
(2016) 08 P&H CK 0244
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11835 of 2000 (O&M)

M/s Modern Feed Industries

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 13 B
Haryana General Sales Tax Rules, 1975 — Rule 28

Citation : (2016) 4 PLR 467

Hon'ble Judges : Mr. Rajesh Bindal and Mr. Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep Goyal, Advocate, for the Petitioner; Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana, for the Respondents

Final Decision : Allowed

Judgement

Mr. Rajesh Bindal, J.—This order will dispose of two petitions bearing CWP Nos. 11835 of 2000 and 3100 of 2002, as identical issue is involved.

2. The facts have been extracted from CWP No. 3100 of 2002.

3. Challenge in the present petition is to the orders passed by the Lower Level Screening Committee and the Higher Level Screening Committee as constituted under the Haryana General Sales Tax Rules, 1975 (for short, "the Rules").

4. Learned counsel for the petitioner submitted that the petitioner is a partnership firm engaged in the business of manufacture of cattle feed. The unit set up for the purpose came into commercial production on 23.5.1996. Section 13-B of the Haryana General Sales Tax Act, 1973 (for short, "the Act") enables the State Government to provide for tax incentives. In exercise of powers conferred under the aforesaid provisions, Rule 28-A was inserted in the Rules. In terms of the aforesaid provisions, the petitioner applied for issuance of eligibility certificate vide application dated 19.8.1996, which was taken up in the meeting of the Lower Level Screening Committee held on 28.10.1997 and rejected the

same. The appeal filed against the order of the Lower Level Screening Committee was also rejected by the Higher Level Screening Committee in the 74th meeting held on 18/19.6.2001, which was communicated to the petitioner vide memo dated 3.10.2001.

5. Challenging the aforesaid communication, learned counsel for the petitioner submitted that Rule 28-A(2)(f) of the Rules defines eligible industrial unit, whereas Rule 2(n) thereof defines notional sales tax liability. The ground on which the application of the petitioner for grant of eligibility certificate has been rejected is totally contrary to the provisions of Rules. The Rules contained a negative list specifying the products, the manufacturers of which are not entitled to the benefits under the Rules. The product of the petitioner is not mentioned therein. Even if on the product manufactured by the petitioner, there is no tax leviable on sale thereof, still in terms of the provisions of the Act and the notification issued thereunder providing rates of tax on the raw material purchased by the petitioner, he would have been entitled to purchase the same without payment of tax. Merely for the reason that the eligibility certificate has not been issued to the petitioner, it has been denied the benefit of purchasing raw material without payment of tax. On a query by the department, the petitioner had specifically mentioned certain goods which were to be used as raw material, some of which were tax free and some were taxable.

6. Learned counsel for the petitioner further referred to a communication dated 1.3.1993 from the Excise and Taxation Commissioner clarifying that the units manufacturing tax free products are entitled to benefit of exemption from tax. He further submitted that the aforesaid communication was superseded vide communication dated 31.7.1997 issued by the Commercial Taxation Commissioner. The Unit of the petitioner had come into production prior thereto. He further submitted that even if on a date, application for issuance of eligibility certificate is filed, the product being manufactured by that unit may be tax free but subsequently tax may be levied on that. But at that stage, it may not be entitled to file application. This is not the scheme of the Act and the Rules as for the purpose of issuance of eligibility certificate, there is no such bar. Even otherwise, as per proviso appended with Rule 28A (4)(a) of the Rules, in case of exemption, the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover. Gross turnover has been defined in Section 2(gg) of the Act, whereas the taxable turnover has been defined in Section 2(p) of the Act. The assessment is framed as per Section 27 of the Act, which initially starts from gross turnover, which includes even the goods which are tax free. He further submitted that at the stage of issuance of eligibility certificate, none of the provisions of the Rules provided that it could not be issued to a unit manufacturing tax free goods. Hence, the orders passed by the Committees deserve to be set aside.

7. On the other hand, learned counsel for the State submitted that idea behind incorporating the Rules was to give benefit of exemption from payment of sales

tax on the goods manufactured by an industrial unit. In case the goods are otherwise tax free, there is no question of giving any benefit. She further submitted that Section 28A(4)(a) of the Rules provides that the benefit for the purpose of arriving at the limit of tax exemption/deferment, the notional tax liability is to be considered, which means amount of tax payable on sale of that product. Once there is no tax payable on the furnished product, there is no use in issuing the eligibility certificate. The idea behind the scheme was to give exemption from payment of tax on sales and not on purchases. As per item 66 in Schedule-B of the Act, the goods manufactured by the petitioner are tax free. The benefit of exemption from payment of purchase tax has been given to the exempted units, whose products are taxable and not tax free.

8. In CWP No. 11835 of 2000, additional contention raised by learned counsel for the State was that the petitioner therein had sought clarification, which was given vide communication dated 31.7.1997 and the petitioner therein having not availed of remedy against that clarification, the petition was not maintainable.

9. To this argument of learned counsel for the State, learned counsel for the petitioner submitted that the communication dated 31.7.1997 was not in response to the clarification sought by the petitioner as the letter written by the petitioner seeking clarification itself was dated 31.7.1997. He further submitted that clarification dated 31.7.1997, as has been referred to by learned counsel for the State was not communicated to the petitioner therein.

10. Heard learned counsel for the parties and perused the paper book.

11. Relevant provisions of the Haryana General Sales Tax Act, 1973 and the Haryana General Sales Tax Rules, 1975, are reproduced hereunder:-

Section 13-B of the Act

(Powers to Exempt Certain Class of Industries)

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 either prospectively or retrospectively and subject to such conditions as may be prescribed.

Rule 28A(2)(f) of the Rules

"(f) ""eligible industrial unit" means:-

(i) a New Industrial unit or expansion or diversification of the existing unit, which
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(I) has obtained certificate of registration under the Act;

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

(III) is not availing the incentive of interest free loan from the Industries

Department for investment after the 1st day of April, 1988;

(IV) is not included in Schedule III appended to these rules except the tiny units set up in a rural area on or after 1st April, 1992, in which capital investment in plant and machinery including market price of plant and machinery taken on lease or otherwise, does not exceed rupees five lakhs, shall not form part of Schedule III.

(V) is not availing or has availed incentive of exemption under section 13 of the Act;

(ii) a sick industrial unit recommended by the High Powered Committee for the grant of fiscal relief either in the form of exemption from the payment of sales tax or purchase tax or both or deferment of tax.

xx xx xx

Rule 28A (2)(n) of the Rules-

(n)- "notional sales tax liability" means -

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the Local Sales Tax Law but for an exemption computed at the maximum rates specified under the Local Sales Tax Law as applicable from time to time; and

Explanation: The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in Form C on the basis that the sales are eligible to tax under the said Act.

Explanation: The branch transfers or consignment sales outside the State of Haryana shall be deemed to be the sale in the course of inter-State trade or commerce.

Note: The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and rules made thereunder.

xx xx xx

Rule 28A(4)(a)

(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 given ahead.

Provided that in the case of exemption the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover of goods manufactured by the unit :

xx xx xx

Explanation 1: For the purpose of arriving at the limit of tax exemption/deferment, the national sales tax liability of the unit shall be taken into consideration.

Notification dated 30.12.1987

List of Goods

Taxable at First Stage in Haryana

(As on Upto Date)

Notn. No. S.O. 156/H.A.20/73/S.18/87 Dated 30th Dec. 1987

In exercise of the powers conferred by section 18 of the Haryana General Sales Tax Act, 1973 and all other powers enabling him in this behalf, and in supersession of Haryana Government, Excise and Taxation Department, Notification No. S.O. 98/H.A.20/73/2.18/73 dated the 5th May, 1973 as amended from time to time, the Governor of Haryana hereby directs that the tax under section 15 of the said Act be levied, with effect from the 1st date of January, 1988, at the first stage of sale on the following goods, namely :-

1. to 3 xx

xx

4. Molasses

5. to 36 xx

xx

37. Vegetable oil, Oils cakes and deoiled cakes.

38. to 82. xx

xx

Sales Tax Rates in Haryana

W.E.F. 4th March, 2000

(As amended upto date)

Sr. No.

Description of goods

Rate of tax (in percentage)

1

2

3

1 to 137

xx

xx

138

Goods leviable to tax at the stage of first sale when sold to a registered dealer who is availing exemption from tax under the industrial policy of the State Government, for the purpose of use in manufacture or processing of goods by him for sale or for the purpose of use in packing in the goods manufactured or processed by him subject to furnishing a declaration appended to this notification by him.

Nil

xx

xx

xx

Sales Tax Rates

From 01.04.1996 to 03.03.2000

Sr. No.

Description of goods Tax

Rate in %

1

2

3

1. to 26

xx

xx

27 (a) and (b)

xx

xx

(c)

Goods leviable to tax at the stage of first sale when sold to a registered dealer who is availing exemption from tax under the industrial policy of the State Government, for the purpose of use in manufacture or processing of goods by him for sale or for the purpose of use in packing of the goods manufactured or processed by him subject to furnishing a declaration in form STD-4 appended to this notification, by him.

Nil

28. to 80.

xx

xx

Schedule-B

(See Sections 6 and 15)

Sr. No.

Description of goods

Conditions and Exceptions

1.

2.

3.

1 to 66

xx

xx

67.

Cattle feed, that is to say, a mixture of rice polish, rice bran deoiled, gram churi, mustard extraction, molasses, barley, sprout, salt, mineral mixture, urea and damaged wheat.

68 to 82.

xx

xx

12. The case set up by the petitioner is that the unit set up by him for

manufacture of cattle feed came into commercial production on 23.5.1996. As intimated, the raw material required for manufacturing cattle feed was deoiled cake, rice bran, chemicals, barley, malt sprout bardana, molasses, etc. The application was considered by the Lower Level Screening Committee in its meeting held on 28.10.1997 and the same was rejected opining that the product being manufactured by the petitioner was already exempted from payment of sale tax, hence, not entitled to issuance of eligibility certificate. Reference was also made to the communication received from Commercial Taxation Commissioner dated 31.7.1997. The opinion of the Higher Level Screening Committee was also in the same terms.

13. Section 13-B of the Act empowers the State Government to exempt any class of industry from payment of tax in the interest of industrial development of the State. Prior to the amendment in Section 13-B of the Act vide Act 13 of 1989, the words used were "from payment of sales tax", however, the word "sales" before the word "tax" were omitted.

14. In exercise of powers conferred under the aforesaid section, Rule 28-A of the Rules was added in the Rules vide amendment dated 17.5.1989. It was with retrospective effect from 1.4.1988.

15. A perusal of the definition of "eligible industrial unit" as provided in Rule 28A of the Rules shows that there are certain preconditions attached, which are:

- (i) Registered under the provisions of the Act;
- (ii) is not a public sector undertaking in which Central Government holding is 51% or more share;
- (iii) is not availing the incentives of interest free loan from the Industries Department for investment after 1.4.1988;
- (iv) is not included in Schedule III appended to these rules except the tiny units set up in a rural area on or after 1st April, 1992, in which capital investment in plant and machinery including market price of plant and machinery taken on lease or otherwise, does not exceed rupees five lakhs, shall not form part of Schedule III;
- (v) is not availing or have availed exemption under Section 13 of the Act; and
- (vi) a sick industrial unit recommended by the High Powered Committee for the purpose of grant of benefits.

16. Sub-rule 5 of Rule 28A of the Rules provides for procedure for filing of application for issuance of eligibility certificate. Schedule III attached with Rule 28A of the Rules provides a list which is defined as negative list in Rule 28A(2)(o) of the Rules. As per the definition of eligible industrial unit, any manufacturer of the products as mentioned in Schedule-III is not entitled to the benefits envisaged under Rule 28A of the Rules. The Schedule-III as applicable on the relevant date is extracted below:-

Serial No.

Industries/class of industries

1.

Oil expellers (including units set up under Rural Industries Scheme)

2.

Dall Mills and Rice Mills (including units set up under Rural Industries Scheme)

3.

Steel and Wooden furniture.

4.

Stone Crushers (including units set up under Rural Industries Scheme)

5.

Power cables except XLP cables and fibre optic cables.

6.

Paraffin wax based industries excluding chlorinated Paraffin wax and the industry where the paraffin wax is required in nominal quantity, i.e., only upto 5% of the total raw material consumed by the unit

7.

Corrugation of G.P./B.P. Sheets.

8.

Caustic soda units except those based on membrane cell technology.

9.

Simple fabricated items like trunks, buckets, gamlas, windows, grills, trussess, etc.

10.

Ethanol (Ethyl Alcohol) based industries except non-molasses alcohol industries.

11.

Khandsari units

12.

Bricks made of ordinary earth including mechanised bricks where the ordinary of earth content is more than 50%.

13.

Thinners.

14.

Induction and ARC Furnance with more than 0.5 MT capacity.

15.

AAC/ACSR conductors.

16.

L.P. Gas cylinders.

17.

Non-graded C.I. Casting.

18.

Roller Flour Mills.

19.

Re-rolling of mild steel, re-rolling of special steel like EN-42 is not covered under the negative list.

20.

Cotton ginning and pressing (including units set up under Rural Industries Scheme)

21.

All servicing units not providing service directly to the industry for production.

22.

Soft drinks (aerated water)

23.

Asbestos Products.

24.

Fermentation and Distillery/Brewery.

25.

Solvent Extraction Plants.

26.

Oil Refinery (edible and non-edible).

27.

Vegetable Ghee.

28.

Ice Plants (including cold Storage).

29.

Cotton spinning mill (except units set up in Hisar and Sirsa Districts)

30.

Fertilizer (Nitrogen Phosphate).

31.

Sugar.

32.

Cement.

33.

Aluminium (Primary stages).

34.

Thermal Power

35.

Oil Refinery.

36.

Sulphuric acid.

37.

Tanneries.

38.

Copper Smelter.

39.

Zinc Smelter.

40.

Iron and Steel (Primary stage)

41.

Pulp and paper

42.

Dyes and Dye intermediates.

43.

Pesticides manufacturing and formulations.

Note: -1: The above list shall not be applicable to the industrial units set up under the Rural Industries Scheme except the units covered under any of the entries mentioned at serial number 1, 2, 4, and 20.

Note: -2:- The Industrial Units in which investment has been made upto 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefit related to the extent of investment made upto the 3rd of January, 1996. Only those assets will be included in the fixed capital investment which have been installed or erected at site and have been paid for. The anticipated cost of the project will be taken on the basis of documents furnished to a financial institution or banks for drawing a loan and which have been accepted by the financial institution or bank concerned for sanction of loan.

17. A perusal of the aforesaid list shows that the neither the product being manufactured by the petitioner, namely, cattle feed, nor the unit engaged in manufacturing of tax free products, is mentioned therein. Meaning thereby there is no bar as such to issue eligibility certificate to a unit engaged in manufacture of cattle feed or for that matter any product which may be tax free on the date, the eligibility certificate is issued, in case specifically not mentioned in the negative list. It merely be noticed here that the product which may be tax free today may be taxable tomorrow.

18. The contention raised by learned counsel for the State that the benefit of exemption from payment of tax being available on the taxable turnover and there being no taxable turnover of the petitioner, it is exercise in futility to issue him eligibility certificate, is merely to be noticed and rejected, for the reasons that the quantum of benefit or type of benefit which the industrial unit may avail after issuance of eligibility certificate is a stage subsequent to the issuance thereof. As has already been referred to by the petitioner that in terms of notification issued by the Government, an eligible industrial unit availing exemption from payment of tax may be entitled to purchase goods without payment of tax. In the overall scheme, the object may be to promote industrialisation. This Court is not opining on the issue as to whether the petitioner will be entitled to any benefit and how the benefit, if any available, under the Rules will be calculated, as this is not the stage for that as only issue under consideration before this Court is as to whether the petitioner can be denied issuance of eligibility certificate.

19. It may further be added that even the view of the Excise & Taxation Commissioner was also same as circulated by memo dated 1.3.1993. The same was changed vide subsequent memo dated 31.7.1997, without there being any

change in law.

20. The contentions raised by learned counsel for the State in CWP No. 11835 of 2000 that the petitioner therein sought clarification and the same having been given against the petitioner and he having not availed of remedy against that is debarred from raising the issue again, is to be noticed and rejected. It was stated by learned counsel for the petitioner that the letter of request given by him was dated 31.7.1997 and on the same day a letter was written by the Commercial Taxation Commissioner, Haryana, the Deputy Excise & Taxation Commissioner, Kurukshetra. It was not even addressed to the petitioner nor its copy was supplied to him, hence, the contention is misconceived.

21. For the reasons mentioned above, we find merit in the present petitions. The same are accordingly allowed. The impugned orders passed by the Lower Level Screening Committee and the Higher Level Screening Committee are quashed. The rejection of the case of the petitioner for issuance of eligibility certificate merely on the ground that the petitioner is manufacturer of tax free goods cannot be legally sustained. The authorities are directed to do the needful.

Harinder Singh Sidhu, J.