
(2003) 04 P&H CK 0122
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13956 of 2002

Mahabir Industries

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-04-2003

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(1), 28A(2), 28A(4), 28A(5)

Citation : (2004) 138 STC 493

Hon'ble Judges : S.S. Grewal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This is a petition for quashing the decisions of the Lower Level Screening Committee (for short, "LLSC") and Higher Level Screening Committee (for short, "HLSC") declining the petitioner's prayer for correction in eligibility certificate dated November 9, 1992 issued by the LLSC under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules"). The other prayer made in the writ petition is for directing the respondents to revise the eligibility certificate and give consequential benefits to the petitioner.

2. The petitioner is a partnership firm engaged in the manufacturing and sale of solvent extracted oil, such as rice bran oil and de-oiled rice bran cakes. It is registered as dealer under the Haryana General Sales Tax Act, 1973 (for short, "the Act"). After commencement of production in its unit situated in Village Takhana, Block Nilokheri, District Karnal, the petitioner applied under Rule 28A of the Rules for issuance of eligibility certificate. The application of the petitioner was considered in the meeting of LLSC held on September 2, 1992 and on the basis of the decision taken in the said meeting, eligibility certificate dated November 6, 1992 (annexure P1) was issued in favour of the petitioner entitling it to claim exemption from payment of sales tax to the tune of Rs. 93,58,262

which could be availed within seven years, i.e., from April 8, 1992 to April 7, 1999. Thereafter, exemption certificate dated December 23, 1992 was issued by the competent authority. The petitioner availed full exemption up to first quarter of 1995-96, i.e., much before the expiry of the period of exemption.

3. After almost three years of having availed the benefit of exemption, the petitioner submitted application dated January 25, 1999 (annexure P2) to General Manager, District Industries Centre, Karnal, for correction of eligibility certificate annexure P1 by claiming that its unit is situated in notified backward area and in terms of the policy decision taken by the State Government on April 17, 1992 which was circulated vide letter dated April 28, 1992, it is entitled to exemption from payment of sales tax upto 150 percent of the fixed capital investment (Rs. 74,94,610) for a period of nine years because Nilokheri Block falls in Zone-A. Vide memo No. 951/SSS dated December 2, 1999, Deputy Excise and Taxation Commissioner, Karnal, recommended the petitioner's case for issuance of revised eligibility certificate. A similar recommendation was made by General Manager, District Industries Centre, Karnal, vide letter dated July 14, 2000 (annexure P4) sent to the Director of Industries, Haryana. However, the LLSC rejected the petitioner's application by observing that there is no provision in the Rules for amendment/correction of the eligibility certificate. This was conveyed to the petitioner by General Manager, District Industries Centre, Karnal, vide letter annexure P5 dated November 20, 2000. The appeal filed by the petitioner against annexure P5 was dismissed by HLSC in its 29th meeting held on May 16, 2002 and May 17, 2002. The decision of the HLSC was conveyed to the petitioner vide letter annexure P6 sent by Director of Industries, Haryana, through General Manager, District Industries Centre, Karnal.

4. The petitioner has challenged annexures P5 and P6 by contending that the decisions of the LLSC and HLSC to decline its prayer for issuance of revised eligibility certificate are contrary to the policy framed by the Government of Haryana to grant exemption upto 150 percent of the fixed capital investment to the industries situated in Zone "A".

5. Respondent No. 4 has filed written statement to contest the writ petition. He has averred that the eligibility certificate issued in favour of the petitioner in November, 1992 had become final because the same was not challenged by way of appeal which could be filed within thirty days. He has further averred that after availing full exemption in terms of certificate dated December 23, 1992, the petitioner started charging tax on its sales and, therefore, it is estopped from claiming further exemption from payment of tax. Respondent No. 4 has justified the rejection of the application filed by the petitioner for correction of eligibility certificate by contending that there is no provision in the Act or the Rules for correction thereof after a period of more than six years of its issuance.

6. Shri Avneesh Jhingan, learned counsel for the petitioner, candidly and fairly conceded that there is no provision in the Act and the Rules for review/revision/modification/correction of the eligibility certificate except by way of appeal which

could be filed under Rule 28-A(5)(f) of the Rules within thirty days of the grant thereof, but argued that the LLSC committed a serious illegality by declining the petitioner's prayer for correction of certificate dated November 6, 1992 in accordance with the policy framed by the Government to grant exemption upto 150 per cent to the small scale units. Shri Jhingan submitted that the petitioner's unit is situated at a place which falls in Zone "A" determined by the State Government and, therefore, the LLSC should have initially granted eligibility certificate for a period of nine years so as to entitle it to claim exemption up to 150 per cent of the fixed capital investment. He further argued that the petitioner cannot be made to suffer due to the mistake of the competent authority, i.e., the LLSC to grant appropriate certificate in terms of Rule 28-A(2) read with Rule 28-A(5) of the Rules and the policy circulated vide letter dated April 28, 1992.

7. Shri Jaswant Singh, learned Senior Deputy Advocate-General, Haryana, defended the impugned decisions of the LLSC and HLSC by arguing that there is no provision in the Act and the Rules for correction of eligibility certificate and in the absence of a specific provision empowering it to revise/review/modify the eligibility certificate, the LLSC could not have entertained the application made by the petitioner for correction of certificate dated November 6, 1992 after a gap of more than six years,

8. We have given serious thought to the respective arguments. A perusal of eligibility certificate, annexure P1, issued under Rule 28A(i) of the Rules shows that the petitioner had claimed tax exemption for a period of seven years from April 8, 1992 to April 7, 1999 by claiming that its unit is located in Zone "B". The LLSC accepted its prayer and on that basis the competent authority issued the desired certificate entitling the petitioner to claim exemption to the tune of 125 per cent of the fixed capital investment of Rs. 74,92,610. The petitioner did not challenge the same by filing appeal under Rule 28A(5)(f) of the Rules. Instead, it applied for exemption certificate which was issued by the competent authority on December 12, 1992. Accordingly, it availed the benefit of tax exemption to the tune of Rs. 93,68,262. In terms of the eligibility certificate, the petitioner could have availed tax exemption from April 8, 1992 to April 7, 1999, but it exhausted the exemption by the end of the first quarter of 1995-96. After almost three years of having availed the benefit of tax exemption in terms of certificate dated December 23, 1992 the petitioner applied for correction of eligibility certificate dated November 6, 1992, without making reference to the provisions under which such an application could be maintained. The LLSC rejected the application as not maintainable and HLSC upheld the decision of the LLSC by observing that no appeal is maintainable against the rejection of the application for review of eligibility certificate.

9. In our opinion, the decision of the LLSC to decline the petitioner's prayer for making correction in eligibility certificate dated November 6, 1992 and/or to issue revised eligibility certificate cannot be declared illegal because there is no

provision in the Act and the Rules under which an eligibility certificate granted in terms of rules 28A(2) read with Rule 28A(4) and (5) can be corrected and that too on the basis of the application filed after almost six years of expiry of the period of limitation prescribed under Rule 28A(5)(f) of the Rules and more than three years of availing the benefit of tax exemption in terms of the eligibility and exemption certificates granted in November and December, 1992.

10. We are further of the view that the only remedy available to the petitioner against any error in certificate, annexure P1, was to file an appeal under Rule 28A(5)(f) of the Rules which it failed to avail within the limitation of thirty days. The HLSC too did not commit any illegality by refusing to entertain the appeal filed by the petitioner because there is no provision in the Rules for such appeal.

11. For the reasons mentioned above, the writ petition is dismissed.