(1999) 05 P&H CK 0101

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6869 of 1999

Ballarpur Industries Limited — APPELLANT

Vs

State of Haryana and Another — RESPONDENT

Date of Decision : 21-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(5)

Citation : (2000) 117 STC 39

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—Petitioner-company in collaboration with M/s. YTONG International, Germany, has set up a unit at Palwal for the manufacture of building materials like blocks, reinforced roofings/slabs, etc. The total cost of setting up this unit is approximately Rs. 40 crores and the main raw material used is flyash which is obtained from Badarpur Thermal Plant, Delhi. It applied through the Director of Industries, Haryana, for exemption from payment of sales tax under Rule 28-A of the Haryana General Sales Tax Rules, 1975 (for short "the Rules"). This request for exemption from sales tax was considered in the meeting of the Higher Level Screening Committee held on April 30, 1997 under the Chairmanship of the Commercial Taxation Commissioner, Haryana. The committee noticed that the unit had gone into commercial production with effect from October 10, 1992 whereas its application for availing sales tax exemption was filed with the department on September 9, 1993 and since it was not filed within 90 days of the date of its going into commercial production, the same was barred by time and could not be granted. This decision of the committee was communicated to the petitioner by the Director of Industries, Haryana, by letter dated May 29, 1997. Feeling aggrieved by the said decision the petitioner preferred an appeal before the Commissioner and Secretary to Government, Industries Department, Haryana, who dismissed the same by order dated May 4,

1998. It is against these orders that the present writ petition has been filed under Article 226 of the Constitution.

2. Chapter IV-A containing Rule 28-A was inserted in the Rules in the year 1989 to provide for the benefit of deferment or exemption from payment of sales tax under the Haryana General Sales Tax Act, 1973 to the eligible industrial units in the State. It provides that every eligible industrial unit holding an eligibility certificate and desirous of availing the benefit under this rule shall make an application in triplicate along with required documents "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. It is further provided that no application shall be entertained if not preferred within time.

3. The argument of the learned Counsel for the petitioner is that even though the application for exemption was not filed within 90 days of the unit going into commercial production, the petitioner is still entitled to the exemption from the period of 90 days immediately preceding the date of the application whenever such application is made. We find no merit in this contention which is contrary to the plain reading of the rule. If the argument were to be accepted there would be no purpose in prescribing the period of 90 days in Rule 28A(5) of the Rules and fixing the starting point of the limitation from the date when the unit goes into commercial production. Thus if an eligible industrial unit is desirous of availing the benefit it has to apply within 90 days from the date it goes into commercial production and not thereafter. The expression "commercial production" has not been defined in the Rules but as understood in common parlance it means when the unit starts sale of its products in the market. The units very often go into trial production which would be different from commercial production but when the product is sought to be sold, it is then only that the unit will be said to have gone into commercial production. In other words, the moment the eligible unit issues the first sale voucher it would go into commercial production for the purpose of this rule and the application for exemption will have to be filed within 90 days from that date. From the language used in Sub-rule (5) of Rule 28A of the Rules, it is clear that the limitation of 90 days prescribed therein is mandatory and there is no provision for any authority to condone this delay or entertain an application beyond the period fixed therein. In the case before us the application for exemption from sales tax was filed by the petitioner-company on September 9, 1993 whereas it had gone into commercial production on October 10, 1992. It is thus clear that the application for exemption was filed much beyond the period of 90 days and the same was rightly rejected both by the Higher Level Screening Committee and by the appellate authority. In this view of the matter, no fault can be found with the impugned orders.

In the result, there is no merit in the writ petition and the same stands dismissed.

