

STATE OF UTTAR PRADESH & ORS.

v.

M/S. VAM ORGANIC CHEMICALS LIMITED
(Civil Appeal No. 1929 of 2004)

FEBRUARY 26, 2010

[S.H. KAPADIA AND AFTAB ALAM, JJ.]

U.P. Trade Tax Act, 1948:

ss. 4-B(2) and (4)(ii) proviso – Amendment of Recognition Certificate – Effective date – Writ petitions challenging show-cause notices issued to assessees for deletion of high speed diesel oil (HSD) from Recognition Certificates, allowed by High Court – HELD: High Court, without examining the nature of the power of Assessing Authority u/s 4-B(4)(ii), intervened at the show cause notice stage – Assessing Authority is vested with discretionary power to amend Recognition Certificate for which it has to give the assessee a reasonable opportunity of being heard – It is for this reason that the show cause notice was issued – However, the stand of Revenue that it seeks to delete HSD on the ground of mistake, is not tenable – ‘Rectification’ is different from ‘amendment’ – The word ‘rectification’ does not find place in the proviso – When a Recognition Certificate is issued to a dealer, he is given the benefit of concessional rate which cannot be withdrawn retrospectively – Matters remitted to Assessing Authority to treat the show cause notices as issued for purpose of amending the Recognition Certificate and decide the same in accordance with the procedure laid down in s.4-B(4)(ii) – Assessing Authority would also decide de novo the cases in which it has passed adjudication orders, and if an order amending Recognition Certificate is issued, the same will operate only from the date of issuance of show cause notice – Central Sales Tax Act, 1956 – s.7.

A The respondents, manufacturers of notified
chemicals, were given central registration u/s 7 of the
Central Sales Tax Act, 1956 and also Recognition
Certificates u/s 4-B of the Uttar Pradesh Trade Tax Act,
1948 for purchase of high speed diesel oil (HSD) at
B concessional rates. However, pursuant to the circular
dated 20.6.2000 issued by the Additional Commissioner,
Trade Tax, Meerut, U.P., notices were issued to the
respondents for deletion of HSD from their Recognition
Certificates. The writ petitions of the respondents
C challenging the show cause notices were allowed by the
High Court.

 In the instant appeals filed by the Revenue, the
question for determination by the Court was: Whether the
Department was right in issuing notices calling upon the
D Companies to show-cause as to why HSD should not be
deleted as an item from their respective Recognition
Certificates issued u/s 4-B(2) of the Uttar Pradesh Trade
Tax Act, 1948?

E Disposing of the appeals, the Court

 HELD: 1.1. The High Court, in the instant case, has
not examined the nature of the power exercised by the
Assessing Authority u/s 4-B(4)(ii) of the Uttar Pradesh
Trade Tax Act, 1948, and intervened at the show-cause
F notice stage. Power to grant exemption from payment of
duty or to pay concessional duty is expressly conferred
on the Assessing Authority. It is a case of conditional
exemption. Under s.4-B(4)(ii) of 1948 Act, the Assessing
Authority is vested with discretionary power to amend a
G Recognition Certificate granted under sub-section (2) of
s. 4-B of 1948 Act either on its own motion or on the
application of the dealer, for any sufficient reason. This
pre-condition of “sufficiency of reasons” requires a
show- cause notice to be given to the dealer in whose
H favour a Recognition Certificate exists, calling upon him

to show-cause as to why an item should not be deleted in a given case. Further, under the proviso to s.4-B(4)(ii) of 1948 Act, the words used are "no recognition certificate shall be cancelled or amended by Assessing Authority of its own motion except after reasonable opportunity of being heard". Therefore, each case needs to be examined by the Assessing Authority if it seeks to exercise its authority to delete an item from a Recognition Certificate. Same is the position if the Assessing Authority seeks to cancel a Recognition Certificate for the reasons indicated in the said sub-section. Not only that, while amending or cancelling a Recognition Certificate, the Assessing Authority is also required to give reasons for amending or cancelling the existing Recognition Certificate or for deleting an item therefrom. [Para 12-15] [11-A-B; 12-C-D, G-H; 13-A-C]

1.2. It is important to note that the word "rectification" does not find place in the proviso to s.4-B(4)(ii). Conceptually, the word "rectification" is different from the word "amendment". This point is relevant because, in the instant case, the stand of the Department is that HSD is inserted in the Recognition Certificate by mistake and it seeks to delete that item on the ground of mistake. That would not be possible. When a Recognition Certificate is issued, a benefit of concessional rate of tax is given to the dealer. He arranges his business affairs on those lines. Therefore, that benefit cannot be withdrawn retrospectively. Such benefit can be withdrawn, at the highest, from the date of the show-cause notice when the Assessing Authority proposes to delete an item from the Recognition Certificate. Such a show-cause notice has been given in each case. Accordingly, such show-cause notice is for amending the Recognition Certificate. [Para 15] [13-C-F]

1.3. All these cases are remitted to the Assessing Authority with a direction to treat the show-cause

- A notice(s) issued for the purposes of amending the existing Recognition Certificate(s). Each assessee will be given a hearing, and the amendment of Recognition Certificate will be decided on merits in accordance with the procedure laid down in s.4-B(4)(ii) of 1948 Act, uninfluenced by the decision of the High-Power Committee dated 12th June, 2000 or the Circulars issued by the Additional Commissioner on 20th June, 2000 or the observations made by the High Court in the impugned judgements. [Para 16] [13-G-H; 14-A-B]

- C 1.4. In some of the cases, pursuant to the show-cause notice(s), the Assessing Authority has passed adjudication orders in terms of the Circulars issued by the Commissioner. The Assessing Officer would decide the said cases *de novo* on the basis of the show-cause notices and also uninfluenced by the observations made in the orders of adjudication earlier. In each case, the Assessing Officer will give a reasoned order. However, if an order amending the Recognition Certificate is issued by the Assessing Authority, the same will operate only from the date of issuance of show-cause notice. [Para 17] [14-C-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.1929 of 2004.

- F From the Judgment & Order dated 25.3.2003 of the High Court of Judicature at Allahabad in C.M.W.P. No. 628 of 2000.

WITH

- G C.A. Nos.1930, 1931-1932, 1933 and 2810-2938 of 2004, 4298 and 4299 of 2009 and 2056 of 2010.

Sunil Gupta, S.K. Dwivedi, AAG, Aarohi Bhalla, Vandana Mishra, Manoj Kumar Dwivedi, Kamendra Mishra, Gunnam Venkateswara Rao for the Appellants.

H

Dhruv Aggarwal, Nandini Gore, Debmalya Banerjee, Sonia A
Nigam, Kartik Bhatnagar, R.N. Karanjawala, Manik
Karanjawala, Praveen Kumar, Rani Chhabra, Siddhartha
Chowdhury, Mukesh Verma, Aftab Alam, Yash Pal Dhingra,
Kavin Gulati, Rashmi Singh, Ruby Singh Ahuja, Manu Nair (for
Suresh A. Shroff & Co.), Ashok Kumar Sinha, Sudhanshu Goil, B
B. Vijayalakshmi Menon, K.R. Sasiprabhu, Arvind Kumar
Sharma, Naresh Kumar, B.K. Satija, Pravir Kumar Jain, E.C.
Agrawala, Suruchi Aggarwal, Pramod Dáyal, Nikunj Dayal,
Rupesh Kumar, Rajesh Kumar, Krishna Kumar, R.S., K.S.
Mahadewan, Sanjeev Malhotra, Prakash Kumar Singh, Jatin C
Zaveri and Shally Bhasin Maheshwari for the Respondent.

The Judgment of the Court was delivered by

S.H. KAPADIA, J. 1. Heard learned counsel on both sides.

2. Delay condoned.

3. Leave granted in the special leave petition.

4. In all these matters, respondents are manufacturers of
notified goods. These respondents have been given central E
registration under Section 7 of the Central Sales Tax Act, 1956,
and also Recognition Certificate under Section 4-B of the Uttar
Pradesh Trade Tax Act, 1948, for purchase of high speed diesel
oil at concessional rate. These certificates have been given on
different dates by the appellants. F

5. The lead matter is *State of Uttar Pradesh & Ors. vs. M/s. Vam Organic Chemicals Limited* [Civil Appeal No.1929 of 2004].

6. M/s. Vam Organic Chemicals Limited is a public limited G
company incorporated under the Indian Companies Act, having
it's registered office at Amroha, Uttar Pradesh. It has
established a continuous process chemical industry for the
manufacture of Vinyl Pyridine, Picoline, etc. [for short,
'chemicals']. The said Company is registered under the Uttar H

A Pradesh Trade Tax Act, 1948 [for short, '1948 Act'], as well as under the Central Sales Tax Act, 1956 [for short, '1956 Act'], as a dealer.

B 7. M/s. Vam Organic Chemicals Limited [for short, "Company"] was granted a Registration Certificate under Section 7 of 1956 Act in which a List of Items was annexed. As per the said List, the Company was entitled to purchase goods under 1956 Act. The Company was also granted a Recognition Certificate under Section 4-B of 1948 Act
C authorizing it to purchase goods on concessional rates. On the basis of the Recognition Certificate granted by the State, the Company became entitled to purchase various goods against Form III-B, which was issued by the Assessing Authority on payment of concessional rate of tax. Since the Company had obtained Registration Certificate under Section 7 of 1956 Act,
D it purchased high speed diesel oil ['HSD', for short] against Form-C from Indian Oil Corporation Limited. The Company had also bought HSD against Form III-B from Indian Oil Corporation Limited under which Indian Oil Corporation Limited charged the tax at the rate of two per cent against Form III-B.

E 8. On 12th June, 2000, a meeting was organised by the Principal Secretary, Finance, Uttar Pradesh, in which a decision was taken that the benefit of Form III-B for purchase of HSD to be used in Diesel Generating Sets in the factory
F should not be given the benefit of concessional rate since such HSD was not directly used in the manufacture of notified goods [chemicals]; rather, it was used for generating electricity in the Generating Set which electricity was then captively used for manufacturing chemicals. On the basis of the said decision dated 12th June, 2000, the Additional Commissioner, Trade
G Tax, Meerut, Uttar Pradesh, issued a Circular on 20th June, 2000, to all the subordinate officers for it's implementation and, accordingly, all Trade Tax Authorities of the State, who, at the relevant time, were under the administrative control of the Commissioner, issued notices for deletion of HSD, an item
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mentioned in the Company's Recognition Certificate. It is this show-cause notice which came to be challenged by M/s. Vam Organic Chemicals Limited and others by filing writ petitions in the Allahabad High Court.

9. In the writ petition filed by the Company, it was submitted that HSD was a fuel, which was absolutely essential for operating the Diesel Generating Set [D.G. Set] in the factory as the Company's factory was engaged in a continuous process chemical industry and, in the absence of HSD, the D.G. Set would become non-functional and if electricity cannot be generated, it would be impossible to produce chemicals. According to the Company, HSD is used in D.G. Sets to generate electric energy which is required for chemical industry. In this connection, reliance was placed on Explanation to Section 4-B of 1948 Act. In reply, it was the case of the Department that HSD is used in the D.G. Set for generating electric energy which is not only used for chemical industry but is also used for electrical appliances in office, factory and to supply electricity for working of lights, fans, etc. According to the Department, HSD is used in the Generating Set for production of electricity; that the unit of the Company was not registered/recognised for production of electricity; that it was not a public utility service under the relevant Electricity Act; and, hence, the Company cannot call HSD a fuel/raw-material used for production of electricity in this case. According to the Department, in the present case, the notified goods consisted of chemicals and not electricity, hence, HSD was not used in the process of production of chemicals directly. For the afore-stated reasons, the Department submitted that, on the facts and in the circumstances of this case, HSD cannot be included in the Recognition Certificate of the Company. By the impugned judgements, the High Court came to the conclusion that the stand of the Department was highly technical. According to the High Court, HSD was used by the Company for the manufacture of chemicals [notified goods], as mentioned in Section 4-B(2) of 1948 Act. According to it, the word "directly" is not mentioned

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A in Section 4-B(2) of 1948 Act. It further held that Section 4-B(2)
of 1948 Act does not mention that the goods, referred to in sub-
section (1), should be used directly for the manufacture of the
notified goods. In the light of the said reasoning, the High Court
came to the conclusion, by the impugned judgements, that the
B show-cause notices issued by the Department calling upon the
Companies to show-cause as to why HSD should not be
deleted from the Recognition Certificate based on the Circulars
dated 20th June, 2000, etc., be set aside. That, it was not open
to the Department to delete HSD, furnace oil, liquid fuels or
C gaseous fuels from the Recognition Certificate as such oil
[HSD] constituted a fuel required for the manufacture of
chemicals in terms of the Explanation to Section 4-B(2) of 1948
Act. Against the said judgements, the State has come to this
Court by above-mentioned civil appeals. We may clarify that,
D in all, there are approximately 138 appeals against the
impugned judgements of the Allahabad High Court in various
writ petitions. Suffice it to state that common issue arises for
determination in this batch of cases, namely, Whether the
Department was right in issuing show-cause notices calling
upon the Companies to show-cause as to why HSD should not
E be deleted as an item from their respective Recognition
Certificates issued under Section 4-B(2) of 1948 Act?

10. Mr. Sunil Gupta, learned senior counsel appearing for
the Department, invited our attention to Annexure CA(I) of the
F Paper Book, which is a List of Items registered under Section
4-B of 1948 Act. It appears to be a List annexed to the
Registration Certificate. What is argued by the learned senior
counsel is that, under Section 4-B(2) of 1948 Act read with
Explanation thereto a dealer has to satisfy the Assessing
G Authority, empowered to issue Recognition Certificate, that he
requires the duly itemised goods mentioned in the Recognition
Certificate for use in the manufacture by him of any notified
goods [final product]. According to the learned senior counsel,
the Recognition Certificate, including the List of Items under
H Section 4-B(2) of 1948 Act, cannot be read in isolation. Each

Item in the List is duly recognised by the Assessing Authority looking to its requirement for use in the manufacture of the final product [notified goods]. In this connection, it was submitted that HSD does find place in the said List but if the said Item is used to make the Generating Set functional for generating electric energy which, in turn, is captively consumed in the manufacture of chemical goods, then, in that event, an assessee will not be entitled to the benefit of concessional rate of tax. Learned counsel invited our attention to several items in the said List, including air-conditioners, stabilizers, electrical panels and Diesel Generating Set. It was argued on behalf of the Department that if HSD is used in the Generating Set, it would not amount to it being used in the manufacture of chemical goods but it would amount to HSD being used to operate the machines. On the other hand, it was urged on behalf of the assessee(s) that, in the absence of HSD, it was not possible to operate the D.G. Set; that, the assessee(s) has installed several D.G. Sets in it's factory for the manufacture of electricity which Sets cannot function without the use of HSD. According to the assessee(s), there is nothing in sub- section (2) of Section 4-B of 1948 Act to suggest that HSD should be used directly in the manufacture of chemical goods. In any event, according to the assessee(s), in the List enclosed with the Recognition Certificate, Diesel Generating Set is mentioned. Therefore, HSD, in any event, is directly used to operate Diesel Generating Set. What is argued on behalf of the assessee(s) is that, if D.G. Set is an item duly recognised by the Assessing Authority, the machines cannot operate without the use of HSD and, in the circumstances, there is, in any event, a direct use of HSD in the working of the D.G. Set. As stated above, the High Court has accepted the contentions advanced on behalf of the assessee(s).

11. At the outset, we quote hereinbelow Section 4-B(2) with the Explanation as also Section 4-B(4)(ii) of 1948 Act:

"4-B. Specific Relief to certain manufacturers.--

A [1] xxx xxx xxx

B [2] Where a dealer requires any goods, referred to in sub-section (1) for use in the manufacture by him in the State, of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee, and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

Explanation.-- For the purposes of this sub-section--

E [a] 'goods required for use in the manufacture' shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants; and

F [b] 'notified goods' means such goods as may, from time to time be notified by the State Government in that behalf.

G [4][ii] The assessing authority may amend a recognition certificate granted under sub-section (2), either of its own motion or on the application of the dealer, where the dealer has changed the name or place of his business or has closed down any branch or has opened a branch or for any other sufficient reason:

H Provided that no recognition certificate shall be cancelled or amended by Assessing Authority of its own

motion except after reasonable opportunity of being heard A
has been given to the dealer."

12. We are looking at the present controversy from a
different point of view. The High Court has not examined, in the
present case, the nature of the power exercised by the B
Assessing Authority under Section 4-B(4)(ii) of 1948 Act. This
point of view arises because, in this case(s), a show-cause
notice has been issued to the assessee calling upon the
assessee to show-cause as to why HSD mentioned in its
Recognition Certificate should not be deleted as it is being C
used for generating electricity in the Generating Set which
electricity is then consumed by the factory. A number of writ
petitions were filed in the Allahabad High Court against the
show-cause notices. The High Court intervened at the show-
cause notice stage. If one looks at Section 4-B(4)(ii) of 1948 D
Act, one finds that the Assessing Authority is vested with
discretionary power to amend the Recognition Certificate
granted under sub-section (2) of Section 4-B of 1948 Act either
on it's own motion or on the application of the dealer where the
dealer has changed his name or place of business or has E
closed down his branch office or for any other sufficient reason.
By way of proviso, it has been clarified that no Recognition
Certificate shall be cancelled or amended by the Assessing
Authority on it's own motion without giving reasonable
opportunity of being heard to the dealer [assessee]. If one looks
at the Scheme of Section 4-B of 1948 Act, one finds that a F
statutory power is given to the Assessing Authority to issue the
Recognition Certificate in respect of the notified goods. There
could be a number of notified goods. In fact, in 1998,
"electricity" itself was one of the notified goods. In our view,
under the Scheme of Section 4-B(2) of 1948 Act, the G
Assessing Authority is vested with the statutory power to issue
Recognition Certificate in respect of items enumerated therein,
which are required by the dealer for use in the manufacture of
any notified goods. In the present case, the assessee(s) is
manufacturing chemical goods. On issuance of the Recognition H

- A Certificate, a concessional rate of tax becomes applicable in respect of items enumerated in such certificate. It is a conditional exemption which is given to the dealer [assessee]. It is important to bear in mind that a Recognition Certificate is issued under Section 4-B of 1948 Act in respect of notified goods [See sub-section (2A) of Section 4-B].

13. Power to grant exemption from payment of duty or to pay concessional duty is expressly conferred on the Assessing Authority. It is a case of conditional exemption. While exercising that power, generally no hearing or reasons are required to be given unless the Act so provides. In this case, a proviso is inserted in Section 4-B(4)(ii) of 1948 Act to say that no Recognition Certificate shall be cancelled or amended by the Assessing Authority without giving reasonable opportunity of being heard to the dealer. It is for this reason that, in the present case, the Assessing Authority has given show-cause notices to all the respondent-dealers calling upon them to show-cause as to why HSD, as an item, should not be deleted from the Recognition Certificate.

14. In the present case, the Department submitted, before us, that, by mistake, HSD has been included in the List. The Department seeks to rectify that mistake. The question, before us, is - whether the Department is precluded from doing so? This question has not been answered by the High Court. In our view, under Section 4-B(4)(ii) of 1948 Act, the Assessing Authority is vested with discretionary power to amend a Recognition Certificate granted under sub-section (2) of Section 4-B of 1948 Act either on it's own motion or on the application of the dealer for any sufficient reason. This precondition of "sufficiency of reasons" requires a show- cause notice to be given to the dealer in whose favour a Recognition Certificate exists calling upon him to show- cause as to why an item should not be deleted in a given case. Therefore, in our view, each case needs to be examined by the Assessing Authority if it seeks to exercise it's authority to delete an item

from a Recognition Certificate. Same is the position if the Assessing Authority seeks to cancel a Recognition Certificate for the reasons indicated in the said sub-section. Not only that, while amending or cancelling a Recognition Certificate, the Assessing Authority is also required to give reasons for amending or cancelling the existing Recognition Certificate or for deleting an item therefrom.

15. One more aspect needs to be highlighted. Under the proviso to Section 4-B(4)(ii) of 1948 Act, the words used are "no recognition certificate shall be cancelled or amended by Assessing Authority of its own motion except after reasonable opportunity of being heard". It is important to note that the word "rectification" does not find place in the said proviso. Conceptually, the word "rectification" is different from the word "amendment". This point is relevant because, in the present case, the stand of the Department is that HSD is inserted in the Recognition Certificate by mistake. The Department seeks to delete that item on the ground of mistake. That would not be possible. When a Recognition Certificate is issued, a benefit of concessional rate of tax is given to the dealer. He arranges his business affairs on those lines. Therefore, that benefit cannot be withdrawn retrospectively. Such benefit can be withdrawn, at the highest, from the date of the show-cause notice when the Assessing Authority proposes to delete an item from the Recognition Certificate. In our view, such a show-cause notice has been given in each of the cases before us. Accordingly, we construe such show-cause notice to be for amending the Recognition Certificate in the facts and circumstances of this case, particularly because, in some of the cases, we find that Recognition Certificates have been issued as far back as in 1980.

16. For the reasons given hereinabove, we remit all these cases to the Assessing Authority with a direction to treat the show-cause notice(s) issued for the purposes of amending the existing Recognition Certificate(s). Each assessee will be given

- A a hearing. Each case for amendment of Recognition Certificate will be decided in accordance with the procedure laid down in Section 4-B(4)(ii) of 1948 Act. The Assessing Authority will decide each case on it's own merits uninfluenced by the decision of the High- Power Committee dated 12th June, 2000.
- B It will also decide each of such cases uninfluenced by Circulars issued by the Additional Commissioner dated 20th June, 2000, and others. The Assessing Officer will decide each case on it's own merits uninfluenced by the observations made by the High Court in the impugned judgements.

- C 17. One more clarification needs to be mentioned. In some of these cases, pursuant to the show-cause notice(s), the Assessing Authority has also passed adjudication orders in terms of the Circulars issued by the Commissioner. In view of our order herein, we direct the Assessing Officer to decide
- D these cases de novo on the basis of the show-cause notices and also uninfluenced by the observations made in the orders of adjudication earlier. In each case, the Assessing Officer will give a reasoned order. However, if an order amending the Recognition Certificate is issued by the Assessing Authority,
- E the same will operate only from the date of issuance of show-cause notice.

18. Subject to what is stated hereinabove, this batch of civil appeals filed by the State of Uttar Pradesh stand disposed of
- F with no order as to costs.

R.P.

Appeals disposed of.