(2000) 07 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13976 of 1999

B.D. Alloys APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 27-07-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 13B
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(5)

Citation : (2001) 124 STC 174

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : D.D. Verma, for the Appellant; Jaswant Singh, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—Whether rejection of the petitioner''s application for grant of eligibility certificate by the Lower Level Screening Committee and the Higher Level Screening Committee is vitiated due to violation of the principles of natural justice or the decisions taken by the two committees suffer from an error of law apparent on the face of the record is the question which arises for determination in this petition filed under Article 226 of the Constitution of India.

2. The petitioner is a proprietorship concern. It is registered as a dealer under the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") and is engaged in the manufacture and sale of cast iron castings, iron and steel and chilled rolls in the industrial unit set up at village Nasirpur, Tehsil and district Ambala. The application submitted on behalf of the petitioner under Rule 28-A(2) of the Haryana General Sales Tax Rules, 1975 (for short, "the 1975 Rules") for grant of eligibility certificate was rejected by the Lower Level Screening Committee on the ground of non-submission of change of land use certificate (for short, "CLU certificate"). The appeal filed by it against the decision of the Lower Level Screening Committee was dismissed by the Higher Level Screening

Committee on the same ground.

3. The petitioner has prayed for quashing of the impugned decisions on the ground of violation of the rules of natural justice and arbitrariness/non-application of mind. In the writ petition, it has been averred that before rejecting the application filed under Rule 28-A on the ground of non-submission of CLU certificate, the Lower Level Screening Committee did not give opportunity to show that production of such certificate was necessary for grant of eligibility certificate. The petitioner has also challenged the order of assessment passed by the Excise and Taxation Commissioner-cum-Assessing Authority, Ambala, by alleging that during the pendency of the appeal filed by the petitioner against the decision of the Lower Level Screening Committee, the officer concerned could not have taken action for levy of tax.

4. In the written statement filed on behalf of respondents Nos. 1 and 5, it has been averred that the order of assessment has been passed in accordance with the provisions of the 1973 Act and the petitioner cannot claim exemption because the application filed by it for issuance of eligibility certificate had already been rejected by the competent authority.

5. In their separate written statement, respondents Nos. 2 and 4 have justified the rejection of the petitioner''s application by stating that the same did not conform to the form prescribed under Rule 28-A(5)(a) of the 1975 Rules.

6. In the additional affidavit dated February 14, 2000 filed by the proprietor of the petitioner, namely, Smt. Sunita Jindal, it has been averred that before deciding the appeal, the Lower Level Screening Committee did not give notice or opportunity of hearing to its representative.

7. Shri D.D. Verma assailed the decisions of the Lower Level Screening Committee and the Higher Level Screening Committee on the ground that the petitioner was not given reasonable opportunity of hearing. He invited our attention to the averments made in paragraphs 9, 11 and 16 of the writ petition, paragraphs 3 to 5 of the additional affidavit of Smt. Sunita Jindal and annexure D1 to show that the Lower Level Screening Committee rejected its application without giving effective opportunity of hearing. He further argued that Rule 28-A(5)(a) of the 1975 Rules is directory in nature and, therefore, non-compliance of the conditions embodied in form S.T. 70, which find reference in the said rule, could not have been made basis for rejecting the application submitted by the petitioner for issuance of eligibility certificate.

8. The learned Deputy Advocate-General referred to the averments made in paragraph 2 (preliminary objections) and paragraph 6 (main reply) to show that the application filed by the petitioner for grant of eligibility certificate was rejected because it was not accompanied by the requisite certificates including the CLU certificate. He submitted that the provision of Rule 28-A(5)(a) is mandatory and non-production of the requisite certificates constituted a valid ground for rejecting the petitioner''s prayer for grant of eligibility certificate. Shri

Jaswant Singh then argued that the condition of producing CLU certificate has been incorporated in form S.T. 70 with a view to check haphazard and unregulated development of the area in which the petitioner has set up industry and, therefore, even though the Industries Department may not have raised any objection on this score, it cannot seek exemption from payment of tax without specifying the prescribed conditions.

9. We shall first deal with the argument of Shri Verma that Rule 28-A(5)(a) is directory in nature and, therefore, non-production of the certificates enumerated in Clause (3) of form S.T. 70 was inconsequential and the Lower Level Screening Committee has gravely erred in rejecting the application on that ground. For the purpose of appreciating the argument of the learned counsel in a correct perspective, we may refer to the provisions of Section 13B of the 1973 Act, Rule 28-A(5)(a), (b), (d) and (h) of the 1975 Rules and the extracts of form S.T. 70. The same are reproduced below :

"Section 13B of the 1973 Act :

Power to exempt certain class of industries.--The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions as may be prescribed."

"Rule 28A(5)(a), (b), (d) and (h) of the 1975 Rules :

28A. Class of industries, period and other conditions for exempting/deferring from payment of tax,--

....

(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.

(b) Applications from small-scale units will be considered by the Lower Level Screening Committee and those from Medium/large scale units by the Higher Level Screening Committee.

....

(d) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the small-scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations along with comments, if any, of the Deputy Excise and Taxation Commissioner concerned for its decision.

....

(h) The eligibility certificate will be issued by the General Manager, District Industries Centre in cases approved by the Lower Level Screening Committee and by the Additional Director of Industries in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production or from the date of issue of entitlement/exemption certificate as the case may be for a period as laid down under Sub-rule (4) unless cancelled or withdrawn. A copy of the eligibility certificate shall also be sent to the Deputy Excise and Taxation Commissioner concerned.

....

Extracts of form S.T. 70 :

FORM S.T. 70

Application form for the issue of eligibility certificate.

To

The General Manager, District Industries Centre, ...District. Sir,

In accordance with Rule 28A of the Haryana General Sales Tax Rules, 1975, I,...................(name) on behalf of the industrial unit as mentioned hereunder hereby apply for the grant of eligibility certificate for tax................ *exemption/ *deferment for a period of............ years and opts to avail the benefit from the date of commercial production or from the issue of entitlement/exemption certificate.

....

3. The following annexures are submitted herewith :

(i) Certificate from Chartered Accountant regarding estimated liability of sales tax for the period for which application is made ;

(ii) certificate from the Chartered Accountant regarding fixed assets on the date of commercial production including the assets of the unit as erected at site and paid for within 60 days of commercial production ;

(iii) latest copy of partnership deed/Memorandum and Articles of Association, List of Directors and the 10 major shareholders/partners ;

(iv) copy of power of attorney or certified copy of resolution passed by the Board of Directors authorising a particular person to apply for the grant of eligibility certificate ;

(v) in case of agricultural land permission from the authorities concerned for converting the same for non-agricultural use ; and

(vi) copy of Registration No./Letter of intent/industrial licence/ DGTD Registration.

Verified that the statements made hereinabove are true as per information derived from my/our record which I believe to be correct. In case any of the statements made above is found to be incorrect or false, the Government will be at liberty to withdraw the benefit of deferment/exemption from the date it was granted and to recover in lumpsum or otherwise the amount of tax already exempted/deferred along with interest.

It is agreed and understood by me/us that the rules for sales tax exemption/ deferment have been gone through by me/us and I/we shall abide by these rules.

Yours faithfully,

Date.................

(Signature of the applicant) (Name.............) (in block letters) Status.................(Proprietor/ Partner/C hair man/Managing Director/Director)."

10. An analysis of the scheme of the 1973 Act and the provisions reproduced above shows that while empowering the State Government to levy tax on the sale or purchase of the goods, the Legislature has made provision for grant of exemption to the specified class of industries. This has been done with a view to achieve the object of accelerated industrial development of the State and for this purpose, the State Government has framed the 1975 Rules u/s 64(1) and (2) of the 1973 Act. Rule 28-A of these Rules deals with various facets of exemption from payment of tax or deferment thereof. The 1975 Rules are in the nature of delegated legislation and, therefore, they will have to be treated as statutory in character. Clause (a) of Sub-rule (5) of Rule 28-A requires that an application for eligibility certificate must be submitted in form S.T. 70. Therefore, the conditions and requirements stipulated in form S.T. 70 will have to be regarded as statutory and non-compliance thereof would entail rejection of the application. In The Maharashtra State Road Transport Corporation Vs. Babu Goverdhan Regular Motor Service and Others, , their Lordships of the Supreme Court dealt with the question as to whether the form prescribed by Rule 80 of the Rules framed by the Maharashtra Government under the Motor Vehicles Act, 1939 was a part of the rule and held as under :

"An application for a permit, apart from containing the particulars referred to in Clauses (a) to (e) of Section 46, must also contain, under Clause (f), such other matters as may be prescribed by Rules.

The form prescribed by the Rule 80 of the Rules framed by the Maharashtra State requiring the furnishing of information on the various particulars and matters referred to therein is not beyond the rule-making power of the Government.

Therefore, the relevant rule and the form prescribed, have to be read together, and so read it follows that an applicant for a permit must comply, at any rate, substantially with the various matters mentioned therein. Section 68 is not controlled by Section 46 of the Act. The form so prescribed forms an integral part of Rule 80 which the State Government is authorised to make, u/s 68 of the Act."

11. On the basis of above discussion, we hold that form S.T. 70 is a part of the scheme of Rule 28A and an application for eligibility certificate has to be submitted in the said form.

12. We are further of the view that having regard to the purpose of incorporating the requirement of producing CLU certificate, namely, to prevent unregulated and haphazard development of the area, the conditions enumerated in form S.T. 70 are mandatory and no exception can be taken to the decisions of the Lower Level Screening Committee and the Higher Level Screening Committee to insist on rigorous compliance of the said requirement.

13. The question which remains to be considered is whether the decision taken by the Lower Level Screening Committee to reject the petitioner''s application for grant of exemption certificate is vitiated due to violation of the principles of natural justice. Shri D.D. Verma submitted that before rejecting its application the Lower Level Screening Committee did not give reasonable opportunity of hearing to the representative of the petitioner. He referred to the averments made in paragraph 9 of the petition and paragraphs 3 to 5 of the additional affidavit of Smt. Sunita Jindal and also invited our attention to annexure D-2 to show that while informing the petitioner about the non-production of the certificates, the General Manager, District Industries Centre, Ambala, had not indicated the date on which the petitioner''s representative was to appear before the Lower Level Screening Committee and without hearing him on the question of production of certificates enumerated in Clause (3) of form S.T. 70, the Committee rejected its application on the ground of non-production of CLU certificate. Shri Verma lamented that the respondents have made an attempt to mislead the court by producing a distorted version of the notice dated June 9, 1997.

14. The learned Deputy Advocate-General conceded that annexure R-4 is not the true and correct copy of the letter sent to the petitioner by the General Manager, District Industries Centre, Ambala, but, at the same time, tried to defend it by saying that this may have been occasioned due to inadvertence. He further submitted that the decisions of the Lower Level Screening Committee and the Higher Level Screening Committee should not be nullified on the ground of violation of the principles of natural justice because as per the petitioner''s own showing, it had not produced the CLU certificate.

15. We have thoughtfully considered the respective submissions. In order to decide whether or not the petitioner was given reasonable opportunity of hearing by the Lower Level Screening Committee, we may refer to the averments made

in paragraphs 3 to 5 of the affidavit of Smt, Sunita Jindal, annexures D-2 and R-4. The same are reproduced below :

"Paragraphs 3 to 5 of the affidavit of Smt. Sunita Jindal :

3. That the Higher Level Screening Committee in its meeting held on March 20, 1997 decided that no case could be considered for the grant of sales tax exemption without obtaining certificate of change of land use from Town and Country Planning Department and any benefit already given should be withdrawn immediately as would be observed from annexure D-1 to this affidavit.

4. That the deponent received memo No. S.T./DIC/Amb/IST/1910 dated June 9, 1997 for appearance before L.L.S.C. from the General Manager, District Industries Centre, Ambala, without mentioning any date for appearance. The original copy of the said notice, in which no date of the meeting of L.L.S.C. is indicated is enclosed as annexure D-2 to this affidavit.

5. That the deponent received no notice for June 24, 1997 on which date the L.L.S.C. decided to reject the application of deponent as per intimation received vide G.M. DIC''s letter dated July 11, 1997 which is P5 to impugned C.W.P.

Annexure D-2 :

From

General Manager, District Industries Centre, Ambala. To

B.D. Alloys, Village Nasirpur, Ambala City. Memo No. ST/DIC/Amb/IST/1910

Subject : Sales tax exemption.

Your attention is invited to this office registered notice No. 12429 dated March 14, 1997 wherein you were requested to remove the following deficiencies as well as to appear before the L.L.S.C. meeting held on dated........

1. C.L.U. from D.T.P.

2. NOC from Pollution Control Board.

3. Option to avail the S.T. exemption.

In spite of this notice, you have failed to complete deficiencies mentioned at Sr. Nos. 1--3 above and also failed to appear before the L.L.S.C. on the abovesaid date.

You are hereby given a final notice to remove the above-mentioned deficiencies before dated..................and appear before L.L.S.C. meeting scheduled to meet on dated..................at...................... in the office of the undersigned.

It may be noted that in case you fail to remove the above deficiencies or appear before the L.L.S.C. on the abovesaid date, your case will be decided without affording any further opportunity.

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

Annexure R.-4 :

From

General Manager, Distt. Industries Centre, Ambala, To

B.D. Alloys, Vill. Nasirpur, Ambala City. Memo No. ST/DIC/Amb/IST/1910

Subject : Sales tax exemption.

Your attention is invited to this office registered notice No. 12429 dated March 14, 1997 wherein you were requested to remove the following deficiencies as well as to appear before the L.L.S.C. meeting held on...............

1. C.L.U. from D.T.P.

2. NOC from Pollution Control Board.

3. Option to avail the sales tax exemption.

In spite of this notice, you have failed to complete deficiencies mentioned at Sr. Nos. 1-3 above and also failed to appear before the L.L.S.C. on the abovesaid date.

It may be noted that in case you fail to remove the above deficiencies or appear before the L.L.S.C. on the abovesaid date, your case will be decided without affording any further opportunity.

Sd/-- General Manager, District Industries Centre Ambala."

16. A bare reading of annexure D-2 shows that while informing the petitioner that it had failed to complete the deficiencies pointed out vide notice No. 12429 dated March 14, 1997 and requiring its representative to appear before the Lower Level Screening Committee, the officer concerned did not indicate the date on which the petitioner''s representative was to appear. This left the petitioner to grope in dark about the date on which the Lower Level Screening Committee was to meet for considering its application for grant of exemption. Notwithstanding this, the Lower Level Screening Committee in its meeting held on June 20, 1997, rejected the petitioner''s application on account of non-submission of CLU certificate. Annexure R-4 is a distorted version of annexure D-2, inasmuch as, third paragraph of that document has been left out. In our opinion, this has been done by the officer concerned with a view to mislead the court in believing that no prejudice has been caused to the petitioner on account of violation of the principles of natural justice. Shri Jaswant Singh tried to convince us that no prejudice has been caused to the petitioner due to the denial of opportunity of hearing to its representative and, therefore, the court may not interfere with the impugned decision, but we have not felt impressed because one of the points raised by the petitioner in support of its claim for grant of exemption certificate is that other industries have been granted such certificates without producing CLU

certificate. Whether or not such plea would be accepted by the Lower Level Screening Committee is not a matter on which we are required to delve because that is an issue which must be addressed and considered by the Lower Level Screening Committee and not by this Court.

17. On the basis of above discussion, we hold that the decision of the Lower Level Screening Committee is vitiated on account of violation of the principles of natural justice. The order of the Higher Level Screening Committee is also liable to be quashed because the said Committee has done nothing more than to confirm an illegal order passed by the Lower Level Screening Committee.

18. In the result, the writ petition is allowed. The decision of the Lower Level Screening Committee rejecting the petitioner''s application for grant of eligibility certificate is declared illegal and quashed. The order passed by the Higher Level Screening Committee dismissing the appeal filed by the petitioner is also declared illegal and quashed. The Lower Level Screening Committee is directed to decide the issue relating to grant of eligibility certificate to the petitioner afresh and pass appropriate order within four months after giving reasonable opportunity of hearing to it. The respondents are directed to pay costs of Rs. 5,000 which shall be recovered from the officer who filed a distorted version of the notice issued to the petitioner.