
(2007) 11 P&H CK 0097
In the Punjab And Haryana At Chandigarh

Hisar Cement Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 3(1)(o)

Citation : (2009) 20 VST 883

Hon'ble Judges : Rajesh Bindal, J;M.M. Kumar, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated March 12, 2003 (P 1), withdrawing the eligibility certificate issued for sales tax exemption in favour of the petitioner-company, pursuant to the decision taken by the Lower Level Screening Committee, Hisar (for brevity, "the LLSC"), in its meeting held on January 27, 2003 as well as order dated April 28, 2006 (P 5), conveying the decision of the Higher Level Screening Committee (for brevity, "the HLSC") taken in its 92nd meeting held on February 16, 2006, whereby the appeal filed by the petitioner-company has been dismissed. Still further it has been prayed that consequential proceedings may also be quashed and direction be issued to the Excise and Taxation Officer-cum-Assessing Authority, Hisar-respondent No. 5 not to recover the consequential additional demand from the petitioner-company.

2. Brief facts of the case are that the petitioner-company is having its factory at Hisar. It has been registered under the Haryana General Sales Tax Act, 1973 as well as the Central Sales Tax Act, 1956. It is claimed that the petitioner-company had set up its plant by incurring total cost of Rs. 127.06 lacs. Sales tax exemption up to a ceiling of Rs. 1,65,33,500 for nine years with effect from September 18, 1993 to September 17, 2002 was granted in its favour. However, the unit of the petitioner-company remained in production up to March 31, 1998 and it could avail benefit of sales tax exemption to the tune of Rs. 16,91,198 as against Rs. 1,65,33,500 allowed by the eligibility certificate. The petitioner-

company has been declared as a sick industrial unit within the meaning of Rule 28A(2)(e) of the Haryana General Sales Tax Rules, 1975 (for brevity, "the Rules") read with Section 3(1)(o) of the Sick Companies (Special Provisions) Act, 1985 and the Haryana Financial Corporation has been appointed as operating agency to work out revival scheme for the petitioner-company. In these circumstances, the Deputy Excise and Taxation Commissioner, Hisar-respondent No. 4 referred the case of the petitioner-company to "the LLSC" and a notice dated June 8, 2001 was issued asking the petitioner-company to show cause as to why the eligibility certificate for sales tax exemption be not withdrawn. On January 27, 2003, after affording personal hearing, "the LLSC" while taking into consideration the fact that the unit of the petitioner-company remained closed for more than six months, decided to withdraw the eligibility certificate for sales tax exemption issued in favour of the petitioner-company (P 1). On March 31, 2003, respondent No. 4 passed an order directing the petitioner-company to deposit a sum of Rs. 16,91,198, which was availed as exemption during the years 1993-94 to 2000-01. The exemption certificate has been withdrawn from the first day of its validity under the provisions of Rule 28A(8)(b) of the Rules, which postulate that when the eligibility certificate is withdrawn, the exemption/entitlement shall be deemed to have been withdrawn from the first day of its validity and the unit shall be liable to payment of tax, interest or penalty as if no exemption certificate has ever been granted to it (P 2).

3. Feeling aggrieved, the petitioner-company filed an appeal dated April 8, 2003, under Rule 28A(5)(f) of the Rules before "the HLSC" asserting that under Rule 28A(8)(a) of the Rules, the eligibility certificate of a unit can be withdrawn only during the currency of the eligibility certificate (P3). On June 9, 2003, during the pendency of the appeal, the Excise and Taxation Officer-cum-Assessing Authority, Hisar-respondent No. 5 issued a demand notice, requiring the petitioner-company to pay an amount of Rs. 16,91,198 on or before July 8, 2003 (P 4). On February 16, 2006, 92nd meeting of "the HLSC" was held, wherein it took the following decision dismissing the appeal filed by the petitioner-company:

Sh. G.S. Aggarwal, Advocate appeared before the committee and explained that discontinuation of business since 2000 was beyond the control of the appellant. This was HFC financed unit. BIFR has declared this unit sick. HTFC was deputed to work out the study of rehabilitation of the unit and supplied to BIFR. The company could not have taken up any step to restart the production till finalisation of the rehabilitation proposal by the operating agency. The case does not fall under the provisions of sick unit. Keeping in view the above report the committee decided to dismiss the appeal of the unit.

4. The aforementioned decision of "the HLSC" has been communicated to the petitioner-company vide letter dated April 28, 2006 (P 5), which is subject-matter of challenge in the instant petition.

5. In the written statement filed on behalf of the respondents factual position regarding grant and withdrawal of exemption certificate for sales tax exemption

has not been denied. However, a preliminary objection has been raised asserting that the incentives/concession, etc., are in the nature of concession and do not confer any legally enforceable right upon the petitioner-company and it is not entitled to invoke the extraordinary writ jurisdiction. It has further been pointed out that on June 13, 1988 the State Government introduced the sales tax incentive scheme for industries as per its industrial policy. Accordingly, Chapter IV "A" of Rule 28A of the Rules was notified by the Excise and Taxation Department, vide Notification No. GSR/46/HA20/73/S.64/89, dated May 17, 1989, which is applicable with effect from April 1, 1988. As per Sub-rule 5(f) and Sub-rule 8(a) of Rule 28A of the Rules sales tax exemption/deferment is to be given to the eligible industrial units/expanded unit/diversified unit. It has been explained that the petitioner-company applied for sales tax exemption on December 3, 1993 under Rule 28A of the Rules. Commercial production was started by the petitioner-company on September 18, 1993. Since the unit was closed with effect from May 28, 2001, a show-cause notice dated June 8, 2001, was issued for not complying condition Nos. 1, 3 and 5 of the eligibility certificate. The stand taken is that the petitioner-company failed to produce decision of the Board for Industrial and Financial Reconstruction (BIFR) declaring it as sick unit, before "the LLSC" as well as "the HLSC". It is, thus, claimed that the eligibility certificate has been rightly withdrawn after affording opportunity of hearing to the petitioner-company.

6. Mr. Avneesh Jhingan, learned Counsel for the petitioner has argued that the exemption certificate cannot be withdrawn after expiration of its period. He has argued that "the LLSC" has gravely erred in law while withdrawing exemption certificate after expiry of its period. The exemption certificate was granted for the period from September 18, 1993 to September 17, 2002, whereas it was cancelled on January 27, 2003. Learned Counsel further argued that the controversy raised in the instant petition is squarely covered by the Division Bench judgment of this Court rendered in the case of Stella Industries (P) Limited v. State of Haryana [2009] 20 VST 62 : [2007] 29 PHT 54 (annexure P 6), wherein it has been held that withdrawal or cancellation of the eligibility certificate under Rule 28A(8) of the Rules can be done only during the currency of the exemption/eligibility certificate and not after its expiry.

7. Ms. Ritu Bahri, learned State counsel while reiterating the stand taken in the written statement has argued that the impugned orders have been lawfully passed. However, she could not successfully controvert the reliance placed by the learned Counsel for the petitioner on Division Bench judgment of this Court in the case of Stella Industries (P) Limited [2009] 20 VST 62 : [2007] 29 PHT 54.

8. After hearing learned Counsel for the parties and perusing the record, we find that the instant petition deserves to be allowed. We are further of the view that the controversy raised in the instant petition has already been settled by a Division Bench of this Court in the case of Stella Industries (P) Limited [2009] 20 VST 62 : [2007] 29 PHT 54, wherein it has been observed as under:

A perusal of the conditions of eligibility certificate granted to the petitioner shows that the maximum amount of benefit available to the petitioner was fixed and also maximum period during which the benefit could be availed of that is Rs. 1,63,66,999 for the period from March 28, 1998 to March 27, 2005 respectively. It is further evident from condition No. 4 of the eligibility certificate, as extracted above, that the eligibility certificate shall cease to be operative with effect from the date the unit reaches the ceiling of deferred/exempted amount of tax prescribed in the eligibility certificate, meaning thereby, the eligibility certificate will become inoperative on two conditions, firstly, when the maximum period provided for its validity, has expired or the maximum amount of benefit available thereunder has been availed of, whichever is earlier. In the present case, it is not in dispute that the benefit available to the petitioner was availed of by it by the year ending March 31, 2002. Meaning thereby, in terms of the conditions of eligibility certificate, the same ceased to be operative thereafter. Once it is so, no action possibly could be taken under Sub-rule (8) of Rule 28A of the Rules, which enables the withdrawal of an eligibility certificate at any time during its currency. Once the currency of the eligibility certificate is over, power under Sub-rule (8) of Rule 28A of the Rules cannot be exercised on the ground it is sought to be exercised by the respondents that is mis-statement or concealment of facts by the petitioner. The plea of the respondents that proceedings for withdrawal of eligibility certificate had been initiated during the currency of the same, have just, to be noticed and rejected, being without any merit. Plain language of Sub-rule (8) of Rule 28A of the Rules provides that it is the withdrawal of the eligibility certificate, which has to take place during its currency and not that the process of withdrawal its to start during that period. Any order passed for withdrawal of eligibility certificate after its currency is over, would be clearly beyond the enabling provisions of Sub-rule (8) of Rule 28A of the Rules.

9. The present case is squarely covered by the aforementioned view taken by the Division Bench in the case of *Stella Industries (P) Limited* [2009] 20 VST 62 : [2007] 29 PHT 54. Therefore, following the same principle of law, we allow the present writ petition.

10 Impugned orders dated March 12, 2003 and April 28, 2006 (P1 and P5) as well as consequential proceedings for recovery of the amount are quashed.

11. The writ petition is disposed of in the above terms.