Case :- WRIT TAX No. - 615 of 2018
Petitioner :- M/S Lg Electronics (India) Pvt Ltd
Respondent :- State Of U.P. And 04 Others
Counsel for Petitioner :- Nishant Mishra
Counsel for Respondent :- C.S.C.,Anjali Upadhya,Ramendra Pratap Singh

Hon'ble Bharati Sapru, J.
Hon'ble Piyush Agrawal, J.

(Delivered by Hon'ble Piyush Agrawal, J.)

We have heard Mr. Tarun Gulati along with Mr. Nishant Mishra, learned counsels for the petitioner, Mr. C.B. Tripathi, Special Counsel for the respondent Nos. 1,2 & 5 and Mr. Ramendra Pratap Singh for the respondent Nos. 3 &4.

By means of present writ petition the petitioner prays for quashing of the notice dated 2.4.2018 issued by the Commissioner of Commercial Tax, U.P., Lucknow under Section 4-A(3) of U.P. Trade Tax Act, 1948 proposing to cancel/recall the order No. 2926 dated 19.2.2018 passed by the Additional CEO/ Ex-Officio Additional Director Industries giving

effect to the decision dated 25.10.2017 passed by the Divisional Level Industrial Development Authority Committee.

The facts of the case are that the petitioner is a registered company incorporated under Indian Companies Act and engaged in the business of manufacture and sales of electric and electronic goods such as Colour Television, Washing Machine, Printed Circuit Board, Microwave, Refrigerator etc.

The petitioner has established a new unit and availed exemption under Section 4-A of the U.P. Trade Tax Act, 1948 under expansion, diversification, modernization or backward integration as provided under the Act /notification.

The State Government from time to time has issued various notifications granting exemption from payment of tax to the new unit or to the units undertaken expansion, diversification, modernization within a period prescribed and condition mentioned there

under.

The petitioner established a new unit with the investment of more than Rs. 50 crores and commenced its commercial production on 9.3.1998. The petitioner was granted Eligibility Certificate for a period of 15 years from the date of first sale i.e. 27.3.1998 or to the extent of 200% of the fixed capital investment i.e. Rs. 1,02,75,90,892/-, whichever is earlier. The petitioner undertook the expansion within a period of five years from the date of original investment enhancing monetary limit of exemption mentioned in the Eligibility Certificate dated 23.10.1999 was enhanced to Rs. 2,03,73,52,192/- for production of Colour Television, Air Conditioner and Washing Machine.

By order dated 7.3.2003 passed by respondent No. 4, further investment of Rs. 39,47,00,000/-made within the period of 2001-02, which further enhanced the fixed capital investment of Rs.79,94,00,000/- was

added in the Eligibility Certificate dated 23.10.1999.

The petitioner further made an investment of Rs. 14,45,08,638/- for manufacture of Printed Circular Board (PCB) and Microwave by order dated 27.9.2000 in turn the fixed capital investment was enhanced by Rs. 28,90,17,276/- and exemption was granted for a period of ten years i.e. from 4.12.1998 to 3.12.2008 and 12.2.1999 to 11.2.2009 for PCB and Microwave respectively.

The petitioner has also undertaken expansion from manufacture of Refrigerator and after fulfilling all the conditions as mentioned in the notification applied for granted of exemption from payment of Sales Tax.

The Additional Director, Industries by order dated 12.5.2003 granted exemption for the period of fifteen years from the date of first sale i.e. 10.6.2001 or 200% of the fixed capital investment i.e. Rs. 75,76,96,000/-

whichever is earlier.

As the petitioner, during the period 2001-2002 to 2005-06 made additional fixed capital investment of Rs. 1,13,47,48,270/- in plant and machinery for manufacture of Refrigerator, the same was not added in the fixed capital investment while granting Eligibility Certificate dated 12.5.2003, therefore, moved an application for review under Rules 25(3)(C).

By order dated 25.4.2008 the review application of the petitioner was partly allowed and fixed capital investment of Rs. 87,91,30,721/- was allowed as additional fixed capital investment and 200% of such FCI i.e. Rs. 1,75,82,61,442/- was directed to be added in the monetary limit of exemption in Eligibility Certificate dated 12.5.2003.

The investment of Rs. 19,99,91,721/- made by the petitioner in moulds, dyes and jigs which was given to vendors/suppliers for manufacture of components to be used in the manufacture of Refrigerator, was rejected. The

reason given for rejecting the said investment, was that the petitioner has not used these above items directly within the factory for production but, the same was given to its vendors and suppliers from manufacture of components.

The petitioner filed a review application under Rule 25(3)(C) before the authorities. The respondent by order dated 11.7.2013 rejected the review application of the petitioner on the ground that the Tribunal in the case of Samsung India Electronics Limited, had rejected the claim of exemption in respect of investment made on moulds, dyes and jigs which was given to the suppliers for use outside the factory.

The petitioner assailed the said order by way of appeal before Full Bench of Commercial Tax Tribunal, U.P., Lucknow. The Tribunal by its order dated 17.12.2013 allowed the appeal of the petitioner and has remanded the matter to respondent No. 3 with the direction as to make

an inquiry to the effect that moulds, dyes and jigs were being exclusively used for manufacture of components to be used by the petitioner along with any other documents or materials.

In pursuance of the remand order dated 17.12.2013, a show cause notice dated 2nd December, 2014 was issued seeking explanation from the petitioner to clarify and provide material to show as to how moulds, dyes and jigs given to its suppliers/vendors for manufacture of components to be supplied only to the petitioner and such manufactured components were exclusively used by the petitioner. In reply to the said show cause notice the petitioner submitted a detailed reply along with the affidavits of the suppliers and various material to demonstrate moulds, dyes and jigs provided by it were used for manufacture of components for the petitioner only and such manufacture components were supplied back to the petitioner only and not to any other person. The petitioner also filed

assessment orders of such suppliers and vendors.

The Deputy Commissioner, Industries Center, G. B. Nagar also issued notice to the petitioner on 12.1.2015. The petitioner filed detail reply on various dates to bring on record all material documents and evidence to demonstrate that the moulds, dyes and jigs provided to its vendors for manufacture of components were used exclusively by such vendors for manufacture of component to be supplied back only to the petitioner.

The General Manager, District Industries Center (in short "G.M.D.I.C."), Gautam Budh Nagar, after examining the assessment orders, affidavits and material brought on record specifically submitted his report mentioning moulds, dyes and jigs provided by the petitioner were used for manufacture of components for the petitioner only and such manufacture components were supplied back to the petitioner only and not to any other

person by such vendors.

The Joint Commissioner (Executive) also submitted its report after considering agreement executed between the petitioner and the vendors/suppliers and other material on record which goes to show that moulds, dyes and jigs were used exclusively for manufacture of components of the petitioner and after manufacturing the components, same was used by the petitioner only. Therefore, the petitioner is entitled for addition of investment of Rs. 19,93,91,721/- in the fixed capital investment.

Thereafter, the Divisional Level Committee by order dated 25.10.2017 considered all reports of G.M.D.I.C. and Joint Commissioner (Executive) and material brought on record and directed the addition of investment of Rs. 19,93,91,721/- made towards moulds, dyes and jigs in the fixed capital investment and modified the Eligibility Certificate.

The Commissioner-respondent No. 2,

issued the impugned notice dated 2.4.2018 under Section 4-A(3) of the U.P. Trade Tax Act. Hence, the present writ petition.

It has been argued by counsel for the petitioner that in pursuance of the Tribunal's remand order the Divisional Level Industrial Development Authority Committee has passed the order after due verification of material on record i.e. Chartered Accountant Certificate, agreement with the supplier, affidavit of the suppliers, assessment orders of the supplier, supplier invoice, supplying component back to the petitioner etc. Thereafter, a detailed inquiry was made by the G.M.D.I.C., Gautam Budh Nagar and Joint Commissioner (Executive), Commercial Tax, Gautam Budh Nagar and these two authorities have submitted a detailed report in favour of the petitioner. These reports have not been disputed by the respondent No. 2. It was also argued that no contrary evidence has been produced on record by respondent No.2 disputing the material brought on record by

the petitioner to show the order granting addition of investment made towards moulds, dyes and jigs were not exclusively used for manufacture of components of the petitioner by the respective vendors.

It was also argued by the counsel for the petitioner that the order of the Tribunal has become final. The petitioner is legally entitled for addition of investment made in moulds, dyes and jigs, as provided under Section 4-A of the U.P. Trade Tax Act, 1948 and the respondent No. 2 can not to be permitted to re-agitate the proceeding again under Section 4-A(3) of the Act.

The counsel for the petitioner has relied upon various judgments, which are quoted as below:-

(i) In the case of *Mansarovar Bottling Co. Ltd. vs. CTT, 1999 UPTC 864*, this Court has held in para 6 as under:

"*6. Thus, by the amendment it has been clarified that the Commissioner can correct a legal or factual error made by the authority granting the eligibility certificate. Thus, we have two provisions on the statute book; one is section 10(2) which provides for an appeal to the Tribunal by any person aggrieved*

by an order granting or refusing to grant an eligibility certificate and under which power the Tribunal can correct all errors whether of law or of fact made by the authority concerned and we have also sub-section (3) of section 4-A which confers jurisdiction on the Commissioner to correct legal or factual error in issuing the eligibility certificate. Patently, it is not a case of misuse of a facility and by cancelling the eligibility certificate on the ground that Coca Cola and Fanta were of the same nature as the products being manufactured by the dealer from before, the Commissioner purports to rectify a legal or factual error in the issue of the eligibility certificate. The question is whether the Commissioner having a right of appeal before the Tribunal has also the right to bring about the same result by himself exercising the powers under section 4-A(3) of the Act. Learned Standing Counsel asserted that the two provisions being placed at different places confer powers on different authority to bring about the same result and that the Commissioner instead of filing an appeal to the Tribunal can himself rectify the mistake of the Tribunal irrespective of the nature of the mistake. In my view such an interpretation of the law is not feasible. As pointed out above, the Divisional Level Committee consists of senior officers and is presided over by an officer of the same rank as the Commissioner and it is inappropriate to assume that under section 4-A(3) of the Act the Legislature intended to vest in the Commissioner the powers of an appellate authority that could correct all mistakes whether of law or of fact in the matter of the grant of an eligibility certificate. If that be the position, the provisions of section 10(2) of the Act in so far as they provide an appeal against an order granting or refusing to grant an eligibility certificate would become redundant and the Commissioner would become a Judge in his own cause. In my view the two provisions have to be given a harmonious interpretation and when the provisions of sub-section (3) confer powers of correcting legal or factual error made by the authority granting an eligibility certificate, this power has to be restricted

to clerical or arithmetical errors which are patent and apparent from record and not errors about which there can be a rational debate. As stated above, in the present case, there is a debate between the parties as to whether the new products Coca Cola and Fanta which admittedly have different composition from the earlier products can be described to be goods of the same nature or they are of a nature different from those manufactured earlier and since the notification dated July 27, 1991 also provides for exemption in the case of a unit undertaking expansion, there has also to be a debate whether even if the two type of goods were of the same nature the eligibility certificate granted to the revisionist should have been for expansion and not for diversification. Such an assumed mistake on which there is debate, and on which aspect of the matter, the Divisional Level Committee has taken a conscious decision, cannot be said to be an error apparent on the face of record and free from debate and the Commissioner can have no jurisdiction under section 4-A(3) of the Act to correct the error himself and must avail the procedure of appeal to the Tribunal. In my view, therefore, the Commissioner had no jurisdiction to correct the alleged error and cancel the eligibility certificate on the ground that the new products were of the same nature as the products being manufactured from before. It may be mentioned that there was debate between the learned counsel for the parties whether Coca Cola and Fanta were of the same nature as the other products and reference was made to Malviya Chemicals & Pharmaceuticals (P.) Ltd., Ghaziabad v. State of Uttar Pradesh, [1991] 83 STC 436 (All.) : 1991 UPTC 830 in which an existing unit manufactured Paracetamol. It established a new unit for the manufacture of antibiotics and this Court has held that the two things were different. Whether the two products are of the same nature has to be determined on the facts of each individual case and in view of my conclusion that the Commissioner had no jurisdiction to invoke this ground, I do not think it necessary to go into the question whether Coca Cola

and Fanta were of a different nature or of the same nature as the goods produced from before.

(E*mphasis Supplied*)"

(ii) Further, in the case of *Sunny Packagers Pvt. vs. State of U.P., 2015 (85) VST 253,* in para 14, the principle laid down in Mansarovar's Case (supra) was agreed and followed. Further in the Judgment of *Chetna Chemcials Pvt. Ltd. vs. CCT, MANU/UP/0165/2007*. This Hon'ble at para 18 has noted that the scope of jurisdiction of the Commissioner is limited to correction of arithmetical or clerical errors as stated in *Jai Duraga Detergents, 1994 SCC Online All 726* [which was reiterated in Mansarovar Bottling (supra)] has been accepted by the Department and a Circular to this effect has been issued by it. In view of the above noted judgments, there is no dispute on the fact that the jurisdiction under Section 4A(3) is extremely limited and cannot be exercised in debatable cases.

(iii) Reliance in this regard is also placed on *Kumar Fuels vs. State of UP. 1986 SCC Online All 801*

"*18. We are unable to accept the contention. The explanation in the above notification sets down the requisite provision for the grant of exemption or the facility of reduced rate of tax for such industrial units which fulfil the conditions. This power is to be exercised by the State Government through Directorate of Industries, Uttar Pradesh, as a small, handloom or handicraft industry or an industrial licence granted by the Iron and Steel Controller or the Textile Commissioner or the Director,-Sugar, or the Director-General of Technical Development or the Government of India. There is nothing in the above notification to show that the above power is to be exercised by the Sales Tax Commissioner or any of the officers of the sales tax department. If a party does not fulfill the requirements for the grant of exemption or reduced rate of tax, it would not be granted such exemption or even the eligibility*

certificate. In case it was wrongly issued, the power to cancel it would be with the State Government or the officers mentioned above. It is well established that the power to grant includes the power to cancel. The Sales Tax Officer or the Sales Tax Commissioner have no such power to cancel the eligibility certificate, for they do not have the power to grant the same. The Commissioner of Sales Tax has a limited power to cancel the eligibility certificate, where there is a misuse of facility for exemption or grant of a reduction of tax. But that is an entirely different matter than the power to cancel eligibility certificate on the ground that it was obtained on wrong premises. That power vested only in the State Government."

(iv) Further, this Hon'ble Court in the case of Anil Kumar Ramesh Chandra Glass vs. State of U.P. 2000 (119) STC 305 has held in para 10 as under:-

"10. It is an admitted position that the Joint Director of Industries, Agra, recommended exemption from sales tax to the petitioners' unit for a period of five years with effect from September 16, 1983. It is also admitted position that no proceeding under section 4-A(3) of the Act has been initiated against the petitioners for having either misused or committing any breach of the eligibility certificate and thereby rendering themselves ineligible to get benefit of facility of exemption from the payment of sales tax. It is not, in dispute that on the application of the petitioners with full particulars to the General Manager, District Industries Centre, who after examination of all available material made recommendation in favor of the petitioners to the Joint Director of Industries for grant of eligibility certificate in favour of the petitioners' unit. The Joint Director of Industries who was empowered to grant such certificate, having been satisfied that the petitioners' unit is entitled to get benefit under section 4-A of the Act, after following the prescribed procedure, issued the certificate. The only stand taken by the respondents before this Court is that

the date of production of the unit furnished by the petitioners was wrong, hence they cannot get benefit of the certificate based on wrong information.

11. The Commissioner of Sales Tax or the Officers of the Sales Tax Department have not been empowered to issue eligibility certificate under section 4-A of the Act granting exemption from the payment of sales tax nor they have been given power to cancel or amend the same except the Commissioner who has been given limited power under section 4-A(3) to cancel where it has been misused or breached and not otherwise. The proviso to section 4-A(3) of the Act further provides that no order under subsection (3) cancelling the eligibility certificate shall be passed without giving the dealer a reasonable opportunity of being heard. Learned Standing Counsel could not place before us any provision in the Act which empowers the Sales Tax Officer to examine the validity of eligibility certificate granted under section 4-A of the Act or to cancel the same and, therefore, respondent No. 2 had no jurisdiction to ignore the eligibility certificate issued under section 4-A of the Act so long it was not cancelled or withdrawn by the competent authority. The contention of the learned Standing Counsel that since by suppressing the material facts, the petitioners have obtained the certificate, in our view, does not give handle to the Sales Tax Officer to ignore the certificate until it is cancelled by the competent authority, i.e., the State Government or any officer empowered by the State Government in this regard. In our view, if an applicant or industrial unit has wrongly obtained eligibility certificate by furnishing wrong information, it is open to the Sales Tax Officer to move the authority who has granted the eligibility certificate or any appropriate authority empowered in this regard to review or to cancel the same but he cannot embark upon a fresh enquiry for himself as to whether the petitioners were entitled to the grant of eligibility certificate or not. Further till the certificate is not

cancelled, it is binding on the taxing authority and no tax can be realised from such small-scale industry on its turnover. Even the Sales Tax Commissioner has limited power to cancel the eligibility certificate only where the facility of exemption has been misused but not on the ground that it has been obtained on wrong premises by furnishing wrong information.

(v) Similar view was taken by a division Bench of this Court in the case of Kumar Fuels, Pucca Bagh, Puranaganj, Rampur v. State of Uttar Pradesh [1986] 63 STC 467 : 1986 UPTC 357 fact of which was more or less similar to the case in hand wherein it has been held as under:

...”

It was asserted by the petitioner counsel that in the both the aforementioned judgments, it was held that since the issue of exercise of power under Section 4A is a jurisdiction issue, the alternate remedy under the Trade Tax Act will not be an impediment for this Hon'ble Court to exercise writ jurisdiction against a notice issued under Section 4-A(3).

Counsel for the respondent Mr. C.B. Tripathi, has argued that the notice under Section 4-A(3) had rightly been issued as the petitioner was not entitled for grant of exemption on the investment made in moulds,

dyes and jigs, which were not used by the petitioner within its factory but, the same was given to various vendors situated outside the factory premises.

He further argued that the Tribunal by order dated 17.12.2013 has remanded the matter back to Divisional Level Committee to re-examine the matter and to make an inquiry in detail which has not been done. But, still the benefit of additional investment made towards moulds, dyes and jigs have been allowed and therefore, the Commissioner of Commercial Tax- respondent No. 2, is empowered under the Act to initiate proceeding under Section 4-A(3) of the Act.

In support of his contention, he had relied upon the judgments passed in the case of *Alpha Chem And Another vs. State of U.P. And Others reported in 1999 (114) STC page 472, Gurunank Surgical Private Limited v. DLC, 1991 UPTC 622*.

It was further argued by Mr. Tripathi that

only show cause notice has been issued and if aggrieved there is remedy to file an appeal before the Tribunal and writ petition is not maintainable. He relied upon the judgment of Apex Court reported in AIR 2013 SC 3518 CIT vs. Vijaybhai N. Chandani.

Mr. R.P. Singh, counsel for the Respondent Nos. 3 & 4, has relied upon the report of G.M.D.I.C. and argued that District Level Committee has rightly granted the Eligibility Certificate, as there is no infirmity in the order

We have heard the counsel for the parties and perused the record.

We also take judicial notice that the exemption from payment of Sales Tax was initially granted by the State Government through U.P. Act No. 22 of 1984 with effect from 12.10.1983 by introducing Section 4A which provides that "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 in any districts or parts of districts in particular, it may on application or otherwise, [in any particular case or generally, by notification,] declare that the turnover of sales in respect of such goods by the manufacture thereof shall, during such period not exceeding [ten 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 manufacture 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, by exempt from the sales tax [whether wholly or partly] or be liable to tax at such reduced rate as it may fix."

The Sale Tax regime came to an end on 13th

May, 1994. Thereafter, Trade Tax regime came into force by U.P. Act No. 31 of 1995 with effect from 14.5.1994 but, the scheme of the erstwhile that continued without any change in exemption scheme under Section 4A of the Act. This continued up to 31st December, 2007 from 1st January, 2008. U.P. VAT Act was introduced in which Section 42 provides for treatment of industrial units availing exemption or reduction in the rate of tax under erstwhile Act and sub-section (4) of Section 42 provides that the units were required to deposit the tax and on the strength of entitlement certificate they shall be entitled for exemption by way of refund of net tax paid along with the return of the Tax period in prescribed manner and on fulfilling the conditions.

In other words, under U.P. VAT Act regime the units were entitled for exemption only after they deposit the Tax and then a refund of only net tax paid only with the return of the remaining amount mentioned on the

Entitlement Certificate were refunded or within the period as mentioned therein.

Now, after introduction of Goods and Service Tax (in short “GST”) with effect from 1st July, 2017 there is no scheme of exemption. The matter in question relates to the grant of exemption initially granted under Sales Tax Act then under Trade Tax Act and then under U.P. VAT Act but, no exemption under GST Act. It is not appropriate to accept the contention of respondent that the petitioner has an alternative remedy and the petitioner be relegated back as if aggrieved by the order passed by the Commissioner, as presently only notice under Section 4A-(3) of the Act is issued.

The case of grant or rejection of exemption, should be decided at the earliest so that businessman can plan his business accordingly. The case in hand shows that four tax regime have changed and presently country in under new G.S.T. Regime, the old

pending cases should be decided at the earliest which will be in the interest of both the parties i.e. petitioner as well as the State and we, therefore, reject the contention of the respondent for relegating back the petitioner to approach the Commissioner in pursuance of notice issued under Section 4-A(3) of the Act.

Now, we proceed to examine the matter on merit.

It is admitted between the parties that the investment of Rs. 19,93,91,721/- has been made by the petitioner is Fixed Capital Investment towards moulds, dyes and jigs. These items have been given by the petitioner to its vendors to use for manufacture of components.

The Tribunal by order dated 17.12.2013 has remanded the matter back to Divisional Level Committee with the direction to make an inquiry as to whether the moulds, dyes and jigs which were given by the petitioner to various vendors for manufacture of

components were exclusively been used for manufacture of components of the petitioner and after manufacture of such components were supplied back only to the petitioner.

After remand order of the Tribunal, notices were issued by G.M.D.I.C. and Joint Commissioner (Executive), respondent Nos. 4 and 5. A detail investigation and inquiry of the record supplied by the petitioner (i.e., certificate of Chartered Accountant, agreement with the buyers, affidavits, suppliers invoices, list of moulds specification design & specification of parts to be manufactured from moulds and disputed assessment orders, vendors suppliers invoices etc.) were made by the two said authorities.

The two authorities i.e. G.M.D.I.C. and Joint Commissioner (Executive) had submitted their independent reports in detail in favour of the petitioner. In their report it has specifically been mentioned that moulds, dyes and jigs were used exclusively from manufacture of

components of the petitioner and after manufacturing the component, same were used by the petitioner only.

The Divisional Level Committee, after considering the report submitted by the two independent authorities has rightly directed to include the investment made by the petitioner in fixed capital investment towards moulds, dyes and jigs, which were given by the petitioner to various vendors for manufacture of components, which were exclusively being used for manufacture of components of the petitioner and, thereafter, manufacture of such components were supplied back only to the petitioner.

The detailed inquiry has been conducted by the competent authority. Neither any adverse material nor any documents were brought on record to support that the moulds, dyes and jigs given by the petitioner to its vendors were not exclusively being used for manufacture of components of the petitioner and after such

manufacture components were not supplied back to the petitioner but, to some other refrigerating company.

The commissioner- respondent No. 2 has not disputed the reports submitted by the two authorities i.e. G.M.D.I.C. and Joint Commissioner (Executive) respondent Nos. 4 and 5 respectively.

The Commissioner while exercising the power under Section 4-A(3) by way of impugned notice has only alleged the inquiries has not been properly made as per the direction of the Tribunal's order dated 17.12.2013.

After the remand order, the record shows various documents, certificates, aggregate with the suppliers affidavit, supply invoices, list of moulds, specific design and specific of parts to be manufactured from moulds, Chartered Accountant Certificate, assessment orders and vendor supply invoices etc. were brought on record and the same was duly verified by the two independent authorities i.e.

G.M.D.I.C. and Joint Commissioner (Executive), respondent Nos. 4 and 5, no discrepancy whatsoever, has been pointed out in their reports.

The Hon'ble Supreme Court in the case of *Vadilal Chemicals Ltd. vs. State of A.P. And others* reported in (2005) 6 SCC 292 while entertaining the writ petition has held in paragraph Nos. 12, 13, 18, 22 and 23 as under:-

> *"12. The appellant replied to the show cause notices in which the jurisdiction of the DCCT to issue the notices was questioned. It was clarified that the appellant was liable to duty under the Central Excise Tariff Act 1985 and that the appellant had been paying 16% Excise Duty on both Anhydrous Ammonia and Liquor Ammonia manufactured by it in accordance with the procedure prescribed under that Act. The details of the processes undertaken in producing the products were also given. It was also drawn to the attention of the DCCT that the authority to determine the eligibility under the G.O. Ms. was not the Commercial Taxes Department, but the Department of Industries & Commerce.*
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> *13. Subsequently, the appellant filed a writ petition in the Andhra Pradesh High Court for a declaration that the appellant was entitled to the benefits notified by the 1993 G.O. and that the pre-revision show cause notices issued by the DCCT for the years 1995-1996 up to the 1999-2000, were illegal, void and unenforceable.*

18. ..... In the present case, the grant of the eligibility certificate was not the outcome of an unconsidered decision based on extraneous considerations. The matter was considered in depth and sanctioned by the District Level Committee of which, as we have already noted, the DCCT was a part. The appellant had made a full disclosure of the process undertaken in respect of which sales tax exemption was granted. No malafides has been alleged against the appellant nor is it the case of the respondents.

22. Furthermore, under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. The procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of Industries & Commerce by issuing an Eligibility Certificate. There was no other method prescribed under the scheme for determining an industrial unit's eligibility for the benefits granted. The Department of Industries & Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same.....

23.....The only question was what was the proper conclusion to be drawn from these. The Department of Industries and Commerce which was responsible for the issuance of the 1993 G.O. accepted the appellant as an eligible industry for the benefits. Apart from the fact that it can be assumed that the Department of Industries was in the best position to construe its own order, we can also assume that in framing the scheme and granting eligibility to the appellant all the departments of the State Government involved in the process had been duly consulted. The State,

which is represented by the Departments, can only speak with one voice. Having regard to the language of the 1993 G.O. it was the view expressed by the Department of Industries which must be taken to be that voice."

In view of the above judgment we look into the background of the present case which is apparently clear that District Level Committee, respondent No. 3 after considering the report submitted by G.M.D.I.C. and the Sales Tax department i.e. Joint Commissioner (Executive) respondent Nos. 4 and 5 have rightly came to the conclusion by including investment made by the petitioner in moulds, dyes and jigs in the fixed capital investment.

In other words, there is no infirmity in the order of District Level Committee (Respondent No. 3) in addition of Rs. 19,93,91,721/- in the monetary limit of exemption mentioned in Eligibility Certificate dated 12.05.2013.

The power of the Commissioner under Section 4-A (3) is not in dispute in the present case but, such a power has to be exercised judicially only. The judgment relied upon by

the parties are not of any help.

The Tribunal while remanding the matter back to the Divisional Level Committee, has relied upon the judgment passed in Appeal No. 38 of 2000 M/s Honda CL Cars India Limited vs. Commissioner Trade Tax U.P., Lucknow wherein the similar controversy has been decided in favour of the assessee.

Once a legal issue which was already settled by judicial pronouncement in the case of Honda CL Cars (supra) the same cannot be permitted to be re-agitated by using the power under Section 4-A(3) of the Act.

If the respondent No. 2 was aggrieved with the order passed by the Tribunal dated 17.12.2013, it was always open for them to file a revision under Section 11 of U.P. Trade Tax read with Section 58 of U.P. VAT Act before the High Court.

Once the respondent No. 2 chooses not to file revision before the High Court against the Tribunal's order of remand dated 17.12.2013,

the same cannot be permitted to re-agitate the matter by way of a proceeding under Section 4A-(3) of the Act.

Further, the Commissioner-respondent No. 2, even could have filed appeal under Section 10(2) of U.P. VAT Act before the Full Bench of Tribunal against the order dated 25.10.2017 passed by Divisional Level Committee. The Tribunal is a superior Authority than the Commissioner. In an appeal by the Commissioner the Tribunal may upheld the grant of an eligibility certificate or can direct to modify Eligibility Certificate.

In view of the above stated facts, the Commissioner has not exercised its power judicially in issuing the impugned notice dated 02.04.2018 under Section 4-A(3) of the Act.

The impugned notice dated 02.04.2018 is here by quashed and writ petition is allowed.

Order date: 12.4.2019

Sushma