
(2000) 02 P&H CK 0109

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition 5273 of 1997 with Civil Miscellaneous No. 9278 of 1999

Annapurna Breads Private Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A

Citation : (2000) 126 PLR 539 : (2000) 2 RCR(Civil) 752

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : S.K. Sud, for the Appellant; N.S. Bhinder, District Attorney, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Petitioner is a private limited company and it set up a new industrial unit at Daultabad, District Gurgaon for the manufacture of bread and bakery foods. With a view to accelerate the growth of industrial activity in the State of Haryana, the State Government introduced Rule 28-A in Chapter IV-A of the Haryana General Sales Tax Rules, 1975 (for short the Rules) exempting such class of industrial units from the payment of tax and subject to such conditions as mentioned therein. Petitioner being an "eligible industrial unit" applied for the grant of an eligibility certificate and the same was issued on 19.2.1990 by the General Manager, District Industries Centre, Gurgaon. The petitioner was held eligible for the grant of tax exemption on the manufacture of bread for a period of seven years from the year 1980-90 to 1996-97 subject to a ceiling of Rs. 52,95,245/-. On the basis of this eligibility certificate, the petitioner was issued an exemption certificate holding that it was entitled to exemption from payment of sales tax in accordance with the provisions of Rule 28-A of the Rules. This exemption certificate was valid for seven years for the period 1989-90 to 1996-97 subject to renewal from year to year. In terms of the exemption

certificate the petitioner was granted exemption from payment of sales tax in a sum of Rs. 1,93,000/- for the first year ending June 30, 1990. The exemption certificate was thereafter renewed for the second year upto June 30, 1991 and the petitioner was granted exemption from the payment of sales tax to the tune of Rs. 2,64,000/-. The petitioner did not apply for the renewal of the exemption certificate after June, 1991 because it had stopped manufacturing bread at its Unit at Daultabad and the industrial activity had been closed. It is claimed that the manufacturing activity had to be discontinued because it could not stand competition from the reputed Breads like the Modern Bread and Britannia Bread which were in the market. It is pertinent to mention here that at the time when the petitioner set up its industrial unit bread was a taxable item and exemption was sought under Rule 28-A of the Rules. Later on, by a notification dated 26.3.1991 tax on bread was withdrawn. Since the petitioner had discontinued its business of manufacturing bread the Lower Level Screening Committee withdrew the eligibility certificate in view of the provisions of sub-rule (8)(a)(ii) of Rule 28-A of the Rules. It may be mentioned that the petitioner had availed the tax exemption on the basis of this certificate upto June, 1991. The effect of the withdrawal was that the exemption certificate granted was deemed to have been withdrawn from the 1st day of its validity and the Unit became liable to payment of tax, interest or penalty under the Act as if no such certificate had ever been granted to it. Feeling aggrieved by the order of the Lower Level Screening Committee, the petitioner filed an appeal before the Higher Level Screening Committee. It was contended before the appellate authority that since sales tax on bread had been withdrawn with effect from 26.3.1991 the petitioner was not liable to pay any tax thereon with its exemption certificate. The fact that it had discontinued its business was admitted. The Higher Level Screening Committee in its meeting held on 20.3.1997 considered the case of the petitioner and rejected the appeal on the ground that the petitioner had closed its manufacturing unit. Still not satisfied, the petitioner filed a further appeal to the Secretary to Government of Haryana, Industries Department, Chandigarh which was dismissed as not maintainable, Chandigarh which was dismissed as not maintainable. It is against these orders that the present petition has been filed under Article 226 of the Constitution.

2. We have heard counsel for the parties and in our opinion the writ petition deserves to be dismissed. The fact that the petitioner has closed down its manufacturing activity at Gurgaon is not in dispute. The eligibility certificate was issued on 19.2.1990 under Rule 28-A of the Rules and the same was subject to the condition that the petitioner-concern would submit a report on the working of the Unit including detailed information regarding production and sale of finished products for every year ending March 31. The certificate was valid for a period of seven years during which period the petitioner could avail of the benefit of tax exemption but all this was subject to the condition that it would continue its business and submit reports regarding production and sale of the products to the concerned General Manager, District Industries Centre. The, certificate was

issued under rule 28-A of the Rule and the same was subject to the condition specified therein. Sub rule (8)(a)(ii) of this Rule with which we are concerned reads as under-

"(8) (a). The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate screening committee, in the following circumstances:-

(i) xxxxxxxxxxxxxx

(ii) discontinuance of its business by the unit of closing down of its business for a continuous period exceeding six months except in case of fire, flood and other natural calamities, riots, strike or lock- out which in the opinion of the committee concerned is beyond the control of the unit,

(ii) xxxxxxxxxxxxxx

Provided that no order of withdrawal of the eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit"

A bare reading of the aforesaid provision leaves no room for doubt that the intention of the Rule is that the industrial unit which has been granted the benefit of tax exemption for a specified period must continue with its business during that period failing which the eligibility certificate could be withdrawn and the benefit of tax exemption recovered. The object of introducing Rule 28-A was to encourage the growth of industrial activity within the State by granting exemption from tax to new industrial units on the conditions mentioned therein. When the exemption is granted for a certain period the intention is that the unit must continue to remain in business at least during that period and that is why clause (ii) of sub-rule (8)(a) empowers the competent authority to withdraw the eligibility certificate when the industrial unit has discontinued its business or has closed down its business for a continuous period exceeding six months except in some cases with which we are not concerned. If the industrial units were to be allowed to close down their business activity during the validity of the eligibility certificate then the very purpose of the Rule would be frustrated as that would not help the growth of industrial activity. In the case before us, the petitioner had been granted the eligibility certificate for a period of seven years from the year 1989-90 and having availed of the benefit for the first two years it closed down its activity and did not apply for the extension of the exemption certificate beyond June, 1991. This is clearly impermissible and in view of the provisions of sub- rule (8) (a)(ii) of Rule 28-A of the Rules, the competent authority was justified in withdrawing the eligibility certificate granted to the petitioner. The argument that the petitioner had remained in business for the first two years for which it had availed the tax benefit and, therefore, the respondents could not recover that benefit cannot be accepted. It is clear from the provisions of Rule 28-A that the industrial unit must remain in business not only for the period for which it availed the benefit during the validity of the eligibility certificate but should also continue with its business activity throughout the period of validity of

that certificate if it wants to retain that benefit.

3. It was strenuously contended by the learned counsel for the petitioner that bread was included as item No. 72 in Schedule-B to the Haryana General Sales Tax Act, 1973 (for short the Act) with effect from 1.4.1991 and since no tax was payable on bread with effect from this date the petitioner was not liable to get the exemption certificate extended after 1.4.1991. The argument, indeed, is that since bread became tax free item with effect from 1.4.1991 the Lower Level Screening Committee was not justified in withdrawing the eligibility certificate. We are not impressed with this argument. It is true that bread was included in Schedule-B to the Act and became a tax free item with effect from 1.4.1991 but this fact is not relevant in the matter of recovery of tax benefit already availed by the petitioner as it has violated the conditions of the eligibility certificate by discontinuing its business. The petitioner was obliged to continue with its manufacturing activity during the entire period for which the eligibility certificate was valid if tax exemption was to be availed of. The respondents are not requiring the petitioner to pay tax on bread after 1.4.1991 but their claim is only for the refund/recovery of the benefits received in the first two years. No fault can, thus, be found with the action of the respondents.

In the result, there is no merit in the writ petition and the same stands dismissed with no order as to costs.