(2004) 08 P&H CK 0183

In the Punjab And Haryana At Chandigarh

Atul Fasteners Ltd. APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 02-08-2004

Acts Referred:

Punjab General Sales Tax (Department and Exemption) Rules, 1991 — Rule 3(2)

Citation : (2007) 7 VST 274

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel J.—This petition seeks a direction for allowing benefits to the petitioner as per provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 read with Industrial Policy, 1996 whereunder, a dealer is entitled to deferment from payment of tax for seven years subject to the tax being paid in 8th, 9th and 10th year.

2. The case of the petitioner is that the company commenced production on April 30, 1997 and applied for exemption but decision on the said application was taken only on September 13, 2001. Claim of the petitioner was accepted and a certificate was issued to the effect that the petitioner was entitled to incentive of sales tax deferment for 84 months for maximum amount of Rs. 62,47,500 from April 30, 1997. The said order is as follows :

It is certified that M/s. Atul Fasteners Ltd., having its manufacturing unit located at C-45, Industrial Area, Phase 3, Mohali District, Ropar, in area Group ''B'' is registered as under for the produce of manufacture mentioned below:

1. Registration No. 16/11/02558/PMT/SSI

Product : Self tapping screw, tinmens rivolts, wood screw, machine screw, special fasteners.

2. Sales Tax Registration No:

(a) Punjab sales tax : 60209417 dated June 8, 1981

(b) Central sales tax : 60209417 dated June 8, 1981

3. Certified that manufacturing unit went into production after expansion on April 30,1997 and in terms of Government Notification No. INC-II/15/43/96-5/IB/4176 dated June 1, 1996 is eligible for the grant of incentive of sales tax deferment for the period of (84) eighty four months and for the maximum amount of Rs. 62,47,500 (rupees sixty two lacs forty-seven thousand and five hundred only) from April 30, 1997.

Sd/- General Manager, District Industries Centre, Mohali.

3. The case of the petitioner further is that the tax was paid from April 30, 1997 to January 12, 2001 since application of the petitioner was still pending and thereafter, an application was made on January 21, 2002 for refund. It was not being decided.

4. In the reply filed by the Sales Tax Department, entitlement of the petitioner to facility of deferment of sales tax is admitted in para 3 but it is stated that under Rule 3(2) of the Rules, deferment becomes operative after the issuance of certificate of eligibility. It is further stated that question of refund could arise only if the amount of tax had been paid in excess. It is further submitted that deferred tax has to be paid in the 8th year, which in the present case commenced from April 30, 2004.

5. In the reply filed on behalf of the District Industries Centre, Mohali, it is stated that the application of the petitioner was moved for the first time on November 17, 1998. An earlier application dated September 24, 1996, moved by the petitioner was only for incentive under the Incentive Code 1996 and not for sales tax deferment. It is further stated that the application of the petitioner was incomplete and complete application was filed only on September 16, 1999. In view of the delay involved, the application was put up before the General Manager, District Industries Centre, Mohali, and on April 12, 2001, the delay was condoned and exemption was granted. It is stated that delay was on the part of the petitioner in submitting the application and thereafter in furnishing relevant documents. Reference is made to letters of the petitioner, annexures P21 to P24.

6. The question to be considered is whether for the period from April 30, 1997 to January 12, 2001 the petitioner is entitled to refund of the sales tax paid, to enable the petitioner to avail of the policy of deferment of paying tax. Admittedly, 8th year has already commenced and deferred tax has to be paid by the petitioner. Claim of the petitioner is that tax paid should first be refunded to the petitioner and thereafter, he will pay the tax back as per the Rules.

7. Learned Counsel for the State submitted that since the petitioner himself delayed in submitting the relevant documents, benefit of deferment will commence only from the date eligibility certificate is issued and in fact, the petitioner is already availing the benefit of deferment of tax for the last three

years and there is no occasion to refund tax already paid at this stage when the petition has been filed three years after the benefit has been allowed.

8. Rule 4 of the Rules provides for benefit of deferment and Rule 3 deals with conditions for eligibility. Rule 3(2) provides that benefit of deferment or exemption becomes admissible only after the issue of the certificate of eligibility. Rule 5 provides that certificate in form ST (D and E) II shall be issued within 30 days of receipt of application, complete in all respects and for the delay, reasons shall be recorded. It is further provided that application has to be made within 30 days after which no application is to be entertained.

9. In the present case, the petitioner did not make an application in terms of the Rules within time and thereafter, delayed application was allowed. The petitioner did not make any grievance about delay in decision and filed this petition only on May 21, 2004 against grant of exemption on September 13, 2001. No doubt, if the authorities are responsible for delay in not taking decision promptly, right of a person seeking exemption can be safeguarded but in the present case, the petitioner-company itself approached this court after about three years of grant of exemption and for the period of four years, during which exemption was not granted, no grievance was made by the petitioner in this regard. In the present case, the period of exemption has already come to an end.

10. The exemption has been granted by the department itself and though, orders have been passed on September 13, 2001, it has accepted the date of commencement of business to be April 30, 1997 and eligibility certificate covers the period from April 30, 1997 to September 13, 2001 also for giving benefit. On the decision of the department itself as on September 13, 2001, the petitioner became eligible to get exemption for the entire period of seven years and therefore, as on that date, the tax already collected, ought to have been refunded. Under Rule 3(2), the benefit becomes admissible after issuance of the certificate of eligibility but there is nothing to show that it is not operative for the entire period for which an assessee is found to be eligible. As on September 13, 2001 the assessee is entitled to exemption for the entire period. He was, therefore, entitled to refund of the tax already paid and since the same has been denied, he is entitled to its refund now. The assessee is also entitled to statutory interest on that amount to be calculated from September 13, 2001 up to date of refund/adjustment. Since the period of exemption has come to an end, the department will be at liberty to adjust outstanding dues against the dealer up to date and refund the balance amount, if any.

11. Accordingly, this petition is allowed in the above terms.

