
(2000) 07 P&H CK 0060
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 19870 of 1998

A.S. Fuels Pvt. Ltd. and Another	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 13B
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(10), 28A(8), 28A(9)

Citation : (2002) 126 STC 48

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

Bench : Division Bench

Advocate : H.L. Sibal and Reeta Kohli, for the Appellant; M.L. Sarin, General and N.K. Joshi, A.A.G., for the Respondent

Judgement

N.K. Sud, J.—The petitioner No. 1, a private limited company, set up a new industrial unit for manufacture of coal tar and smokeless coal

at village Kharwar, District Rohtak, falling in Zone A which had been declared backward by the State of Haryana. Since the unit was eligible for

sales tax exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short "the Rules"), it was granted the necessary eligibility

certificate entitling it to avail of the sales tax exemption for a period of nine years starting from December 13, 1994 up to December 12, 2003. On

the basis of the eligibility certificate the unit was granted exemption certificate for the period ending June 30, 1995. The same was renewed in the

first instance up to June 30, 1996 and thereafter up to June 30, 1997. The petitioners filed an application for further renewal of the exemption

certificate on July 31, 1997. This application was rejected vide order dated December 15, 1997 on the ground that the same was not complete

particularly in respect of surety bond and despite sufficient opportunity the petitioner did not complete the necessary particulars. While processing the application for renewal, the Deputy Excise and Taxation Commissioner (for short, "the D.E.T.C.") discovered that the unit of the petitioner was out of production since January 1997 and as such its exemption certificate was also liable to be cancelled under Sub-rule (9)(i) of Rule 28A of the Rules. He, therefore, issued a show cause notice to this effect on December 5, 1997 requiring the petitioner to submit its explanation on December 15, 1997. The petitioner neither appeared before the D.E.T.C. nor did it furnish any explanation. The D.E.T.C., therefore, cancelled the exemption certificate held by the dealer by his order dated January 14, 1998. The petitioner filed appeals against these orders before the Prohibition Excise and Taxation Commissioner, Haryana, who remanded the case to the D.E.T.C. to be heard afresh on merits. For this purpose the petitioner was directed to appear before him on May 11, 1998. During the remand proceedings it was again found that the industrial unit had not worked since January, 1997, and that almost the entire plant and machinery had been removed from the factory premises and taken to some other place outside the State of Haryana without any information to the department. Even the factory shed and other structures were found to have been dismantled and the business totally closed. The D.E.T.C. by his order dated June 30, 1998 again rejected the application for renewal of the exemption certificate and also cancelled the exemption certificate already granted by invoking Sub-rule (9)(i) of Rule 28A of the Rules. He directed the petitioner to deposit the tax of Rs. 40,45,324 in respect of which exemption had already been availed of and also to pay interest thereon. The petitioner filed an appeal before the Prohibition Excise and Taxation Commissioner, Haryana, challenging the aforesaid order of the D.E.T.C. which was rejected vide order dated October 29, 1998. It is against these orders that the present writ petition has been filed.

2. H.L. Sibal, learned Senior Advocate appearing on behalf of the petitioner, contends that the cancellation of the exemption certificate was not justified as the unit had remained closed since January, 1997, on account of non-availability of coal which was a factor beyond its control. It was pointed out that the unit manufactured smokeless coal for which the coal was the main raw material. The petitioner claims to have made persistent

efforts for getting the requisite supply of coal which yielded no results. For this purpose, our attention was invited to the various letters written to

the General Manager, District Industries Centre, Rohtak. Thus, it was argued that when the raw material was not made available, the petitioner

was compelled by circumstances beyond its control to stop the production. It was also stated that as the unit had been lying closed for more than

one year, the machinery had been removed for getting it over-hauled and had not been re-installed as the supply of raw material has not been

restored to it. It was then contended that even if the cancellation of the exemption certificate were to be upheld under Sub-rule (9)(i) of Rule 28A

of the Rules, the same could not operate retrospectively and the petitioner could not be asked to deposit the amount of Rs. 40,45,324 which was

the amount of exemption already availed of. This amount pertained to the period when the industrial unit was in production.

3. On the other hand Sh. M.L. Sarin, learned Advocate-General, Haryana, appearing on behalf of the respondents, has submitted that as the unit

set up by the petitioner in the backward area had not worked since January, 1997, the exemption certificate was liable to be cancelled as provided

under Sub-rule (9)(i) of Rule 28A of the Rules. It was further argued that the said sub-rule did not provide for any exceptional circumstances under

which the consequences provided therein could be waived. Once it is found that a unit had discontinued its business at any time for a period

exceeding six months or has closed down its business during the period of exemption, the exemption certificate was liable to be cancelled. It was

also contended that the eligibility certificate granted under Rule 28A requires the dealer to fulfil the conditions provided therein. After the eligibility

certificate is granted, the dealer is required to obtain an exemption certificate which is valid upto the end of the following month of June. Thereafter

the exemption certificate is required to be renewed on year to year basis as per the procedure provided in Sub-rule (7) of Rule 28A of the Rules,

Attention was also drawn to Sub-rule (9) which provides the circumstances under which the exemption certificate granted was liable to be

cancelled. It was argued that once the exemption certificate is so cancelled, it would necessarily follow that the exemption of tax already availed of

under such a certificate would become without any authority of law and liable to be recovered. This consequence, according to the learned

Advocate-General, is clearly provided in Clause (v) of Sub-rule (10) of Rule 28A of the Rules. It was, therefore, pleaded that the petitioner-

company was liable to deposit the amount of Rs. 40,45,324 along with interest as directed by the D.E.T.C. in his order dated June 30, 1998.

4. We have heard the rival contentions and have perused the relevant records. The factual position is not in dispute. The eligibility certificate had

been granted to the petitioner-company for a period of nine years from December 13, 1994 to December 12, 2003. The exemption certificate had

also been issued to the petitioner which was valid up to June 30, 1995 and was subsequently renewed twice i.e., up to June 30, 1996 and June

30, 1997 on year to year basis on applications furnished by the petitioner. It is also an admitted position that the unit established by the petitioner-

company had not worked since January, 1997, and it was on this ground that not only the petitioner's application for renewal of the exemption

certificate up to June 30, 1998 had been failed but the very exemption certificate was cancelled by invoking Sub-rule (9)(i) of Rule 28A of the

Rules.

5. Before dealing with the rival contentions it is necessary to take note of the relevant provisions of Rule 28A of the Rules which read as under :

Rule 28A :

(1).....

(2) For the purpose of this chapter, unless the context otherwise requires,--

(a) to (i).....

(j) "eligibility certificate" means a certificate granted in form S.T. 72 by the appropriate Screening Committee to an eligible industrial unit for the purpose of grant of exemption/deferment.

(k) "exemption certificate" means a certificate granted in form S.T. 73 by the Deputy Excise and Taxation Commissioner of the district to the

eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as

the case may be ;

(l) "entitlement certificate" means a certificate granted in form S.T. 73 by the Deputy Excise and Taxation Commissioner of the district to the

eligible industrial unit holding eligibility certificate which entitles it to get

deferment of sales tax.

(2) to (4).....

(5) (a) Every eligible industrial unit holding eligibility certificate which is desirous of availing benefit under this rule shall make an application in form

S.T. 70 in triplicate along with attested copies of the documents mentioned therein to the General Manager, District Industries Centre within 90

days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be

entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached

therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him in this behalf.

.....

(6) (a) An eligible industrial unit which has been issued with an eligibility certificate (hereinafter referred to as the applicant unit), shall, within sixty

days of its receipt make an application for the grant of exemption or entitlement certificate, as the case may be, in form S.T. 71 to the Deputy

Excise and Taxation Commissioner of the District in which his unit is located. The application shall be accompanied with an attested copy of the

eligibility certificate and other documents mentioned in the application. No application shall be entertained if not received within time. An

application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having been not

made if the applicant fails to complete it on an opportunity afforded to him in this behalf. On receipt of application, the Deputy Excise and Taxation

Commissioner shall ask the applicant unit seeking benefit of--

(i) tax deferment to either execute a mortgage deed in form S.T. 74 creating a pari passu first charge along with financial institutions/banks on the

assets of the unit, or to furnish a bank guarantee for 15 per cent of the total benefit to be availed of in a year and a surety bond in form S.T. 50 for

the balance amount of 85 per cent. The mortgage deed/agreement or bank guarantee shall be valid till the recovery of the entire deferred amount of

tax. The bank guarantee, if expiring early or if furnished on annual basis shall be renewed two months before the date of expiry failing which the

unsecured deferred tax shall become due for payment immediately ;

(ii) tax exemption to either execute a surety bond in form S.T.50 equivalent to 15 per cent of the amount of notional sales tax liability sought to be

exempted or a bank guarantee for that amount in a year, which shall be valid for the period extending to five years after the expiry of total period of

tax exemption ;

(b) The Deputy Excise and Taxation Commissioner shall after satisfying himself that the applicant-unit is holding a genuine and valid eligibility

certificate, has furnished adequate security and that his application is in order will issue him the exemption/entitlement certificate, as the case may be

within thirty days of the receipt of the application. One copy of the certificate shall be sent to the Director of Industries or the General Manager,

District Industries Centre as the case may be and one copy shall be retained in the record. The certificate issued shall be valid unless cancelled or

withdrawn from the date of commercial production or from the date of issue of entitlement / exemption certificate, as the case may be, to the 30th

June next or when notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier.

Note.--The agreement or the mortgage deed or the bank guarantee, as the case may be, is an important document and shall be entered in a

register to be maintained in form S.T. 75 by the Deputy Excise and Taxation Commissioner concerned in his personal custody. At the time of

transfer of the charge of his office, the Deputy Excise and Taxation Commissioner shall hand over the register as well as the documents to his

successor personally against proper receipt and shall send a certified copy of the same to the Excise and Taxation Commissioner by name who will

acknowledge its receipt to both the officers.

(7)(a) The exemption certificate or the entitlement certificate as the case may be, shall be renewed from year to year for which the industrial unit

shall make an application to the Deputy Excise and Taxation Commissioner-in-charge of the district by the 31st May in form S.T. 71. The

application shall be accompanied with exemption/ entitlement certificate, additional security as specified in Sub-clauses (i) and (ii) of Clause (a) of

Sub-rule (6) equal to fifteen per cent of the declared notional sales tax liability of the current year and the difference between the actual and the

declared notional sales tax liability of the previous year in the case of sales tax

exemption and equivalent, to the extent of estimated tax liability of the current year and difference between actual and estimated tax liability of previous year in case of tax deferment, as also other documents mentioned in the application.

The Deputy Excise and Taxation Commissioner after making such enquiries as are necessary, and after satisfying himself that the applicant is a

bona fide industrial unit and has not misused the exemption/entitlement certificate, shall renew the exemption/entitlement certificate within 30 days

of the making of the application for renewal failing which the certificate shall remain valid until the renewal is refused or the certificate otherwise

expires. The exemption I entitlement certificate on renewal shall unless cancelled or withdrawn be valid from 1st of July of the year in which the

application is made if it is in time or otherwise from the date of application to 30th June, next or when the eligibility certificate expires or the

cumulative notional sales tax liability first exceeds the quantum of tax exemption /deferment fixed for the unit, whichever is earlier.

(b) If the Deputy Excise and Taxation Commissioner-in-charge of the district finds that the application for renewal of exemption/ entitlement

certificate is not in order or the particulars contained in the application are not correct and complete or the applicant is not a bona fide industrial

unit or has misused exemption/entitlement certificate or has not complied with any of the directions given to it by him within the specified time, he

may reject the application after giving the applicant an opportunity of being heard.

(c) An appeal against the order passed by the Deputy Excise and Taxation Commissioner under Clause (b) of this sub-rule shall lie to the Excise

and Taxation Commissioner, Haryana, if preferred within thirty days of the communication of the order appealed against.

(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) if it is discovered that it has been obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts ;

(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:

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.

(b) When the eligibility certificate is withdrawn, the exemption/ entitlement certificate shall be deemed to have been withdrawn from the 1st day of

its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it.

(9) The exemption/entitlement certificate granted to an eligible industrial unit shall be liable to be cancelled by the Deputy Excise and Taxation

Commissioner concerned in the following circumstances, after affording an opportunity of being heard to the unit,--

(i) discontinuance of its business by the unit at any time for a period exceeding six months or closing down of its business during the period of

exemption/deferment ;

(ii) disposal by the unit of any of its fixed assets mortgaged with the Government in the Excise and Taxation Department ;

(iii) failure to furnish adequate security by the unit as required under the rules ;

(iv) failure of the unit to make payment of the deferred amount on the date of payment ;

(v) contravention of any of the provisions of the Act and/or the rules or conditions of the eligibility certificate or the exemption/ entitlement

certificate by the unit.

(vi) when the appropriate committee, which sanctions the eligibility certificate recommends that the exemption/entitlement certificate of the unit be

cancelled for reasons to be recorded in writing.

(10) (i) to (iv).....

(v) On cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax

exempted/deferred shall become payable immediately, in lumpsum, and the provisions relating to recovery of tax, interest and imposition of penalty

shall be applicable in such cases.

6. The first contention of the petitioner is that as the discontinuance of business by its unit since January, 1997 was on account of non-supply of

raw material to it, which was a factor beyond its control, the exemption certificate could not be cancelled. This contention had been rejected by the

Prohibition Excise and Taxation Commissioner in his order dated October 29, 1998 on the ground that no material had been placed before him

which could enable him to conclude that the unit was closed for any circumstances beyond the control of the petitioner. However, we are of the

view that it is unnecessary to go into this issue to decide the validity of the cancellation of exemption certificate under Sub-rule (9)(i) of Rule 28A of

the Rules. A plain reading of this provision shows that discontinuance of business by a unit or closing down of its business for a continuous period

of exceeding six months automatically invites the cancellation of the exemption certificate. There are no exceptions provided in this sub-rule which

can save its application. It is, thus, absolutely clear that once it is found that the unit had discontinued its business for a period exceeding six

months, the cancellation of the eligibility certificate would be justified. It is not open to a dealer to plead that the discontinuance was on account of

factors beyond its control. In this view of the matter, it is not necessary for us to go into the merits of the case of the petitioner that the business had

been discontinued due to the failure of the District Industries Centre, Rohtak to restore the supply of coal which was a factor beyond the control of

the petitioner. In view of the admitted position that the unit had not worked since January, 1997, for a period of more than six months, the

exemption certificate of the petitioner could be rightly cancelled under Sub-rule (9) of Rule 28A of the Rules.

7. The next question now for our consideration is as to whether upon cancellation of exemption certificate under Sub-rule (9)(i) of Rule 28A of the

Rules the dealer could be required to deposit the tax benefit availed of by it for all the earlier years or only for the year during which the default had

occurred ? A conjoint reading of the relevant provisions of Rule 28A of the Rules already reproduced above shows that a unit which fulfils certain

conditions is issued an eligibility certificate specifying the period and amount in respect of which exemption of sales tax can be claimed. After a unit

has been issued the eligibility certificate it is required to apply on form S.T. 71 for grant of exemption certificate for which again it has to fulfil

certain conditions including furnishing of a surety bond. The exemption certificate so granted is valid from the date of issue or from the date of

commercial production to the 30th June next. If a reference is made to the application form S.T. 71 it is clear that the claim for tax exemption

pertains to the notional liability of the current year and the surety bond required to be furnished also pertains to the said amount. Sub-rule (7)

further requires that the unit will submit a fresh application for each subsequent year on form S.T. 71 furnishing additional security in respect of

claim of tax exemption for that year. An application for renewal has to be made by 31st May each year, i.e., one month before the expiry of the

earlier exemption certificate. The renewal application has to be disposed of within 30 days, i.e., before the expiry of the validity period of renewal

for the earlier year. If the necessary order is not passed within 30 days, the exemption certificate is deemed to remain valid until an order on

renewal application is passed. An application for renewal, if made within prescribed time and allowed by the competent authority, is valid from 1st

of July, of that year to 30th June next. In case the application for renewal of exemption certificate is not made within time but is made after the

expiry of the earlier year's renewal, then if it is allowed by the competent authority its validity starts from the date of application to the 30th June

next. Thus, whereas the eligibility certificate is valid for a period of 9 years, the exemption certificate issued on the basis of the same is valid up to

the date renewal is granted to it. It is not valid in the first instance for the entire period of validity of the eligibility certificate. Sub-rule (8)(a)

provides the circumstances under which the appropriate screening committee can withdraw the eligibility certificate. Sub-rule (8)(b) contains the

consequences that follow the withdrawal of the eligibility certificate. Sub-rule (9) empowers the D.E.T.C. to cancel the exemption/entitlement

certificate under certain circumstances. However, this sub-rule does not provide for the consequences of such a cancellation. The necessary

provision has been made in Sub-rule (10)(v) of Rule 28A of the Rules which is now required to be interpreted. A comparative reading of Sub-

rules (8) and (9) of Rule 28A of the Rules shows that if a unit discontinues its business or closes it down for a period exceeding six months, action

can be taken under both the provisions. Under Sub-rule (8) the eligibility certificate can be withdrawn whereas under Sub-rule (9) the Exemption/Entitlement Certificate can be cancelled. In Clause (ii) of Sub-rule (8) (a) there are certain exceptions provided which can save the unit from withdrawal of its eligibility certificate. If the unit can explain that the discontinuance or the closing down of its business is attributable to fire, flood and other natural calamities, strike or lock-out, which in the opinion of the committee concerned is beyond its control, the eligibility certificate would not be withdrawn. However, in Sub-rule (9)(i) no such exception has been provided. The moment it is found that a unit had discontinued its business, or closed it down during the period of exemption/deferment for a period exceeding six months, there is no option with the Deputy Excise and Taxation Commissioner but to cancel the same. Thus, what is cancelled in Sub-rule (9) is the certificate for the year in which any of the circumstances mentioned in that rule are found to exist. A further comparison of Sub-rules (8)(b) and (10)(v) of Rule 28A of the Rules makes it further clear that in case of withdrawal of eligibility certificate the exemption/entitlement certificate is deemed to have been withdrawn from the first day of its validity and, therefore, the unit is liable to payment of tax, interest or penalty under the Act as if no such certificate had ever been granted to it. On the other hand Sub-rule (10)(v) does not contain any such provision for withdrawal of the benefit from the first day of the validity of the eligibility certificate. The only meaning that can be attributed to the language of this sub-rule is that the cancellation of an exemption/entitlement certificate can relate only to the year in respect of which the said certificate is still to expire and it is only the benefit of tax exemption availed of by a dealer for that year alone shall become payable in lumpsum. If we were to hold that even on the cancellation of an exemption/entitlement certificate the entire amount of tax exemption availed of by the unit in all the earlier years becomes payable, the provision of Sub-rule (8) would be rendered redundant. The cancellation of an exemption/entitlement certificate would then tantamount to withdrawal of eligibility certificate which can only be done by the appropriate screening committee.

8. We may also refer to another important aspect. The circumstances under which the exemption/entitlement certificate can be cancelled are

contained in Sub-rule (9). As already mentioned, this rule does not contain any provision providing for the consequences of such a cancellation. On

the other hand if a reference is made to Sub-rule (10)(v) which contains the consequences of cancellation of an exemption/entitlement certificate, it

is evident that such consequences follow only if the certificate is cancelled before it is due for expiry. Thus, according to us, the power of

cancellation by the Deputy Excise and Taxation Commissioner under Sub-rule (9) can only be exercised when an exemption certificate granted by

him is in force and has not already expired. This is the only interpretation that can attribute meaning and provide rationale to the provisions of Sub-

rules (8) and (9) of Rule 28A of the Rules.

9. It may be mentioned that if after the expiry of an exemption/entitlement certificate it is found that a unit had discontinued its business or closed it

down for a period exceeding six months, the department is not without a remedy. It can always take action for withdrawal of the eligibility

certificate as provided in Sub-rule (8) of Rule 28A of the Rules.

10. Coming to the facts of the present case it is evident that the exemption certificate issued to the petitioner was valid up to June 30, 1995 in the

first instance It was thereafter renewed up to June 30, 1996 and then up to June 30, 1997. Thus, the validity of that certificate was upto June 30,

1997 only. It is also evident that the application for further renewal was not filed by the petitioner within the time prescribed under Sub-rule (7) of

Rule 28A of the Rules as the same could have been filed up to May 31, 1997. Such an application was filed on July 31, 1997 when the validity

period of the exemption certificate as renewed from time to time had already expired. Thus, the cancellation of the exemption certificate after its

validity period had already expired on June 30, 1997, did not attract the provisions of Clause (v) of Sub-rule (10) of Rule 28A of the Rules as it

was clearly not a case of cancellation of exemption certificate before it was due for expiry. In this View of the matter, we hold that the D.E.T.C.

was not justified in directing the petitioner to deposit the amount of Rs. 40,45,324 in respect of the tax exemption availed of by it for the period up

to June 30, 1997. To this extent the orders of the authorities below are modified.

11. We may add that in the light of the view that we have taken, it is not necessary for us to deal with the contention of the petitioner that Sub-rule

(10)(v) of Rule 28A of the Rules, in so far as it empowers the department to withdraw the tax exemption already availed of by a dealer before the

cancellation of the exemption certificate, was not valid. This issue has become infructuous in view of our finding that tax exemption of Rs.

40,45,324 availed of by the petitioner upto June 30, 1997 could not be recovered on cancellation/ non renewal of its exemption certificate for the

period July 1, 1997 to June 30, 1998 vide order passed on October 29, 1998 after the expiry of the validity period of the exemption certificate

which had been last renewed up to June 30, 1997.

12. We may also refer to the contention of the learned Advocate-General that even though technically the respondents may not be competent to

recover the tax benefit already availed of by the petitioner on account of cancellation of the exemption certificate, the recovery ordered under the

impugned order should be upheld because in the circumstances of the case, the eligibility certificate itself was liable to be withdrawn under Sub-rule

(8) of Rule 28A of the Rules which would entail the same consequences. We are unable to accept this argument. We cannot proceed on the

assumptions that the eligibility certificate has been withdrawn without there being any recourse to the procedure laid down under Sub-rule (8) of

Rule 28A of the Rules, In the absence of any action under the said provision we cannot possibly opine on its correctness or otherwise. However, if

the respondents have a case for withdrawal of the eligibility certificate under Sub-rule (8) of Rule 28A of the Rules, they shall be free to proceed in

accordance with law and nothing observed by us in this petition shall prejudice their rights under that provision.

13. With these observations, the writ petition is disposed of in the above terms. In the facts of the case, there shall be no order as to costs.