

CASE NO.:
Appeal (civil) 6634 of 2003

PETITIONER:
Commissioner, Trade Tax, U. P.

RESPONDENT:
M/s The Dhampur Sugar Mills Ltd.

DATE OF JUDGMENT: 09/12/2004

BENCH:
S. N. Variava & Dr. AR. Lakshmanan

JUDGMENT:
J U D G M E N T

S. N. VARIAVA, J.

This Appeal is against the Judgment of the Allahabad High Court dated 16th May, 2002.

Briefly stated the facts are as follows.

M/s Dhampur Sugar Mills Limited [hereinafter called the 'Company'] is having its Registered Office at Dhampur, Bijnore District, U. P. It carries on business of manufacturing sugar. In 1991 it opened, at Dhampur, a unit manufacturing Chemicals. In 1993, it opened a unit manufacturing Particle Board at Agwanpur, Moradabad District, U.P. In 1993, it established another unit manufacturing Sugar at Rozagaon, Barabanki District and in 1995 it established a unit manufacturing Sugar at Asmoli, Moradabad District, U. P.

By a Notification dated 27th July 1991 certain exemptions were granted. The Company made an application in Form 46 before the General Manager, District Industries Centre, Bijnore, for exemption in respect of its Dhampur unit in Bijnore. It claimed an investment of Rs.11.93 crores.

On 16th September 1993 the Company made an application in Form 46 before the General Manager, District Industries Centre, Barabanki, in respect of the Rozagaon Sugar unit claiming an investment of approximately Rs.47 crores.

On 13th of January 1994, the Company made an application in Form 46 before the General Manager, District Industries Centre, District Moradabad, in respect of the Agwanpur unit claiming an investment of Rs.11.98 crores.

On 1st of February 1994 the District Level Committee of District Bijnore granted exemption to the Company in respect of the Dhampur unit to the extent of capital investment of Rs.7.61 crores. In pursuance of this decision, an Eligibility Certificate was issued on 9th February 1994 granting tax exemption/reduced rate of tax for a period of 8 years, i.e. 30th March 1991 to 29th March 1999, on a capital investment of Rs.7.61 crores. The certificate mentions two principal goods, namely, sugar and chemicals and one specific derivative, namely, Acetic Anhydride.

It appears that on 17th June, 1994 the Company filed an application before the Joint Director of Industries, Moradabad, protesting against the reduction of its claim for capital investment from Rs.11.93 to Rs.7.61 crores. There is a dispute whether such a review application was received. However, for our purposes, it is not necessary to go into this dispute. But it must be noticed that the only complaint was in respect of reduction of its claim for capital investment.

On 25th August 1994, an Eligibility Certificate was issued to the Agwanpur unit for tax relief for a period of 9 years, i.e. from 29th

September 1993 to 28th September 2002, or 125% of capital investment of Rs.7.89 crores.

On 13th November 1995, the Company filed an application in Form 46 to the General Manager, District Industries Centre, Moradabad, in respect of the Asmoli Sugar unit.

On 21st of February 1997, another Notification was issued in respect of units where the capital investment of Rs.50 crores or more had been made.

On 1st August 1997 the application by the Asmoli Sugar unit was rejected on the ground that sugar was an exempted commodity. There is a dispute as to whether this Order of rejection was communicated. However, for our purposes, it is not necessary to go into this controversy also.

On 10th of December 1997, a Government Circular was issued on the basis of a Judgment of the Allahabad High Court, clarifying that if the principal goods were exempt from the tax then the benefit of the Notification could not be granted to the bye-products also. However, on 10th of November 1998 on a reconsideration the Government clarified by another Circular that even if the principal goods is tax-free the exemption could be granted on the bye-products.

On 25th December 1998, the Respondent-Company made an application to the Joint Director of Industries, Moradabad Division, referring to its review application dated 17th June 1994. The Respondent-Company now applied for exemptions/tax benefits under the Notification dated 21st February 1997 for its units in Dhampur, Bijnore, Barabanki and Faizabad Districts. Thus this clearly was not a reminder of the application dated 17th June, 1994. It was in effect a fresh application making claims in respect of the above-mentioned Units. This application was rejected on 30th March 2000. Against the rejection, the Respondent-Company filed Appeal No.112 of 2000 before the Trade Tax Tribunal. This Appeal came to be rejected on 20th March 2001.

In the meantime, on 5th of November 2001 an Eligibility Certificate was issued to the Rozagaon Sugar unit granting relief for a period of 14 months, i.e. from 24th January 2001 to 20th March 2002 or 125% of the capital investment of Rs.20.30 crores.

Against the rejection of its Appeal by the Trade Tax Tribunal, the Company filed a Trade Tax Revision in the High Court. This has been allowed by the High Court by the impugned Judgment.

The question before this Court is whether the High Court has erred in allowing such a belated joint application when the Company itself had, on earlier occasions, filed separate applications in respect of each of its units which applications had been allowed partially by various Orders set out hereinabove. It must be noted that the only provision for a review is under Rule 25(3)(c) wherein a review can be filed within 30 days. It is clear that the application made on 25th December 1998 was a belated application and it was not a review.

It was feebly suggested that this was an application under Section 22 of the U.P. Trade Tax Act, which reads as follows:-

"22. Rectification of mistakes

(1) Any officer or authority, or the Tribunal or the High Court may, on its own motion or on the application of dealer or any other interested person rectify any mistake in any order passed by him or it under this Act apparent on the record within three years from the date of the order sought to be rectified:

PROVIDED that where an application under this sub-section has been made within such period of three years, it may be disposed of even beyond such period:

PROVIDED FURTHER that no such rectification, as has the effect of enhancing the assessment, penalty, fees or other dues shall be made unless reasonable opportunity of being heard has been given to the dealer or other person likely to be affected by such enhancement.

(2) Where such rectification has the effect of enhancing the assessment, the assessing authority concerned shall serve on the dealer a revised notice of demand in the prescribed form and therefrom all the provisions of the Act and the rules framed thereunder shall apply as if such notice had been served in the first instance."

Clearly, Section 22 has no application on these facts.

Many of the matters included in this application were not part of any earlier orders and were not even subject-matter of earlier applications. No Appeals had been filed against the issuance of the Eligibility Certificates referred to hereinabove. Clearly the Company could not have maintained such an application made at such a belated stage. The lower authorities had rightly rejected the application. It was thus not open for the High Court to interfere in the manner it has purported to do. The Judgment of the High Court is, to say the least, most surprising and entirely unsustainable.

Accordingly, the impugned Judgment is set aside. The application made by the Respondent-company on 25th December 1998 will stand rejected.

We, however, clarify that whatever benefits have been granted to the Respondent pursuant to their earlier applications will continue to be available to the Respondent.

The Appeal stands disposed of accordingly. There will be no order as to costs.