(2002) 07 P&H CK 0049

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17904 of 2001

Flow Link Industries Private Limited APPELLANT

Vs

Sales Tax Tribunal and Others RESPONDENT

Date of Decision : 04-07-2002

Acts Referred:
Haryana General Sales Tax Rules, 1975 — Rule 28A

Citation : (2002) 128 STC 433

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

Bench : Division Bench

Advocate : Rajesh Bindal, for the Appellant; Ritu Bahri, D.A.G. Haryana, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Petitioner is a private company and had set up a new industrial unit which went into commercial production on December 12, 1994. It applies for the grant of Eligibility Certificate for deferment of payment of sales tax under Rule- 28-A of the Haryana General Sales Tax Rules, 1975. This claim of the petitioner was rejected by the Lower Level Screening Committee on March 1.4, 1997. Feeling aggrieved by this order, an appeal was filed before the Higher Level Screening Committee which was accepted and the case remanded for a fresh decision. The Eligibility Certificate was issued on August 23, 1999. Before the matter regarding the grant of Eligibility Certificate could be finally decided by the competent authority, the Assessing Authority made the assessment on December 31, 1997. The petitioner filed an appeal against the order of assessment which was dismissed by the Joint Excise and Taxation Commissioner by order dated August 13, 1998. Alongwith the memorandum of appeal the petitioner had also filed an application seeking permission of the authority to entertain the appeal without deposit of the assessed tax. On this application, the petitioner was directed to deposit a sum of Rs.19,87,306/- in monthly instalments of Rs. 1.5 lacs each beginning from June, 1998. Since the petitioner failed to comply with this direction, the appeal was dismissed. Feeling aggrieved by this order, an appeal was filed before the Sales Tax Tribunal which, too, was dismissed on December 4, 1998 on the ground that the petitioner had failed to comply with the interim order passed by the Joint Excise and Taxation Commissioner inasmuch as it failed to deposit the instalments fixed by the department. It is against these orders that the present petition has been filed under Article 226 of the Constitution.

2. We have heard learned counsel for the parties and it is their common case that after the dismissal of the appeal by the Sales Tax Tribunal the competent authority granted the Eligibility Certificate to the petitioner for deferment of the payment of sales-tax. This certificate was issued on August 23, 1998. Thereafter the Entitlement Certificate was issued on March 28, 2000. Since the petitioner has now been issued the Eligibility Certificate and the Entitlement Certificate, we are of the considered view that the appeals which already stand dismissed should be restored to their original numbers and these should be heard on merits without requiring the petitioner to deposit the assessed amount. It true that on the date when the appeals were dismissed the petitioner was not in possession of the Eligibility and the Entitlement Certificate but those have been obtained by it subsequently and after these had been issued, the petitioner had become entitled to deferment of sales tax w.e.f. 12.12.1994 and taking note of the subsequent events, we set aside the orders dismissing the appeals filed by the petitioner and direct respondent no. 2 to hear the appeals filed by the petitioner on merits. For the same reasons, the order dated July 16, 2001 dismissing the review application filed by the petitioner also deserves to be set aside.

3. Before concluding, we may mention that the learned counsel for the petitioner stated before us that during the pendency of the appeals, the petitioner had deposited Rs.7,93,700/- out of which the Department has refunded only Rs.3,74,276/- and that the petitioner is entitled to the refund of the balance amount. We are not examining the issue in this case and it will be open to the petitioner to claim refund, if any, due to it from the Department in accordance with law.

4. In the result, the writ petition is allowed and the impugned orders dated August 13, 1998, December 4, 1998 and July 16, 2001 are quashed leaving the parties to bear their own costs,

5. The parties through their respective counsel are directed to appear before respondent no. 2 on July 22, 2002 for further proceedings.

Sd/- Virender Singh. J.

