
(2003) 05 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16336 of 2002

Bharati Teltech Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 08-05-2003

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(11)

Citation : (2004) 138 STC 432

Hon'ble Judges : N.K. Sud, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : M.L. Sarin and K.L. Goyal, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud, J.—Petitioner is a dealer registered under the provisions of Haryana General Sales Tax Act, 1973 (for short, "the Act") and the Central Sales Tax Act, 1956. It claimed sales tax exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") which was granted by the Higher Level Screening Committee in its meeting held on November 21, 1994 approving case of the petitioner for availing sales tax exemption for Rs. 494.80 lakhs for a period of 7 years from December 13, 1991 to December 12, 1998 on the sale of Electronic Publication Telephone (for short, the "EPBT"). Subsequently, on May 3, 1997, it made an application seeking amendment in the eligibility certificate so as to include certain other items. The Higher Level Screening Committee rejected that application vide order dated July 22, 1997. Petitioner filed an appeal before the Commissioner of Industries which was accepted and the matter was remained to the Higher Level Screening Committee to revise the eligibility certificate allowing the benefit of sales tax exemption on additional items. However, the period of exemption remained unaltered. Petitioner availed full benefit of exemption.

2. After the expiry period of exemption, the Deputy Excise and Taxation

Commissioner, Gurgaon, while monitoring the production level of the petitioner's unit, noticed that it was not maintaining the level of production of preceding five years and had thereby violated the provisions of Rule 28A(11)(a)(i). Consequently, he initiated proceedings against the petitioner and held it liable under Rule 28A(11)(b) to make full payment of tax exemption benefit availed by it during the concession period alongwith interest. A copy of the order of the Deputy Excise and Taxation Commissioner has been placed as annexure P8. Aggrieved by this order, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals), Rohtak, which was rejected vide order dated February 27, 2001 (annexure P10). Thereafter, the petitioner filed an appeal before the Sales Tax Tribunal, Haryana which was also rejected vide order dated September 26, 2002 (annexure P13). It is against these orders that the present writ petition has been filed.

3. Shri M.L. Sarin, learned Senior Counsel for the petitioner, contended that the action of the respondents in withdrawing exemption was not justified as there was no violation of Rule 28A(11)(a)(i) of the Rules. The production of the petitioner had not fallen below the level of average production for the preceding five years. He referred to the comparative figures as reflected in the following chart furnished before the Tribunal :

(Quantity manufactured in lakhs)	Particulars	EPBT	Pagers	Spares	Total	Preceding
5 calendar	18.96	0.22	23.24	42.42	years (1994-1998)	Average of preceding
	3.79	0.04	4.65	8.48	5 years.	Subsequent 3 calen-
	27.95	Nil	44.72	72.67	dar years	(1999-2001)
	9.32	Nil	14.90	24.22	quent 3 years.	(Turnover of
						goods manufactured
						Rupees in lakhs)
						Particulars
						Amount (Rs. in lakhs)
						Preceding 5 calendar
						years (1994-1998)
						8,830.43
						Average of preceding
						5 years
						1,766.09
						Subsequent 3 calendar
						years (1999-2001)
						1,123.81
						Average of
						subsequent 3 years
						3,746.05

According to him, the average production of the "EPBT" for the period of five years preceding the year 1998, when the exemption had been fully availed, was 3.79 lakhs whereas the average production in the subsequent 3 calendar years was 9.32 lakhs. He pointed out that even after accepting this factual position about the average production, the Tribunal has upheld the withdrawal of exemption on irrelevant considerations based on conjectures and surmises. He placed reliance on the judgment of this Court in R.K. Mittal Woollen Mills v. State of Haryana (supra) to contend that the provisions for withdrawal of exemption have to be construed strictly. Such a withdrawal can be made only on the grounds mentioned in sub-Rule (11)(a) of Rule 28A and not on any other ground.

4. Shri Jaswant Singh, Senior Deputy Advocate General, Haryana, on the other hand, supported the impugned orders for the reasons mentioned therein.

5. After hearing Counsel for the parties and after going-through the impugned orders, we find merit in the contention raised on behalf of the petitioner. Sub-Rule (11) of Rule 28A under which the benefit of tax exemption/deferment can

be withdrawn reads as under :

"(11)(a) The benefit of tax exemption/deferment under this rule shall be subject to the conditions that the beneficiary/industrial unit after having availed of the benefit-

(i) shall continue its production atleast for the next five years and not below the level of average production for the preceding five years ; and

(ii) shall not make sales outside the State for next five years by way of transfer of consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in clause (a), it shall be liable to make, in addition to the full amount of tax benefit availed of by it during the period of exemptions/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it :

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit :

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard."

6. The only ground on which tax exemption has been withdrawn in this case is that the petitioner had not maintained the level of average production as required under sub-rule (11)(a)(i). The Tribunal has itself found that the average production of EPBT of the unit during the relevant period of preceding five years was 3.79 lakhs whereas in the three subsequent years, the average production of EPBT was 9.32 lakhs. These figures have not been controverted by the learned Deputy Advocate-General even before us. Once this position is found to be factually correct, petitioner cannot be said to have violated the requirement of sub-Rule (11)(a)(i) which was the only ground on which exemption had been withdrawn. The Tribunal ought to have set aside the orders of the Deputy Excise and Taxation Commissioner and Joint Excise and Taxation Commissioner (annexures P8 and P10) respectively instead of upholding their action on totally erroneous considerations. It has justified the action of the authorities below on the ground that the petitioner had created expanded capacity to coincide with the expiry of the benefit period in the first unit. According to the Tribunal, this position was evident from the fact that the turnover in the first unit had gone down from Rs. 13.27 crores during 1998-99 to Rs. 4.48 crores during 1999-2000, whereas the turnover of the expanded unit had increased from 65.49 lakhs in 1998-99 to 31.36 crores in 1999-2000. This approach of the Tribunal is totally erroneous. It has not pointed out any violation of any law or Rule by the petitioner nor has it referred to any misstatement made by it for grant of exemption qua the expanded unit. Thus, this finding of the Tribunal is purely conjectural. Furthermore, even if what has been stated by the Tribunal were to

be accepted as correct, the exemption of tax could still not be withdrawn as it is not a ground mentioned in sub-Rule (11)(a)(i) of Rule 28A for withdrawal of exemption. The decision of this Court in R.K. Mittal Woollen Mills's (supra) case fully supports the contention of the learned counsel for the petitioner that exemption once granted can be withdrawn only in the two situations mentioned in clauses (i) and (ii) of sub-Rule (11)(a) and not on any other ground.

7. In view of the above discussion, we are of the considered view that since there was no violation of Rule 28A(11)(a)(i) of the Rules, the exemption granted to the petitioner could not be withdrawn. Consequently, the writ petition is allowed and the impugned orders annexures P8, P10 and P13 are quashed. However, in the circumstances of the case, there shall be no order as to costs.