(2010) 12 P&H CK 0459

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 21593 of 2010

Arun Colour Chemp. Ltd. — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28B(10)

Citation : (2011) 41 VST 319

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition seeks quashing of order dated April 21, 2006 passed by the General Manager, District Industries Centre, Jhajjar withdrawing the eligibility certificate granted to the petitioner under rule 28B(10)(a)(ii), (iii) of the Haryana General Sales Tax Rules, 1975 as upheld by the appellate authority vide order dated May 6, 2008.

2. The case of the petitioner is that it is engaged in manufacture of food colour, flavours, lake colours, carnal, etc. It was granted eligibility certificate on November 24, 1999 for exempting the applicant from payment of tax for seven years from April 12, 1999 to April 11, 2006. Before expiry of the said period, General Manager, District Industries Centre vide letter dated December 7, 2005 issued a show-cause notice to the petitioner as to why the eligibility certificate may not be cancelled as unit of the petitioner was lying closed and the machinery had been shifted to Himachal Pradesh in violation of conditions subject to which tax exemption was granted. After due consideration of the stand of the petitioner, the impugned order of cancellation of eligibility certificate was passed with the following observations :

Sh. Vam Dev, director of the company, appeared before the committee on behalf of the industrial unit. As decided in the last meeting, the case along with joint inspection report of GM, DIC and DETC was placed before the committee for withdrawal of eligibility certificate issued for the period April 2, 1999 to April 11, 2006. From the report it was observed that the unit was inspected jointly on April 3, 2006 and found that captioned unit has again installed plant and machinery which were earlier shifted to Parwanoo (H. P.). From the condition of the machinery it was also observed that it is lying closed since long. At present, only one mixing machine is operative and rest of the machinery is lying idle. From the perusal of electricity bills it was observed that the industrial unit did not function after January, 2004. Moreover, G. sets installed in the unit are also not in operational condition since long. Moreover, it was also noted from the sales tax quarterly return that the unit has remained out of production more than six months. It is showing nominal sales after January, 2004 of the items which were produced in the plant before January, 2004. The promoter of the company could not produce any supporting documents such as purchase of raw material, etc., proving working of the unit.

Finding no merit in the arguments of the promoter the committee decided to withdraw eligibility certificate issued for the period April 12, 1999 to April 11, 2006 from first day of its validity as per provision of rule 28B(10)(a)(ii) of the HGST Rules, 1975.

Therefore, the eligibility certificate issued vide this office memo No. DIC/BHD/STE/3413 dated November 25, 1999 is hereby withdrawn from the first day of its validity.

3. Appeal against the said order was dismissed on May 6, 2008 with the following observations :

Shri Tarun Sharma, advocate and Sh. Bam Dev Bhardwaj, Director appeared before the committee on behalf of the industrial unit. They were heard. The eligibility certificate of the unit was withdrawn by the LLSC in its meeting held on April 5, 2006 on the report of DETC, Jhajjar that the unit discontinued its business activities from the year 2004 and the machinery was shifted from the unit to Parwanoo (Himachal Pradesh). The unit filed an appeal before HLSC and the appeal was placed before the committee in its 101st meeting held on September 11, 2007. In the meeting the unit submitted written statements and stated that the unit is working properly and also submitted the quarter-wise amount of sale. The unit has not produced any document in support of working of their unit. After due deliberations the committee find no merits in the appeal and written submissions made by the unit and decided to reject the appeal.

4. Thereafter, the petitioner filed a review application which was dismissed on January 30, 2009. The petitioner is stated to have made a further application on June 9, 2010 which was dismissed on August 5, 2010.

5. The contention raised in the petition is that the Director of Industries and Commerce, Haryana, was not empowered to take decision on behalf of Higher Level Screening Committee in view of the order passed by this court in Civil Writ

Petition No. 14681 of 2006 (Alcatel South Asia Ltd. v State of Haryana [2010] 31 VST 567) decided on April 7, 2010.

6. The relevant provision of rule 28B(10)(a)(ii), (iii) of the Haryana General Sales Tax Rules, 1975 is as under :

(10) (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)...

(ii) discontinuance of its business by the unit or 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 lockout which in the opinion of the committee concerned is beyond the control of the unit;

(iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity.

7. In the facts and circumstances of the case, we do not find any ground to interfere with the order of withdrawal of eligibility certificate passed by the General Manager, District Industries Centre, Jhajjar and order dated May 6, 2008 dismissing the appeal. The review application of the petitioner was dismissed on January 30, 2009. The petitioner remained quiet till June 9, 2010 for a period of about 11/2 years. The petition thus, suffers from laches. Apart from this, there is concurrent finding of fact recorded by original authority and the appellate authority that the petitioner closed its unit in violation of conditions for exemption which finding has not been shown to be perverse.

8. Accordingly, the writ petition is dismissed.

