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HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (T) No.7527 of 2007

1. Vandana Pvt. Ltd., Unit II a Company incorporated under the Companies Act 1956 having its works unit at Plot No.606 at Urla Industrial Area, Raipur through Prahlad Kumar Agrawal aged about 45 years, S/o Niranjanlal Agrawal, resident of Vandana Bhawan, M.G. Road, Raipur (CG)
2. Prahlad Kumar Agrawal, aged about 45 years, S/o Niranjanlal Agrawal, resident of Vandana Bhawan, M.G. Road, Raipur (CG)

---Petitioners

Versus

1. State Appellate Forum (for Exemptions), Govt. of Chhattisgarh, through Secretary, Dept. of Commerce & Industries, D.K.S. Mantralaya Bhawan (CG)
2. State Level Committee for Commercial Tax Exemption through Director, Dept. of Industries, Industry Directorate, Sona Khan Bhawan, Ring Road No.1 (CG)
3. Director Industries, Sona Khan Bhawan, Ring Road No.1 (CG)
4. State of Chhattisgarh through Secretary
   (a) Department of Commercial Tax, D.K.S. Mantralaya Bhavan, Raipur (CG)
   (b) Dept. of Commerce and Industry, D.K.S. Mantralaya Bhavan, Raipur (CG)
5. Commissioner Commercial Tax Vanijyik Kar Bhawan, Civil Lines, Raipur (CG)

---Respondents

For Petitioners	:	Mr.Neelabh Dubey, Advocate
For State	:	Mr.Anand Dadariya, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

19/06/2018

1. The petitioners' application for grant of exemption from payment of tax under the notification dated 6.10.1994 was rejected by the State Level Committee on 16.2.2005, which was communicated to them by memo dated 10.3.2005, against which, the petitioners preferred an appeal before the State

Appellate Forum under Section 10 of the Entry Tax Act, 1976. The State Appellate Forum by the impugned order dated 30.5.2006 (Annexure P/19) dismissed the appeal of the petitioners, against which, this writ petition has been filed by the petitioners herein.

2. Mr.Neelabh Dubey, learned counsel for the petitioners, would submit that finding recorded by the learned State Appellate Forum is perverse and contrary to the record. He would further submit that the petitioner Company had factory licence granted with retrospective effect on 18.1.1999 w.e.f. 31.12.1996 and there was no requirement of own land for claiming exemption under the notification dated 6.10.1994, yet learned State Appellate Forum without considering the factory licence which the petitioners had and on the perverse ground, dismissed the appeal filed by the petitioners, whereas it has to be considered strictly in terms of the notification dated 6.10.1994.

3. On the other hand, Mr.Anand Dadariya, learned Deputy Government Advocate for the respondents/State would support the impugned order.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the records with utmost circumspection.

5. Para 6 of the notification dated 6.10.1994 provides for new industrial unit which is entitled for exemption which states as under:-

> “(6) New Industrial unit means an industrial unit established by a registered dealer in any District in

> the State of Madhya Pradesh for the manufacture of any goods, certified to be a new industrial unit by an authority authorised for the purpose by the Commerce and Industries, Department of the Government of Madhya Pradesh, wherein, he commences commercial production on or after 6th May, 1994 and shall include an industrial unit which is established by him in the premises of his existing industrial unit subject to the condition that he complies with the following requirements :
>
> (i) the industrial unit is separately registered as a new industrial unit with an authority authorised for the purpose of the Commerce and Industries Department of the Government of Madhya Pradesh;
>
> (ii) Separate factory licence/Central Excise Licence, if necessary, and separate registration certificate under the Act, and the Central Act is obtained in respect of the new industrial unit;
>
> (iii) Separate building/shed for the new industrial unit is constructed, new plant and machinery is installed therein and separate electric power connection or additional electricity load with a separate meter has been sanctioned for this new industrial unit by the Madhya Pradesh Electricity Board;
>
> (iv) The dealer manufactures in the new industrial unit products different from those manufactured in the existing industrial unit;
>
> (v) separate books of accounts are maintained for the new industrial unit;
>
> (vi) the new industrial unit is independent of the existing industrial unit and is not dependent on the existing industrial unit in any manner.”

6. It is the case of the petitioners that the petitioner Company has already granted factory licence with retrospective effect on 18.1.1999 w.e.f. 31.12.1996 and commercial production was started on 5.6.1997 and as such, they had the factory licence on the date of commercial production, but this fact was not considered by the State Appellate Forum and it has been held that the petitioner Company has no factory licence. It is further case of the petitioners that there was no such requirement to own land for grant of exemption from payment of tax under the notification dated 6.10.1994, yet on that ground the petitioners' appeal has been dismissed by the State Appellate Forum.

7. The petitioners' appeal was required to be considered in the light of para 6 of the notification dated 6.10.1994, but it has not been considered and appeal has been dismissed on the ground that the petitioner company does not possess land for establishing new industrial unit and also held that the petitioner company did not fulfill the requirement of para 6 of the notification dated 6.10.1994 for grant of exemption from payment of tax without giving sufficient and valid reasons for holding so.

8. In view of that, the impugned order dated 30.5.2006 (Annexure P/19) passed by the State Appellate Forum is set aside. The matter is remitted to the State Appellate Forum, who shall consider and decide the case of the petitioners afresh against the order dated 16.2.2005 strictly in accordance with law after hearing the petitioners and other affected parties within a period of three months from the date of receipt/production of certified copy of this order. However, it is made clear that this Court has not expressed any opinion on merits of the case and the State Appellate Forum shall decide the appeal of the petitioners strictly in accordance with law.

9. The writ petition is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-