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**(2001) 10 P&H CK 0035**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 5701 of 2000**

Indian Acrylics Ltd.

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 06-10-2001

**Acts Referred:**

Punjab General Sales Tax (Department and Exemption) Rules, 1991 — Rule 1(2), 1(3), 4(3), 4(4), 4A

**Citation :** (2002) 128 STC 146

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

**Bench :** Division Bench

**Advocate :** R.P. Sawhney and Kishan Singh, for the Appellant; Rupinder Khosla, D.A.G., for the Respondent

**Final Decision :** Allowed

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## Judgement

G.S. Singhvi, J.—The petitioner has invoked jurisdiction of this Court under Article 226 of the Constitution of India for striking down Sub-rules (3) and (4) of Rule 4 of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, "the 1991 Rules") and for quashing the condition imposed by the prescribed authority in the exemption certificate, annexure P2, requiring it to maintain separate accounts of existing units and expansion units.

2. The petitioner is a company incorporated under the Companies Act, 1956. It is engaged in the business of manufacture and sale of acrylic fibre and is registered under the Punjab General Sales Tax Act, 1948 (for short, "the 1948 Act") and the Central Sales Tax Act, 1956 (for short, "the 1956 Act"). In January, 1993, the petitioner was granted sales tax exemption to the tune of Rs. 333 crores spread over a period of seven years in terms of Industrial Policy, 1992, in respect of the industrial units set up at Village Harkishanpura, District Sangrur. However, it could avail the benefit of exemption only to the tune of Rs. 49 crores. In 1996, the Government of Punjab announced a new Industrial Policy (hereinafter described as "the 1996 Policy") which was published vide Notification No.

15/43/96-5/IB/2238 dated March 20, 1996 for grant of fresh incentives to the new entrepreneurs as well as existing industries. For the purpose of giving effect to the 1996 Policy, the State Government framed the rules titled as "Punjab Industrial Incentive Code under the Industrial Policy, 1996" (hereinafter described as "the Incentive Code, 1996"). With the avowed object of availing the benefit of incentives announced under the 1996 Policy, the petitioner undertook expansion of its existing unit by enhancing the installed capacity from 25,000 TPA to 38,500 TPA and made additional fixed capital investment to the tune of Rs. 3,568.41 lacs. The General Manager, District Industries Centre, Malerkotla, issued eligibility certificate (annexure P1) under Rule 6.3(ii) of the 1991 Rules entitling the petitioner to claim sales tax exemption amounting to Rs. 84 crores in a period of 120 months commencing from January 9, 1999. After receiving the eligibility certificate, the petitioner submitted application to the Assistant Excise and Taxation Commissioner, Sangrur (respondent No. 3) for grant of sales tax exemption certificate in accordance with the 1996 Policy and the Incentive Code, 1996. Respondent No. 3 issued certificate, annexure P2, with the following condition :

"The exemption is subject to the condition that the dealer will keep the separate accounts of the existing unit and the expansion unit will pay the tax accordingly under rule."

3. The petitioner has averred that the condition of maintaining separate books of account in respect of the existing unit and expansion unit appears to have been incorporated in the certificate on the basis of Rule 4(4) of the 1991 rules which speaks of grant of benefit of deferment/exemption on the basis of incremental production and while doing so, respondent No. 3 completely ignored the provisions contained in the 1996 Policy and Rule 2.5 read with Rule 6.3 of the Incentive Code, 1996. It has further averred that Rule 4(3) and (4) of the 1991 Rules cannot be invoked while granting exemption under the 1996 Policy and the same are liable to be declared ultra vires to the 1996 Policy and Articles 265 and 300A of the Constitution of India.

4. Respondents Nos. 1 and 3 have not controverted the petitioner's assertion that the exemption granted to its original unit had come to an end in January, 2000, but they have justified the condition enshrined in the exemption certificate for maintaining separate accounts of the existing unit and expansion unit by asserting that this was done in accordance with Sub-rules (3) and (4) of Rule 4 of the 1991 Rules. They have averred that the petitioner was granted exemption certificate in accordance with the 1996 policy read with the 1991 Rules and therefore, it cannot avoid the applicability of the concept of incremental production. In support of this contention, respondents Nos. 1 and 3 have relied on the decision taken in the meeting of the Officers Committee on Fiscal Management under the Chairmanship of the Chief Secretary, Punjab, held on January 27, 2000. They have also questioned the petitioner's locus standi to challenge Rule 4(3) and (4) by contending that after having availed the benefit of

incentives, it cannot turn around and challenge the provisions of the 1991 Rules.

5. In the written statement filed on behalf of respondent No. 2, it has been averred that the department has granted sales tax exemption to the petitioner to the tune of Rs. 382.84 crores from May 14, 1993 for a period of seven years.

6. The question as to whether the provisions of Rule 4(3) and (4) of the 1991 Rules can be invoked while granting the benefit of sales tax deferment/exemption in the light of the 1996 Policy was considered and answered in negative in C.W.P. No. 5726 of 2000-- Oswal Fats and Oils Vs. State of Punjab and Others, . In that case, the court referred to the salient features of the Industrial Policy, 1989, 1996 Policy, Incentive Code, 1996, Sections 10-A, 27(1) and 30-A of the 1948 Act and Rules 1(2) and (3), 4(1), (3) and (4), 4-A and 4-B of the 1991 Rules and observed as under :

"An analysis of the above extracted portions of the two industrial policies, the provisions of the rules framed for implementation thereof, the provisions of the 1948 Act and the 1991 Rules shows that with a view to achieve the objective of rapid industrialisation of the State and the consequential creation of job opportunities for unemployed youth, the State Government gave incentives to the new entrepreneurs and also to the existing industries in the form of capital subsidy, exemption or deferment of the sales tax, etc. Section 10A which begins with a non obstante clause, empowers the State Government to defer the payment of tax by the particular class of industries in the interest of industrial development of the State and Section 30-A which empowers the State Government to grant exemption from payment of tax to the particular class of industries, were inserted in the 1948 Act with effect from March 19, 1990 vide Punjab Act No. 3 of 1990. Provisos and Explanations were inserted in Section 30-A vide Ordinance No. 4 of 1992 (which was replaced by Act No. 1 of 1993) in the light of the 1989 Policy and Electronics Policy, 1991. The 1991 Rules were framed by the President of India u/s 27 read with Sections 10-A and 30-A of the 1948 Act with a view to regulate the deferment and exemption of payment of tax envisaged by the 1989 Policy. Later on, these Rules were amended keeping in view the provisions of Package of Incentives, 1992 and the 1996 Policy. The incentive in the form of sales tax exemption/deferment for expansion/modernisation of the existing industry envisaged in the 1989 Policy was to be given on incremental production as defined in Rule 3.12 of the Incentive Code, 1989. For this purpose, expansion and/or modernisation part of the existing industry was considered as an independent identity by virtue of Rule 6.2(4) of Incentive Code, 1989. Under that rule, the industrial unit was required to obtain separate sales tax registration certificate for the additional capacity and incremental production resulting from such expansion/modernisation. This was also unequivocally reflected in the 1991 Rules which were brought into force with effect from April 1, 1989 and made applicable to the units which came into production on or after April 1, 1989. "Rule 4(3) and (4) read with explanation appearing below Rule 4(4) provided for grant of benefit under Sub-rule (1)

thereof on the basis of incremental production. Later on, Rule 1(3) was amended vide Notification No. G.S.R. 65/P.A. 46/48 dated September 21, 1992 and again vide Notification No. G.S.R. 97 dated May 22, 1996 with effect from April 1, 1996 so as to make it applicable to the units which came into production on or after 1st day of October, 1992 and 1st day of April, 1996 respectively. Rule 4-A which begins with a non obstante clause was also inserted vide notification dated September 29, 1992 with a view to extend the benefit of deferment/exemption to the units coming into production on or after 1st day of October, 1992. The 1996 Policy made a clear departure from the 1989 Policy in the matter of grant of incentives in the form of sales tax deferment/exemption inasmuch as the concept of incremental production was omitted from the said Policy and the Incentive Code, 1996. Instead, the new concept of giving benefit of additional fixed capital investment was introduced. A corresponding change was also made in the 1991 Rules by inserting Rule 4-B with effect from April 1, 1996 vide notification dated May 22, 1996. This rule also begins with non obstante clause and Clause (ii) of Sub-rule (1) thereof lays down that group of industries which are set up in B category area (the petitioner falls in this category) on or after April 1, 1996 and the goods produced by them shall be eligible for grant of the benefit, at their option, of deferment of, or, exemption from the liability to pay tax under the 1948 Act for a period of seven years commencing from the date of production subject to the condition that total amount of tax deferred or exempted shall not exceed 150 per cent of their fixed capital investment."

7. On the question of applicability of the concept of incremental production to the incentives granted under the 1996 Policy, the court observed as under :

"A comparison of the 1996 Policy with the 1989 Policy shows that the 1996 Policy was framed to accelerate the level of growth, to attract fresh investment and also to facilitate the expansion of the existing industries. With this end in view, the package of the special incentives was devised. The most notable change made in the 1996 Policy which was implemented by framing the rules in the form of Incentive Code, 1996 was to drop the concept of incremental production and introduction of benefit based on additional fixed capital investment for expansion. This change was also incorporated in the 1991 Rules by inserting Rule 4-B.

A conjoint reading of Rules 1(2) and (3), 4(3) and (4), 4-A and 4-B of the 1991 Rules makes it clear that while the concept of incremental production was adopted for giving benefit of sales tax deferment/exemption envisaged by the 1989 Policy and the Incentive Code, 1989, the same was replaced by the concept of giving benefit in the form of sales tax deferment on the fixed capital investment under the 1996 Policy read with the Incentive Code, 1996. The use of expression "notwithstanding anything contained in any other provisions of these rules" in Rule 4-A(1) is clearly indicative of the intention of the rule-making authority not to invoke the concept of incremental production for grant of benefit of the incentives under the Package of 1992. The use of expression "notwithstanding anything contained in Rule 4-A and subject to the provision of

sub-rule (2)" in Rule 4-B and the language of Clauses (i)(a) and (ii) of Sub-rule (1) of Rule 4-B show that the benefit of exemption to the industries set up in A category area and B category area on or after 1st day of April, 1996 was made relatable to the fixed capital investment and not on the basis of incremental production. Therefore, the decision taken by the respondents to grant benefit of sales tax deferment to the petitioner by applying the concept of incremental production is liable to be declared ultra vires to the scheme of the 1996 Policy, the Incentive Code, 1996 and Rule 4-B(1)(ii) of the 1991 Rules."

8. The court then considered the effect of non obstante clauses contained in Rules 4-A and 4-B of the 1991 Rules and observed as under :

"The effect of a non obstante clause in a statute was considered by the Constitution Bench of the Supreme Court in *Kulathil Mammu Vs. The State of Kerala*, in the context of Articles 6 and 7 of the Constitution of India. The facts of that case were that one Aboobacker, who was born on March 5, 1936 in District Kozhikode, left India some time in 1948. He remained in Pakistan till 1954. In September, 1954 he came to India on Pakistani passport. Between November, 1954 and October, 1964, he off and on went back to Pakistan and came to India. In 1964 he was found living in District Kozhikode without valid travel documents. He was arrested. Writ petition filed on his behalf challenging his arrest was dismissed by Kerala High Court which held that Aboobacker will be deemed to have migrated to Pakistan within the meaning of Article 7 of the Constitution of India and thus, was a foreigner. While upholding the decision of the High Court, the majority of the Supreme Court referred to the non obstante clauses contained in Articles 6 and 7 and held as under :

"Article 6 begins with the words "notwithstanding anything in Article 5" and Article 7 begins with the words "notwithstanding anything in Articles 5 and 6". Articles clearly indicate that they were meant to deal with the abnormal situation and prescribe conditions as to who shall be deemed to be citizens of India on the date of the commencement of the Constitution (Article 6) and who shall not be so deemed (Article 7). It is also remarkable, that both these articles are silent on the question of domicile and the presence of the non obstante clause in the beginning of these articles clearly shows that the concept of domicile was not to be brought into them when deciding who shall be deemed citizens of India (Article 6) or who shall not be deemed to be citizens of India (Article 7). Therefore, the Constitution makers did not intend that the concept of domicile should be brought into Articles 6 and 7 notwithstanding that such concept was present in Article 5 which provides for the normal case of citizenship of India. In this situation it is clear that when Article 6 as well as Article 7 use the word migrated, the intention must have been to give the wider meaning to that word, namely, going from one territory to the other". (Underlining Here italicised is ours).

9. In *General Insurance Corporation of India Vs. Commissioner of Income Tax, Bombay*, , a division Bench of the Supreme Court considered the question as to

whether the amount set apart by General Insurance Corporation for redemption of preference shares can be added back for computing profits and gains of business. The facts of that case show that the appellant-Corporation was formed as a Government company under the General Insurance Business (Nationalisation) Act, 1972. It carries on general insurance business in India. At the time of nationalisation, the then existing private companies which were carrying on the business of general insurance merged together in four subsidiaries of the appellant-Corporation. The Central Government contributed to the capital of the appellant in the form of preference shares and equity shares for the purpose of paying compensation to the shareholders and the management of the merged companies. The preference shares were to be redeemed in such time as the Board of Directors of the appellant-corporation might deem fit. In profit and loss account for the assessment year 1977-78, the appellant-assessee made a debit entry of a certain amount and, in accordance with Rule 2(2)(a) of the General Insurance Business (Nationalisation) Rules, 1973 (for short "GIB Rules") transferred the same to the preference share capital redemption account. The Income Tax Officer added back that amount to the income of the assessee on the reasoning that in view of Rule 2(a) of the GIB Rules this amount was to be treated as revenue expenditure. The High Court upheld the action of the Revenue. While allowing the appeal of the Corporation, the Supreme Court held as under :

"The sum set apart as provision for redemption of preference shares could not have been treated as an expenditure. It is also not an expenditure or allowance of the nature covered by Sections 30 to 43-A of the Income Tax Act, 1961, The question of determining its admissibility by reference to Rule 5(a) of the First Schedule to the Income Tax Act, 1961 does not arise, nor could it have been added back by the assessing authority by purporting to exercise power under the said rule. The object of GIB Rules is quite different. The concept behind Rule 2(2) (a) of the GIB Rules is to permit the Corporation to enter the amount of reserve in the profit and loss account in the expenditure side which would not have been permissible otherwise, because the amount set apart in a reserve cannot be expenditure. The rule puts a stamp of permissibility on something not permissible otherwise. This rule itself is suggestive of the fact that the amount set apart in a reserve is not an expenditure in its commercial sense. The extent of the GIB Rules does not go beyond providing an accounting method. These rules cannot be pressed into service for altering the basic character of the amount which is not an expenditure.

The object of Rule 2(2)(a) is to reduce the amount of profit of the Corporation by the amount set apart as reserve by artificially treating the amount of reserve as an item in the expenditure column. If the same amount was allowed to be added back to profits under Rule 5(a) of the First Schedule to the Income Tax Act, then the object sought to be achieved by Rule 2(2)(a) abovesaid is defeated. The non obstante clause with which Section 44 of the Income Tax Act opens and gives it an overriding clause with which Section 44 of the Income Tax Act would earn an

overriding effect on the provisions of another enactment also though Parliament has not chosen to give Section 44 of the Income Tax Act such an effect. Nor does Rule 2(2)(a) of the GIB Rules have an overriding effect on the provisions of the Income Tax Act. The two provisions contained in the two enactments have thus different purposes to achieve. The rule of harmonious construction would therefore sustain neither what the Income Tax Officer did nor the view of the law taken by the High Court." (Underlining Here italicised is ours).

10. By applying the propositions laid down in the aforementioned decisions to the facts of this case, we hold that non obstante clause contained not in Rule 4-B(1) overrides the provisions contained only in Rule 4-A, but also in Rule 4(3) and (4) of the 1991 Rules and, therefore, the concept of incremental production cannot be invoked for granting benefit of sales tax deferment to an industrial unit like the petitioner which undertook expansion after April 1, 1996.

11. The argument of the learned Deputy Advocate-General that Rules 4(3) and (4) should be read as part of Rule 4-B was rejected in the following words :

"The argument of the learned Deputy Advocate-General that Rule 4(3) and (4) should be read as part of Rule 4-B because the non obstante clause contained in Sub-rule (1) of Rule 4-B is worded differently than the non obstante clause used in Rule 4-A appears to be attractive in the first blush, but lacks merit and deserves to be rejected. In this context, it is important to bear in mind that Rule 4-A was inserted vide notification dated September 29, 1992 for the purpose of giving effect to package of incentives announced by the Government in September, 1992 and by incorporating non obstante clause in it, the rule-making authority had made it clear that the benefit available under the package of the incentives will not be restricted by applying the concept of incremental production. Rule 4-B, as observed above, was inserted for giving effect to the 1996 Policy and the rules contained in the Incentive Code, 1996. Therefore, the non obstante clause used in Sub-rule (1) of Rule 4-B will have the effect of overriding the provisions of Rule 4-A as also Rule 4(3) and (4) and being later in point of time, it would prevail over all other provisions of the 1991 Rules."

12. By applying the ratio of the decision of Oswal Fats and Oils Vs. State of Punjab and Others, to the facts of this case, we hold that the provisions of Rule 4(3) and (4) of the 1991 Rules cannot be applied by the respondents to the incentives granted to the petitioner under the 1996 Policy read with Incentive Code, 1996 and. therefore, the condition embodied in certificate, annexure P2, requiring it to keep separate accounts of the existing unit and expansion unit is liable to be declared ultra vires to the provisions of the 1996 Policy and Incentive Code, 1996.

In view of the above conclusion, we do not consider it necessary to pronounce upon the validity of Rule 4(3) and (4) of the 1991 Rules.

In the result, the writ petition is allowed. The condition incorporated in annexure P2 requiring the petitioner to maintain separate accounts of the existing unit and

the expansion unit is declared illegal and quashed with a direction to the respondents to grant the benefit of exemption to it without insisting on compliance of the said condition.