
(2008) 12 P&H CK 0044
In the Punjab And Haryana At Chandigarh

Mahabir Vegetable Oils Pvt. Ltd.	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 09-12-2008

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A

Citation : (2009) 24 VST 99

Hon'ble Judges : L.N. Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd., (2011) 184 ECR 288 : (2011) 2 JT 429 : (2011) 2 RCR(Civil) 933 : (2011) 2 SCALE 577 : (2011) 3 SCC 778 : (2011) 4 SCR 944 : (2011) 2 UJ 858 : (2011) 38 VST 514 : (2011) AIRSCW 2262 : (2011) AIRSCW 1540 : (2011) AIRSCW 1617 : (2011) 2 Supreme 135

Adarsh Kumar Goel, J.—This petition seeks quashing of order dated September 26, 2007 passed by the Lower Level Screening Committee (LLSC), constituted under the provisions of Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules"), as affirmed by the Higher Level Screening Committee (HLSC) vide order dated July 4, 2008.

2. Case of the petitioner is that it is a company under the Companies Act, 1956. The State of Haryana declared its Industrial Policy and framed Rule 28A of the Rules, which, inter alia, provides for exemption from sales tax to the extent of specified quantum on conditions specified therein. The operative period mentioned in the Rules is from April 1, 1988 to July 1997.

3. The petitioner was making investment prior to 1996. One of the conditions of eligibility is that the product to be manufactured should not be in the negative list, i.e., should not be in Schedule III appended to the Rules. On December 16, 1996, notification was issued including the solvent extraction plant in the

negative list and on that basis, the petitioner was sought to be declared ineligible on the ground that eligibility is to be seen on the date of commencement of commercial production or on the date of application. The date of application and commercial production in the case of the petitioner is in the year 1997. The petitioner filed writ petition in this Court, which was dismissed and thereafter filed C. A. No. 1635 of 2006 in the honourable Supreme Court, which was allowed vide order dated March 10, 2006 (the judgment is Mahabir Vegetable Oils Pvt. Ltd. and Another Vs. State of Haryana and Others, S. The honourable Supreme Court held that on the day the petitioner started making investment, Rule 28A was operative. The said rule amounted to representation, on which the petitioner acted. The relevant observations are as under : (page 383 of STC)

The promises/representations made by way of a statute, therefore, continued to operate in the field. It may be true that the appellants altered their position only from August, 1996, but it has neither been denied nor disputed that during the relevant period, namely, August, 1996 to December 16, 1996 not only they have invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. Parties had also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. An entrepreneur who sets up an industry in a backward area, unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State. The State accepted that equity operated in favour of the entrepreneurs by issuing Note 2 to the notification dated December 16, 1996 whereby and whereunder solvent extraction plant was for the first time inserted in Schedule III, i.e., in the negative list.

Both the provisions contained in Schedule III and the Note 2 formed part of subordinate legislation. By reason of the said note, the State did not deviate from its professed object. It was in conformity with the purport for which original Rule 28A was enacted.

We, in this case, are not concerned with the quantum of exemption to which the appellants may be entitled to, but only with the interpretation of the relevant provisions which arise for consideration before us.

We may at this stage consider the effect of omission of the said note. It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main Act. Rule-making power is a species of delegated legislation. A delegatee therefore can make rules only within the four corners thereof.

It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See *West v. Gwynne* [1911] 2 Ch. 1.

A retrospective effect to an amendment by way of a delegated legislation could be given, thus, only after coming into force of Sub-section (2A) of Section 64 of

the Act and not prior thereto.

By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect.

4. With the above observations, the matter was remanded to the Director of Industries, to consider it afresh.

5. After considering the matter, the impugned order was passed. Therein, recommendation was made for grant of eligibility certificate to the extent of Rs. 94,48,911 for a period of nine years, i.e., from March 29, 1997 to March 28, 2006. The said amount has been calculated with reference to the investment made by the petitioner up to December 16, 1996. On appeal, the appellate authority affirmed the said view with the following observations:

...The Committee examined the judgment relied upon and observed that the honourable Supreme Court has not found fault with the amendment dated December 16, 1996 whereby the solvent extraction plant have been put into negative list (Schedule III). The effect of enlargement of the negative list is that the unit has ceased to be eligible for exemption/deferment with effect from December 16, 1996. Besides, it is further observed that tax concessions, as repeatedly held by the honourable Supreme Court, are a defeasible, not an indefeasible, right but the withdrawal is always prospective.

6. We have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the petitioner submitted that the petitioner could not be deprived of the benefit of the entire investment. Either the petitioner was eligible under the Rules or the petitioner was not eligible. Once the petitioner was considered to be eligible inspite of notification dated December 16, 1996 putting the product in the negative list, benefit could not be restricted.

8. Learned Counsel for the State submitted that though the petitioner was eligible under the policy, eligibility was confined till the date the product was put in the negative list. In absence of any challenge to the notification dated December 16, 1996, restricting the eligibility of the petitioner up to December 16, 1996 cannot be interfered with.

9. The question for consideration is, whether the petitioner having been treated to be eligible, could be denied the benefit of investment after the date of unit having been put in the negative list.

10. Rule 28A, i.e., Sub-rule (2)(f) of Rule 28A is reproduced below:

(f) "eligible industrial unit" means:

(i) a new industrial unit or expansion or diversification of the existing unit, which:

(I) has obtained certificate of registration under the Act;

(II) is not a public sector undertaking where the Central Government held 51 per cent or more shares ;

(III) is not availing incentive of interest-free loan from the Industries Department for investment after the April 1, 1988 ;

(IV) (is not included in Schedule III appended to these Rules) [(V) is not availing or has availed incentive of exemption u/s 13 of the Act]

11. Sub-rule (4)(a) deals with date of eligibility, which is 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]....

12. Thus, the eligibility is from the date of commercial production or from the date of issue of entitlement/exemption certificate.

13. Admittedly, on the date of commercial production and also on the date of issue of entitlement/exemption certificate, the petitioner was in the negative list and could not be considered to be eligible unless applicability of notification dated December 16, 1996 was confined to units which started investment after the said date.

14. The respondents themselves have extended the benefit by not treating the notification dated December 16, 1996 to be applicable to the petitioner. Once the petitioner has been treated to be eligible, there was no valid reason to further classify the benefit of investment up to the date of amendment, putting the unit in the negative list.

15. In view of above, we allow this petition and quash the impugned orders to the extent of restricting the benefit to the date of notification, i.e., December 16, 1996.

16. The appellate authority may now pass a fresh order in accordance with law, within four months from the date of certified copy of this order.