 25 of the Uttaranchal Trade Tax Rules, 1948. Sub-section (2B) of Section 4A reads as under:

If there is discontinuation of business, within the meaning of Sub-section (1) of Section 18, of the manufacturer who was eligible for exemption from or reduction in rate of tax under Sub-section (1), whether such exemption from or reduction in rate of tax was already granted or not, and if he is succeeded by another manufacturer, by means of sale, licence, contract, lease, managing agency or in any other manner, such successor-manufacturer may, subject to the provisions of Sub-section (3), apply to the officer competent to grant eligibility certificate under Clause (d) of Sub-section (2), within sixty days of such succession, for the grant, under this section of exemption from or reduction in rate of tax for the unexpired portion of the period for which exemption from or reduction in the rate of tax was or could be granted to the former manufacturer:

Provided that the aforesaid officer may, in its discretion and for adequate and sufficient reasons to be recorded in writing, entertain an application moved within six months of the date of the expiration of the period specified in this sub-section:

Provided further that such manufacturer and successor-manufacturer for the purpose of liability of tax shall be treated as the transferor and the transferee u/s

3C:

Provided also that in computing the unexpired portion of the period, the period during which the production of successor-manufacturer remains closed on account of an order passed by any court or Board for Industrial and Financial Reconstruction or appellate authority or industrial and financial reconstruction shall be excluded.

8. The discontinuation of business was there on account of non-repayment of loan and the possession of the unit first taken over from the manufacturer by UPFC u/s 29 of the U.P. State Financial Corporation Act and the revisionist succeeded former manufacturer and applied to the officer competent to grant eligibility certificate under Clause (d) of Sub-section (2) within sixty days of the successor-unit for grant of exemption of unexpired period from the date of start of production by the successor-manufacturer which was duly entertained under the first proviso by the competent officer. By virtue of the second proviso the former manufacturer was treated as transferor and the successor-manufacturer was treated as transferee.

9. The grant of exemption certificate for the unexpired portion of period, of which exemption was granted, is subject to Sub-section (3) of Section 4A of the Act. Sub-section (3) of Section 4A reads as under:

(3) Where the Commissioner is of the opinion that the facility of exemption from, or reduction in the rate of tax obtained on the basis of an eligibility certificate referred to in Clause (d) of Sub-section (2) or on the basis of any eligibility certificate issued under any executive orders of the Government issued before or after September 13, 1985 has been misused in any manner whatsoever or there is any legal or factual error in issuing such eligibility certificate or that the new unit has committed breach of any of the conditions, subject to which the facility of exemption from, or reduction in the rate of tax was granted or that the new unit to which the eligibility certificate has been granted in accordance with the provisions of this Act is not entitled to facility under this section or is entitled to such facility for a lesser period or from a different date he may, by order in writing passed before or after the expiration of the period of exemption or reduction cancel or amend the eligibility certificate from a date specified in the order and such date may be prior to the date of such order, so however, that in cases of misuse or breach, the cancellation of eligibility certificate shall have effect not before the date of such misuse or breach:

Provided that no order under this sub-section shall be passed without giving the dealer a reasonable opportunity of being heard.

10. Under Sub-section (3) of Section 4A, the Commissioner is competent to cancel the licence if there is any legal error in issuing eligibility certificate after giving reasonable opportunity of being heard. The Commissioner cancelled the eligibility certificate of the revisionist on the ground of illegality that the certificate ought to have been processed and approved and then could have been granted by the officer competent to grant it. This view was affirmed in the appeal.

11. The eligibility certificate is to be granted according to the procedure prescribed. "Procedure prescribed" means prescribed by the rule, which is contained in Rule 25 of the Uttaranchal Trade Tax Rules, 1948. Rule 25 of the said Rules is reproduced here as under:

25. Grant of eligibility certificate.--(1)(a) The application for grant of eligibility certificate by a new unit or a unit which has undertaken expansion, diversification, backward integration or modernisation shall be submitted in Form No. ST-XLVI (in six copies in case of units with a fixed capital investment up to rupees 5 lakhs and in eight copies in case of units with a fixed capital investment exceeding rupees five lakhs), to the General Manager, District Industries Centre of the district in which the unit is situated and in the case of unit situated in any Industrial Development Authority Area to the Area Development Officer (Industry) of the said authority.

(b) The General Manager, District Industries Centre of the Area Development Officer (Industry) of the concerned Industrial Development Authority may require the unit to furnish any additional information within 60 days of the receipt of an intimation in this regard.

(c) If the application is incomplete or does not contain the required information, the unit may be asked to complete the application or furnish the required information within 60 days of the receipt of an intimation in this regard. If the unit fails to complete the application or furnish the required information or the additional information mentioned in Clause (b) within the prescribed time, the date on which the application is completed or the information or the additional information is furnished shall be treated as the date of application of such unit.

(2) The State Government may constitute the following committees for the disposal of application for grant of eligibility certificate:

(1) Secretaries, Committee.

(2) State Level Committee.

(3) Divisional Level Committee.

(4) Divisional Level Industrial Development Authority Committee.

(5) District Level Committee.

(6) District Level Industrial Development Authority Committee.

(3)(a) The application of the units with a fixed capital investment up to Rs. 5 lakhs shall be disposed of by the District Level Committee or, as the case may be, by the District Level Industrial Development Authority Committee.

(b) The application of the units having a fixed capital investment exceeding Rs. 5 lakhs shall be disposed of by the Divisional Level Committee or, as the case may be, by the Divisional Level Industrial Development Authority Committee.

(c) If the application of a unit is rejected such unit may submit an application for review to the same committee, within 30 days of the receipt of information of such rejection. The said committee after examining the relevant records and after giving a reasonable opportunity to the unit of being heard, shall decide the review application.

(d) If there is a difference of opinion on any matter among the members of the committee mentioned in Clauses (a) and (b) the matter shall be referred to the State Level Committee. The said committee shall, after examining the relevant records and after giving, if necessary, an opportunity to the unit of being heard, shall decide the matter.

(e) If there is difference of opinion among the members of the State Level Committee the matter shall be referred to the Secretaries, Committee. The said committee shall, after examining the relevant records and after giving, if necessary, an opportunity to the unit of being heard, decide the matter.

(f) The eligibility certificate in respect of the units having fixed capital investment up to Rs. 5 lakhs shall be issued under the signature of General Manager, District Industries Centre or, as the case may be, the Area Development Officer, (Industry) of the concerned Industrial Development Authority. The eligibility certificate of units with a fixed capital investment exceeding Rs. 5 lakhs, shall be issued under the signature of Additional or Joint Director of Industries of the range or, as the case may be, Joint Director or Additional Director (Industries) of the concerned Industrial Development Authority.

(4)(1) The application of the units shall be disposed of by the different committees constituted under Sub-rule (2) within three months after receiving the report of Trade Tax Department.

(2)(a) If such application is not disposed of by the committee within the prescribed period, the committee shall lose the right of disposal of such application.

(b) If such application is pending before the District Level Committee or the District Level Industrial Development Authority Committee, it shall be disposed of by the Divisional Level Committee or Divisional Level Industrial Development Authority Committee respectively.

(c) If such application is pending before the Divisional Level Committee or the Divisional Level Industrial Development Authority Committee it shall be disposed of by the State Level Committee notwithstanding anything contained in Clause (d) of Sub-rule (3).

12. The exemption to an individual unit is to be granted under the notification issued by the State Government under Sub-section (1) of Section 4A specifying in the notification goods manufactured under Sub-section (2) of Section 4A of the Act, if the unit fulfils other conditions for grant of eligibility certificate. An application

under form No. ST-XLVI in six copies in case of units with a fixed capital investment up to rupees five lakhs and in eight copies in case of units with a fixed capital investment exceeding rupees five lakhs to the General Manager, District Industries Centre of the district in which the unit is situated and in the case of unit situated in any Industrial Development Authority area to the Area Development Officer (Industry) of the said authority. The said application is to be disposed of by the Committee constituted under Sub-rule (2) of Rule 25 and eligibility certificate shall be issued under the signature of General Manager, District Industries Centre or, as the case may be, the Area Development Officer (Industry) of the concerned Industrial Development Authority of the units having fixed capital investment up to rupees five lakhs.

13. The eligibility certificate of the units exceeding rupees five lakhs shall be?" issued under the signature of Additional or Joint Director of the concerned Industrial Development Authority. Thus, there is clear-cut distinction between the authorities competent to issue the certificate and authorities empowered to receive application and call for further details.

14. Sub-section (2B) of Section 4A of the Act requires the successor-manufacturer to apply to the officer competent to grant eligibility certificate under Clause (d) of Sub-section (2) which provides that such officer (sic) in accordance with the procedure "as may be prescribed".

Under Clause (f) of Sub-rule (3) of Rule 25 the officer competent to issue the certificate is prescribed. Sub-section (2B) of Section 4A of the Act does not require the successor-manufacturer to apply to the officers mentioned in Clause (b) of Sub-rule (1) of Rule 25.

15. Sub-section (2B) of Section 4A of the Act deals with two conditions, firstly, where the exemption certificate has already been granted to the transferor-unit, secondly, where the exemption could be granted to the successor-manufacturer and has not been granted. The Legislatures have specifically provided for making an application to the officer competent to grant eligibility certificate under Clause (d) of Sub-section (2) of Section 4A with obvious reasons, where the eligibility certificate has already been granted on the decision of the committee referred in Sub-rule (2) of Rule 25 in favour of transferor-company, the officer competent to grant the eligibility certificate shall compute the unexpired portion of period during which the production was closed and after computing that period the certificate shall be issued by the officer competent to grant the eligibility certificate in favour of transferee/successor-manufacturer for the unexpired period from the date of production by the transferee/successor-manufacturer as the eligibility certificate was granted to the transferor-manufacturer in accordance with the procedure prescribed and in such cases the application need not be referred to the committee for considering and disposing of application for grant of eligibility certificate by the committee referred in Sub-rule (2) of Rule 25 of the Rules. In the second category of

cases where the eligibility certificate could be granted to the successor-manufacturer, and was not granted in favour of transferor-manufacturer, the application received under Sub-section (2B), the officer shall send the application to the committee referred under Sub-rule (2) of Rule 25 and committee shall dispose of application as per Section 4A in accordance with Rule 25 of the Rules as the words "could be granted" refer to the scrutiny of application for grant of eligibility certificate and to arrive at a decision as to whether the exemption should be granted or not. The officer referred in Sub-rule (3) of Clause (f) of Rule 25 shall issue certificate on the decision of committee only and not otherwise.

16. Here in the present case since the eligibility certificate was granted in favour of the transferor-manufacturer, the officer competent to grant eligibility certificate was required under Sub-section (2B) of Section 4A of the Act to compute the unexpired portion of the period and grant the exemption certificate for unexpired period as there was already approval of the committee in favour of the unit.

17. Thus, the certificate issued by the Joint Director (Industries) in the present case was perfectly legal and valid. The view taken by the Commissioner, Trade Tax, as well as the Appellate Tribunal is contrary to the clear provision of law contained in Sub-section (2B) of Section 4A of the Act read with Clause (f) of Sub-rule (3) of Rule 25 of the Trade Tax Rules.

Accordingly, the questions are answered in favour of revisionist and the revision is allowed. The order of the Commissioner, Trade Tax, Uttaranchal as well as the Appellate Tribunal is set aside. The grant of eligibility certificate by the Joint Director (Industries), Pauri Garhwal, is upheld.