

(1996) 07 P&H CK 0157
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3634 of 1995

Maurya Timbers

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 40
Haryana General Sales Tax Rules, 1975 — Rule 28A

Citation : (1996) 114 PLR 609

Hon'ble Judges : N.K. Agrawal, J

Bench : Single Bench

Advocate : R.C. Dogra and Deepak Kapoor, for the Appellant; Kapil Aggarwal, for the Respondent

Final Decision : Allowed

Judgement

N.K. Agrawal, J.—This is a petition under Article 226/227 for quashing the order passed by the Revisional Authority u/s 41(3) of the Haryana General Sales Tax Act, 1973 (for short "the Act") and the order of the Sales Tax Tribunal passed on 1.2.1995.

2. The petitioner was a small scale Industrial Unit and was registered as a partnership firm under the Act as well as the Central Sales Tax Act. Registration Certificate under the Act had been obtained in the year 1982, vide No. JAG/III/243, dated 28.12.1982 and certificate under the Central Sales Tax Act, 1956, vide No. JAG/CST/245 dated 28.12.1982. The petitioner, in order to diversify its activities, set up a new diversified unit for the production of Plywood, Ply board, Wooden panel, Flush doors, Windows, ventilators etc. Production of the new items in the new diversified unit commenced on 20.6.1989. The petitioner with a view to getting the benefit of tax exemption u/s 13B of the Act made An application for the grant of eligibility certificate which was issued by the relevant screening committee on 25.1.1990. The petitioner became eligible for purposes of exemption from payment of tax under the Act from 20.6.89 to 19.6.96. After

the petitioner received the eligibility certificate for a period of 7 years as aforesaid, an application was made for the issuance of an exemption certificate before the Deputy Excise and Taxation Commissioner. Exemption Certificate was granted on 26.5.1990 entitling the petitioner to receive the benefit of exemption for the same period of 7 years for which the eligibility certificate had been issued by the relevant screening committee. Quarterly returns were filed for the financial year 1989-90 and, for that year, assessment was made by the assessing authority, vide order dated 24.8.1992. The Assessing Authority gave benefit of exemption from tax in respect of sales declared by the new diversified unit at Rs. 10,15,332. Notional liability of Central Sales Tax @ 4% on the aforesaid total amount of Inter-State sales was worked out at Rs. 40,613/-. This amount of tax being notional tax was treated as exempt from payment inasmuch as the petitioner had already obtained the eligibility certificate as well as exemption certificate. Under the eligibility certificate, tax to the extent of Rs. 3,08,102/- was specified as the limit of exemption available to the petitioner for the period from 20.6.1989 to 19.6.1996. The Assessing Authority, after determining the notional tax amounting to Rs. 40,613/-, declared the assessee as an exempt unit from the payment of that amount of tax. The balance entitlement of Rs. 2,67,488/- was carried forward to the next year. Assessment of the existing unit had also been made by the assessing authority vide order dated 13.12.1991 and, in that order also, the turnover of Rs. 10,15,332/- relating to the new diversified unit was excluded from the gross turnover of the existing unit and the balance turnover was subjected to tax under the Central Sales Tax Act. An amount of Rs. 75,647/- was held to be refundable to the petitioner under that assessment.

3. The Revisional Authority (Deputy Excise and Taxation Commissioner) exercising the power u/s 40 of the Act, suo motu took up the matter and withdrew the benefit given by the assessing authority to the petitioner. In the opinion of the revisional authority, the petitioner had been wrongly given the benefit of exemption from 20.6.89, the date of commencement of production, whereas registration certificate for the new diversified unit had been issued w.e.f. 25.1.90. A view was taken that since the new diversified unit did not hold registration under the Act, no benefit of exemption could be given from the date of commencement of production. Thus, under this suo motu action taken u/s 40 of the Act, the Revisional Authority revised both the assessment orders dated 13.12.91 and 24.8.92.

4. The case of the petitioner is that the revisional authority had no powers to withdraw the benefit of exemption granted by the screening committee and also by the Deputy Excise and Taxation Commissioner. No power had been conferred on the revisional authority u/s 40 of the Act to revise either the eligibility certificate or the exemption certificate. The proper course was to get the two certificates modified or cancelled if the petitioner was found to have violated any condition of any of the two certificates. If the registration had not been obtained from the date of production, the relevant authority granting the certificate should have been moved for necessary action. Section 40 of the Act empowered the

revisional authority to call for the record of any case pending before, or disposed of by, any assessing authority or appellate authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein. It has been contended by the learned counsel for the petitioner that the revisional authority could call for the record of assessment but could not interfere with the order made by the relevant screening committee declaring the petitioner as eligible for the benefit of exemption from deduction of tax. Similarly, order passed by the Deputy Excise and Taxation Commissioner granting the exemption certificate to the petitioner could also not be revised as it was not part of the assessment nor was this order made by the assessing authority as such. Exemption certificate had been issued by the Deputy Excise and Taxation Commissioner under the relevant rules framed u/s 13B of the Act. Section 13B of the Act reads as under:-

"The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax for such period and subject to such conditions as may be prescribed."

This provision was brought on the Statute Book by Haryana Act No. 11 of 1984 published in the Government Gazette on 18th April, 1984. Rules were framed by the State Government and procedure was laid down regarding the issuance of eligibility certificate and the exemption certificate.

5. Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short "the Rules") contains a detailed procedure as to how an industrial unit would make application for the grant of eligibility certificate and also for the exemption certificate. Under Sub-rule (2)(i), the constitution of the lower level screening committee has been provided for the purposes of issuing eligibility certificate to a small-scale industrial unit. The lower level screening committee shall consist of Additional Deputy Commissioner as the Chairman, the General Manager, District Industries Centre of the concerned district as the Member Secretary and the Deputy Excise and Taxation Commissioner Incharge of the District as the Member. Under Sub-rule (4) of Rule 28A of the Rules, benefit of tax exemption is to be given to an eligible industrial unit for a specified period from year to year from the date of commercial production or from the date of issue of entitlement or exemption certificate, as may be opted. Under Sub-rule (5) of the said rule, every eligible industrial unit holding eligibility certificate is required to make an application to the General Manager, District Industries Centre within 90 days of the date of its going into commercial production. Under Clause (f) of Sub-rule (5) an appeal from the decision of the lower level screening committee shall lie to the higher level screening committee. The eligibility certificate is to be issued by the General Manager, District Industries Centre in the cases approved by the lower level screening committee. Such a certificate shall be valid under Clause (h) of Sub-rule (5), from the date of commercial production or from the date of issue of entitlement or exemption certificate for the specified period unless cancelled or

withdrawn. After an industrial unit obtains the eligibility certificate, it has to make an application within 60 days of the receipt of the eligibility certificate for the grant of exemption or entitlement certificate. This application has to be made under Sub-rule (6) of Rule 28A of the Rules to the Deputy Excise and Taxation Commissioner of the District in which the unit is located. In the case of application which is found to be incomplete or incorrect, it shall be deemed that no such application had been made at all. The Deputy Excise and Taxation Commissioner shall, after satisfying himself that the unit is holding a genuine and valid eligibility certificate and has furnished adequate security and that the application is in order, issue the exemption or entitlement certificate, as the case may be, within 30 days of the receipt of the application. The provision regarding withdrawal of the eligibility certificate has been given in Sub-rule (8) of Rule 28A of the Rules. An eligibility certificate can be withdrawn at any time during its pendency by appropriate screening committee in 3 situations: (i) where it is discovered that, it has been obtained by fraud, deceit, misrepresentation, misstatement or concealment of material fact; (ii) where there is discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months or (iii) where there is disposal or transfer of any of the fixed assets by the unit adversely affecting its manufacturing or production capacity.

6. Similarly, under Sub-rule (9) of Rule 28A, an exemption certificate granted to an eligible industrial unit can also be cancelled by the Deputy Excise and Taxation Commissioner in certain circumstances.

7. The learned counsel for the petitioner has argued that the eligibility certificate had been issued to the petitioner on 25th January, 1990 but had been made effective from the date of commencement of production. Similarly, exemption certificate had been issued on 26th May, 1990 but it was also made operational from the date of commencement of production. Both the certificates had been issued by two competent authorities and there was no occasion for the revisional authority to exercise powers u/s 40 of the Act so as to modify or withdraw the certificates. The revisional authority, while revising the assessment order, chose a dubious method, not permissible in law, to cancel the exemption certificate issued by the Deputy Excise and Taxation Commissioner. It has to be noticed that the revisional authority, who passed the revising order u/s 40 of the Act, was also a Deputy Excise and Taxation Commissioner and therefore, was not higher in rank than the authority empowered to issue the exemption certificate. While revising the assessment order, the revisional authority withdrew the benefit of exemption which he could not do while exercising powers u/s 40 of the Act. The rules governing the grant of eligibility certificate make it very clear that such a certificate would be granted by a competent screening committee, called as the lower level screening committee, and such a certificate can be withdrawn by that committee alone. Since the petitioner had already been declared as eligible for the purposes of benefit of exemption by the lower level screening committee w.e.f. 20.6.89, there was no occasion to reach a conclusion that no eligibility or

exemption could be granted prior to the date of registration. In the eligibility certificate issued on 25.1.90, the registration numbers of the existing unit have been mentioned. The relevant column for the registration certificate number for the new diversified unit has not been filled in the eligibility certificate. The certificate was issued for a period of 7 years starting from 20.6.89. Therefore, the lower level screening committee did not consider it necessary that the new diversified unit should have immediately obtained the registration certificate under the Act. Even if it was an error, that could be rectified by the lower, level screening committee only. In the exemption certificate, the Deputy Excise and Taxation Commissioner has given the registration number JAG-HGST-6654 valid from 25.1.90. It is thus clear that the Authority issuing the exemption certificate took notice of the registration certificate obtained by the diversified unit and found it appropriate to grant exemption from the date of commencement of production as had been done by the lower level screening committee while granting the eligibility certificate. The existing industrial unit of the petitioner did hold necessary registration certificate and the lower level screening committee, taking notice of it issued eligibility certificate.

8. It has to be seen that in view of the object of the scheme regarding exemption from the payment of tax, it is the date of commencement of production which is relevant. The lower level screening committee, after examining the case of the petitioner, had found it appropriate to grant the eligibility certificate from 20.6.89, the date of commencement of production.

9. A similar matter came up for examination before the Allahabad High Court in *M/s. Kamal Plastics and Rubber Industries v. State of U.P. and Ors.* 1991 UPTC 907. An eligibility certificate had been granted to an industrial unit. The Sales Tax Officer raised an objection in respect of that certificate. It was held that power to recall the order vested only in the authority who had the power to grant the certificate. In case an unit had obtained the eligibility certificate by fraud, deceit or misrepresentation, it was open to the competent authority to recall or cancel such certificate. It was not open to the assessing authority to go behind the certificate. This view provides support to the petitioner's claim that the revisional authority could not withdraw the benefit of eligibility certificate and the exemption certificate granted by the competent authorities under the Act. The Revisional Authority, while modifying the assessment order, indirectly made an order of partial cancellation of the eligibility certificate as well as the exemption certificate which he could not do.

10. A question regarding the late issuance of registration under the Factories Act also came for examination before the Allahabad High Court in *Sahu Stone Crushing Industries v. Divisional Level Committee* and another 1955(98) S.T.C. 66 (All.). In that case, the industrial unit had been granted the eligibility certificate for 7 years from the date of first sale, i.e. 3.12.86. Registration under the Factories Act was, however, granted, on 24.11.1988. Effective exemption from sales Tax, was, therefore, granted from 24.11.1988, the-date of registration

under the Factories Act. It was observed by the Court that where a person applies for registration under the Factories Act, he has no control over the proceedings thereafter for the grant of registration. It was held that the requirement about the registration under the Factories Act was not a mandatory provision but a directory one. The question whether a provision is mandatory or directory depends on the purpose of the legislation as disclosed by its objects, design and scope. In deciding whether a provision is mandatory or directory, one of the important questions which has to be considered is whether the object of the legislation will be defeated or furthered in holding the provision to be mandatory or directory.

11. In the present case of the petitioner, the scheme regarding exemption does not admit of a plea that registration under the Act was mandatory. As has already been seen, the existing industrial unit held registration certificate issued in the year 1982. The diversified industrial unit was granted registration w.e.f. 25.1.1990 though it was issued on 26.5.1990. It is not clear as to why the certificate of registration was issued w.e.f. 25.1.1990. The petitioner has explained that an application for modification of the certificate was filed before the Registering Authority on 17.7.1991 but no separate orders were passed. However, assessment was completed vide order dated 24.8.1992 and benefit of exemption was duly granted for the entire period commencing from 20.6.1989. The plea of the petitioner is that the fixing of the effective date of registration as 25.1.1990 had no relevance at all except that the eligibility certificate had been issued on 25.1.1990. There appears no specific reason as to why the registration certificate, though issued on 26.5.1990, was made effective and operative from 25.1.1990.

12. A question regarding an incentive scheme launched by the Karnataka Government came to be examined by the Supreme, Court in Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others, . It was observed that where a concession is granted, one has to see the substance of the concession granted and not merely certain words used out of context. The learned counsel for the petitioner, taking support from the said observation, has submitted that the scope, object and intention of the scheme have to be kept in view while deciding the matter regarding the requirement of registration under the Act vis-a-vis the benefit of exemption granted under the Scheme.

13. Consequently, the order of the learned Revisional Authority is not found as sustainable in law as he had no powers nor jurisdiction to revise or modify the exemption granted by the Deputy Excise and Taxation Commissioner. The order passed by the Tribunal on 1.2.1995 is also not sustainable whereby the order of the Revisional Authority was sustained.

14. The scheme in question makes it very clear that the conditions required to be fulfilled by an industrial unit have to be examined keeping in view the purpose of the scheme. Even where the new diversified unit had not obtained the

registration certificate, benefit was granted by the competent screening committee as well as the Deputy Excise and Taxation Commissioner. The Revisional Authority had not been vested with any powers under Rule 28A of the Rules. The competent authority granting the eligibility certificate or the exemption certificate could alone modify, cancel or withdraw the relevant certificate. Therefore, the order withdrawing the benefit is found to be without jurisdiction, invalid and unsustainable.

15. The learned counsel for the petitioner has also challenged the levy of interest on the amount of tax held to be due and payable by the petitioner. It is contended that no tax was payable under the scheme and, therefore, levy of interest is totally unjustified in the light of a decision of Supreme Court in U.K. Synthetics Ltd. v. Commercial Taxes Officers 1994(94) S.T.C. 422. This view has been reiterated by the Supreme Court in Farick India Ltd. and Anr. v. State of Haryana and Ors 1994(95) S.T.C. 188.

16. Since the withdrawal of the benefits of exemption has been held to be invalid, there is found no justification in the levy of interest on the amount of tax due. It was the notional tax which was required to be determined and that was so done by the Assessing Authority while making assessment for the assessment year 1989-90 vide order dated 24.8.1992.

17. The writ petition is allowed and the orders passed by the Revisional Authority on 17.3.1994 and 25.7.1994 and the order of the Sales Tax Tribunal dated 1.2.1995 are quashed so far as withdrawal of benefit of exemption certificate is concerned.

18. No order as to costs.