

(2000) 03 GUJ CK 0013
In the Gujarat High Court

Case No : Special Civil Application No. 1017 of 2000

Allana Pharmachem Ltd.

APPELLANT

Vs

Industries Commissioner

RESPONDENT

Date of Decision : 15-03-2000

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 36(3)

Citation : (2000) 03 GUJ CK 0013

Hon'ble Judges : M.S. Shah, J;Anil R. Dave, J

Bench : Division Bench

Advocate : K.H. Kaji, for the Appellant; Premal Joshi, for the Respondent

Judgement

A.R. Dave, J.—Rule. Service of Rule is waived by learned Assistant Government Pleader, Shri Premal Joshi, for respondents Nos. 1 and 4 and by Mr. M. G. Doshit, for respondents Nos. 2 and 3. At the request of the learned advocates the matter is finally heard.

2. The grievance which the petitioner has ventilated in the present petition is with regard to not granting eligibility certificate by respondent No. 1. It has been submitted in the petition that on the basis of the eligibility certificate, the petitioner can get certain benefits under "Sales Tax Incentive Scheme for Industries, 1986", a scheme which has been framed by the Government of Gujarat in Industries, Mines and Energy Department under its Resolution dated May 6, 1986 and other related resolutions.

3. It has been submitted by learned advocate Shri K. H. Kaji appearing for the petitioner that the petitioner-company had started manufacturing certain drugs in July 1989. For the purpose of manufacturing the drugs, it had purchased plants and machineries worth Rs. 37,50,000 in July 1989 and thereafter the petitioner had invested Rs. 1 crore for expansion of the plant. The petitioner-company wanted to have certain benefits under certain incentive schemes framed by the State of Gujarat, including the one which has been referred to

above. For the purpose of getting benefit under the said scheme, it was necessary for the petitioner to obtain eligibility certificate from the Industries Commissioner who is respondent No. 1 herein. It is his case that an application for obtaining eligibility certificate was submitted on December 22, 1989 by the petitioner. The said application was scrutinised by the concerned authorities but for a considerably long period no reply was given by the said authority. Ultimately, by a letter dated June 21, 1999 the petitioner was informed that it would not be possible for the said authority to give certificate of eligibility for the reason that the petitioner-company had stopped manufacturing drugs with effect from October, 1996. Moreover, the petitioner-company was also not having "no objection certificate" issued by Gujarat Pollution Control Board. Thus, the petitioner was denied the eligibility certificate.

4. Subsequently, after some more correspondence, another order was received by the petitioner dated November 24, 1999 whereby the petitioner was informed that for the reasons stated in the earlier letter dated June 21, 1999 it was not possible for respondent No. 1 to give the eligibility certificate to the petitioner-company. Thereupon the petitioner had made a representation to the honourable Minister for Industries on November 30, 1999 but till the date of filing of the petition, the petitioner-company had not received any reply from respondent No. 1, except a reply from the office of the honourable Minister for Industries that the said application was forwarded to the Industries Commissioner, Gandhinagar, so that his office can look into it again.

5. At the time of hearing of this petition, learned advocate Shri Kaji has submitted that respondent No. 1 ought not to have rejected the application of the petitioner and the petitioner ought to have been given the eligibility certificate for the reason that the petitioner had already obtained no objection certificate from Gujarat Pollution Control Board. Of course, the said certificate was valid only up to March 31, 1994. He has submitted that because of the market conditions the petitioner-company stopped manufacturing drugs in October 1996. It has been submitted by Shri Kaji that in view of the fact that the petitioner had continued to manufacture drugs up to October, 1996 and as No objection certificate was procured from Gujarat Pollution Control Board for the period ending up to March 31, 1994, respondent No. 1 could have given eligibility certificate valid up to March 31, 1994 to the petitioner so as to enable the petitioner, to get the benefit from payment of sales tax to a limited extent.

6. In pursuance of the notice issued by this Court, learned A.G.P. Shri Premal Joshi has appeared and has submitted that as no objection certificate which was given by the Gujarat Pollution Control Board was limited up to March 31, 1994 and as the petitioner-company had stopped manufacturing drugs at the time when the place of production was visited by the concerned officers of respondent No. 1, the petitioner was not entitled to any eligibility certificate.

7. For the purpose of taking a final decision in the matter, we are of the view that we need not go into further niceties of the matter.

8. It is not in dispute that the petitioner-company was having no objection certificate from the Gujarat Pollution Control Board for a period up to March 31, 1994 and it is also not in dispute that the petitioner-company had manufactured drugs up to October 1996. Looking to the above referred facts which are not disputed, at this stage we are of the opinion that the petitioner ought to have been given eligibility certificate, even for the limited period during which the petitioner was manufacturing drugs and was having no objection certificate from Gujarat Pollution Control Board, by the Commissioner of Industries. Looking to the above facts we are prima facie of the view that respondent No. 1 ought not to have refused grant of eligibility certificate simply because the petitioner had stopped manufacturing drugs in October 1996. It is pertinent to note that the application for eligibility certificate was given on December 22, 1989. For the reasons beyond the control of the petitioner-company, the petitioner-company stopped manufacturing activity in October 1996. It appears that for a period of seven years no action was taken by respondent No. 1 on the application given by the petitioner on December 22, 1989. If after some time the petitioner-company had stopped manufacturing activity, in our opinion, no fault can be found with the petitioner-company. If otherwise the petitioner is eligible to get any benefit for the production activity carried out by it for a period of about seven years, respondent No. 1 should not deny the eligibility certificate on the ground that the petitioner had stopped manufacturing activity. Moreover, it is also not in dispute that for the period up to March 31, 1994 Gujarat Pollution Control Board had given the no objection certificate and a copy of the said certificate is also placed on record by respondent No. 1. This shows that respondent No. 1 was very much aware of the fact that such a certificate was given by Gujarat Pollution Control Board.

9. Looking to the facts and the circumstances of the case, we direct respondent No. 1 to reconsider the case of the petitioner on the ground that the petitioner-company had already obtained no objection certificate from Gujarat Pollution Control Board for the period up to March 31, 1994 and had manufactured drugs up to October 1996. Respondent No. 1 shall also consider the contents recorded in the memo of this petition and further affidavit filed by the petitioner and thereafter shall issue eligibility certificate or pass appropriate reasoned order on or before May 31, 2000.

10. Rule is made absolute with no order as to costs. An interim relief which was granted earlier shall continue to operate till June 30, 2000.

11. Rule made absolute.