
(2002) 12 P&H CK 0059
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1164 of 2002

Innovative Tech-Pack Ltd.

APPELLANT

Vs

Higher Level Screening Committee and Another

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(3)

Citation : (2003) 131 STC 498

Hon'ble Judges : S.S. Saron, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : K.L. Goyal and Sandeep Goyal, for the Appellant; Randhir Singh, Senior DAG, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Petitioner is a public limited company which is running an industrial unit at Sohna in District Gurgaon. It applied on February 23, 1995 for the grant of an eligibility certificate under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules"). This certificate was applied for manufacturing packing material (jars, bottles and caps). Under Sub-rule (4) of Rule 28A of the Rules, the dealer applying for the benefit of tax exemption or deferment is required to opt whether the said certificate should be operative from the date of commercial production or from the date of issue of exemption certificate. Since the petitioner did not exercise its option in the application, it addressed a communication to the General Manager, District Industries Centre, Gurgaon on March 9, 1995 informing the latter that it wanted to avail the benefit of exemption from the date of grant of exemption certificate. Thereafter, on March 20, 1995 it addressed another letter to the General Manager informing him that it wanted the benefit of exemption from the date of commercial production and not from the date of exemption certificate as was mentioned/requested in its earlier letter of March 9, 1995. The matter regarding the grant of eligibility certificate remained pending with the competent authority and it was

only on February 15, 2000 that the eligibility certificate was issued to the petitioner copy of which is annexure P5 with the writ petition. The period of eligibility was "nine years from the date of issue of exemption certificate" subject to a ceiling of Rs. 99,03,000 only. The products for which the certificate was issued were mentioned in Clause 9(b) of the certificate and this clause includes only pet jars and bottles. It is pertinent to mention here that the petitioner had applied for the certificate in regard to caps as well but the certificate was silent in regard to this product.

2. Since the eligibility certificate was not in accordance with the request made by the petitioner and was to commence from the date of issue of the exemption certificate and it also did not pertain to the manufacture of caps, the petitioner made a representation to the Additional Director, Industries, Haryana, Chandigarh. The request made in this representation was to rectify the mistake/error committed while issuing the eligibility certificate. The representation was rejected and a communication was sent to the petitioner on July 26, 2000. The petitioner then addressed a communication dated September 7, 2000 to the Commissioner and Secretary, Department of Industries, Haryana, Chandigarh making the aforesaid two grievances. It appears that the department treated this communication as an appeal filed by the petitioner against the order of the Higher Level Screening Committee issuing the eligibility certificate and since, according to the department, this was filed beyond a period of 30 days from the date of the issue of the certificate, the same was rejected as time-barred. It was then that the present petition was filed under Article 226 of the Constitution for a mandamus directing the respondents to amend the eligibility certificate so as to commence from the date when the petitioner's industrial unit went into commercial production. Another prayer made is that the respondents be directed to include the product "caps" in the certificate for which the petitioner had made the application.

3. In response to the notice of motion the respondents have filed their reply controverting the averments made in the writ petition. The petitioner has also controverted the averments made in the written statement and has filed a replication.

4. We have heard learned counsel for the parties and perused their pleadings and are of the view that the writ petition deserves to succeed. The relevant part of Sub-rule (4) of Rule 28A of the Rules with which we are concerned, reads as under :

"(4)(a) Subject to other provisions of this rule, the benefit of tax exemption or deferment shall be given to an eligible industrial unit holding exemption or entitlement certificate, as the case may be to the extent, for the period, from year to year in various zones from the date of commercial production or from the date of issue of entitlement/exemption certificate as may be opted as under :

....."

5. A perusal of the aforesaid provision makes it clear that an eligible industrial unit while applying for the eligibility certificate is entitled to exercise its option in regard to the date from which the said certificate is to commence. It could commence from the date when the industrial unit went into commercial production or from the date of issue of exemption certificate. In the present case, the petitioner initially opted that the certificate should commence from the date of grant of exemption certificate. Thereafter, it addressed another communication on March 20, 1995 informing the General Manager of the District Industries Centre, Gurgaon that the certificate should commence from the date when the industrial unit of the petitioner goes into commercial production and not from the date of exemption certificate as mentioned in the earlier letter. It appears that the High Level Screening Committee while examining the application of the petitioner overlooked its request and did not consider the same. It is not even the case of the respondents that the petitioner could not change its option once exercised. In any case, Rule 28A of the Rules is a part of the taxing statute and if the rule is silent in regard to the change of option it will have to be interpreted in favour of the dealer. There is no specific bar contained in Rule 28A of the Rules debarring an industrial unit to change its option once exercised in regard to the date of commencement of the eligibility certificate. There is, however, a bar contained in Sub-rule (3) of Rule 28A of the Rules. According to this sub-rule, an eligible industrial unit is required to exercise its option either to avail the benefit of tax exemption or deferment and if the option once exercised in this regard has been made final the dealer has no right to change the option subsequently but in regard to the date of commencement of the eligibility certificate, there is no such bar and, therefore, we are clearly of the view that it was open to the petitioner to change its option in regard to the date of the commencement of the eligibility certificate. Since the Higher Level Screening Committee did not consider this aspect, we are of the view that the grievance made by the petitioner is justified and that the certificate issued to the petitioner ought to have commenced with effect from the date when its industrial unit went into commercial production.

6. Now coming to the next grievance of the petitioner. Here again, we are of the view that the petitioner is on a sound footing. It applied for the eligibility certificate in regard to three products which it was wanting to manufacture, namely, packing material (jars, bottles and caps). The certificate granted by the Higher Level Screening Committee is restricted only to the manufacture of jars and bottles. It does not cover caps. Here again, no explanation is forthcoming as to why this product was left out from the column pertaining to the description of manufactured products. This aspect was also overlooked by the Higher Level Screening Committee and the representations made by the petitioner in this regard were not considered. The representation made to the State Government was treated as an appeal filed by the petitioner and since the department was of the view that the representation had been filed beyond the period of 30 days from the date of issue of the eligibility certificate, it was dismissed on the ground

of limitation. We are not sure whether the representation which the petitioner filed before the Secretary, Industries Department, was an appeal under Rule 28A of the Rules but even if it was beyond the period of limitation it did not justify the Higher Level Screening Committee to overlook the aforesaid two aspects.

7. Before concluding, we may notice the contention of Shri Randhir Singh, learned Senior Deputy Advocate-General appearing on behalf of the respondents. He contends that the item of caps cannot be included in the eligibility certificate because on an inspection carried out by the departmental team it transpired that the petitioner was not manufacturing caps at the time when it set up the industrial unit and, therefore, no exemption certificate could be granted in regard to such an item. We are not impressed with this argument. The period of eligibility certificate was nine years and as per the option exercised by the petitioner, this period had to commence from the date when its industrial unit went into commercial production. The maximum benefit of tax exemption to which the petitioner was entitled had also been mentioned in Clause 10 of the certificate which, as already observed, was Rs. 99,03,000 only. In other words, the petitioner was entitled to the benefit of tax exemption to the tune of Rs. 99,03,000 during the period of nine years commencing from the date when it went into commercial production. There is no requirement of Rule 28A of the Rules that the industrial unit must be manufacturing an item when it applies for the eligibility certificate or at the time when the industrial unit was set up. Therefore, it makes no difference even if the petitioner was not manufacturing the item of caps at the time when the industrial unit was set up. If it starts manufacturing the items for which it had applied for the exemption certificate during the period of nine years of its validity, we are clearly of the view that it shall be entitled to claim exemption in regard to those items as well.

8. For the reasons recorded above, the writ petition is allowed and the impugned order passed by the Higher Level Screening Committee fixing the date of commencement of benefits from the date of issue of exemption certificate quashed and it is directed to grant the benefits to the petitioner with effect from the date when the industrial unit went into commercial production. The Higher Level Screening Committee is also directed to include in the items of manufacture the product of caps for which the petitioner had made an application. The directions hereinabove be carried out expeditiously but not later than three months from the date of receipt of a copy of this order. There is no order as to costs.