(2012) 09 P&H CK 0390

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11362 of 2012

M/s. Royal Aluminium Co. Pvt. Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 19-09-2012

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2012) 56 VST 478

Hon'ble Judges : G.S. Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Avneesh Jhingan, for the Appellant; J.S. Toor, Addl. A.G., Haryana, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sandhawalia, J.—The present petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing orders dated 13.4.2006 and 3.5.2012 and for a further direction to the respondents to take a decision on merits of the case, after giving due opportunity to the petitioner. The pleaded case of the petitioner is that it is a private limited company having its registered office at New Delhi and is carrying on its business of manufacturing of Aluminium Sections. It was registered under the Haryana General Sales Tax Act, 1973 (for brevity, ''HGST Act'') and thereafter under the Haryana Value Added Tax, 2003 (in short, ''VAT Act'') as well as under the Central Sales Tax Act, 1956.

2. Under the Industrial Policy, various incentives were announced by the State of Haryana for setting up of industry in the State and the petitioner had set up a unit. In order to avail the benefits, the petitioner applied for Sales Tax Exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (hereinafter to be referred as, ''the Rules''). The petitioner was granted exemption under Rule 28A of the Rules for the period 12.5.1998 to 11.5.2007 for a maximum amount of Rs. 253.50 lacs and was availing this benefit w.e.f. 1.4.2003, when the VAT Act was

introduced. The dealer exercising the option as provided under the VAT Act opted for 50:50 scheme of deferment. The production at the unit of the petitioner was stopped for some time as the machinery developed some defect which could not be repaired and during this period DETC, Rohtak visited the factory premises and informed the Industries Department with regard to suspension of the production at the site. Respondent No. 2 took up the matter under Rule 28A(8)(a) of the Rules for withdrawal of the benefit on account of stoppage of manufacturing activity for more than six months. Since the factory was closed, the notice was received back unserved and the notice sent at Delhi address was also received back unserved. The petitioner received no notice from respondent No. 2 - Lower Level Screening Committee, which vide an ex parte order dated 28.2.2006 withdrew the eligibility certificate of the petitioner. The petitioner filed an appeal before respondent No. 3 within 30 days from the date of receipt of notice dated 13.4.2006. The appeal was fixed for hearing on 22.2.2012 after 5 years and in this regard notice dated 6.2.2012 was sent to the petitioner and its counsel regarding fixation of date of hearing. Counsel showed his inability to attend the proceedings on 22.2.2012 as there was some function in the family of the counsel. The Manager of the petitioner-company was sent alongwith an adjournment application of the counsel, who appeared before respondent No. 3 - Higher Level Screening Committee and made a request for an adjournment on the ground of inability of the counsel to attend the proceedings. However, the request was not accepted and the appeal was dismissed after noting the Manager''s presence as Clerk of the counsel. Accordingly, the present writ petition has been preferred on the ground that proper opportunity has not been afforded as required under Rule 28A(8) of the Rules.

3. In the written statement filed by the Joint Director, District Industries Centre, Rohtak, it has been pleaded that DETC had recommended for withdrawal of the eligibility certificate after the business had discontinued for a continuous period of six months. The plant and machinery had been removed and the power of the unit had also been disconnected. Accordingly, under the Rules, the eligibility certificate granted to the unit was liable to be withdrawn as the Block Level Extension Officer (Industries) visited the unit on 22.12.2005 and reported that the unit was lying closed and no labour/person was present there. The case was put up before the Lower Level Screening committee in its meeting held on 27.12.2005 and the petitioner-company was also served registered notice to appear before it. No one appeared on 27.12.2005 and the letter dated 16.2.2006 was sent at the factory address through the Block Level Extension Officer (Industries) and report was received that the factory was locked. Thereafter, letter dated 20.2.2006 was sent to one of the Directors of the Company at his residential address at Delhi and the same was received back undelivered from the postal authorities. Accordingly, after discussion, the eligibility certificate was withdrawn. The appeal of the petitioner was taken up for hearing on 7.12.2006 by the Higher Level Screening Committee and the petitioner-company was informed vide memo dated 22.11.2006 and the counsel of the petitioner-

company was also informed telephonically on 29.11.2006 but nobody had appeared on behalf of the petitioner-company before the Committee. A request for an adjournment was received from the Company. The Committee decided to give one more opportunity to the company and directed to put up the case in the next meeting of the Committee i.e. 11.9.2007. The company was informed about the next date of the meeting and the company''s counsel was also informed on 30.8.2007. On the said date also, nobody appeared before the Committee on behalf of the company. Last opportunity was given to the petitioner-company and the case was ordered to be put up on 22.2.2012 and on that date eventually the order was passed and the appeal was dismissed. It is, thus, pleaded that the company was given full opportunity to plead its case on merits but the company was trying to linger on the case and evading the hearing for one reason or the other.

4. Counsel for the petitioner has contended that the petitioner cannot be penalized for non appearance of its counsel and the notice was never sent to the petitioner-company at its registered address of Paharganj, New Delhi. On the other hand, counsel for the State has justified the order urging that the petitioner had been given several opportunities by the Higher Level Screening Committee.

5. After hearing counsel for the parties and perusing the record, it may be noticed that the stand of the petitioner is that the machinery had developed some defect and was sent for repairing. At that point of time, the inspection had been carried out. A perusal of Annexure P4 shows that Registered A.D. notice sent initially was returned back as the firm was closed. No notice was sent at the registered office of the company at New Delhi. Order dated 13.4.2006 was, thus, passed without giving proper opportunity of hearing to the petitioner-company to put forward its case. The appeal filed came up for hearing after a period of six years and notice was issued to the petitioner-company again at the same address at Rohtak of the counsel and not at the registered office of the company at New Delhi, which is clear from Annexure P3. The counsel had not appeared before the Committee on 22.2.2012, the date fixed for hearing and the Manager of the petitioner-company appeared and prayed for some time but the said request was declined and the order passed by respondent No. 2 was maintained. Since vide the impugned order serious civil consequences have visited the petitioner, it is entitled for a proper hearing. There was no appearance on its behalf and the matter was never decided on merits but on the basis of the record of the respondents. The petitioner is, thus, entitled to an opportunity of hearing before passing any order against it. Accordingly, the present petition is allowed and the order dated 13.4.2006 and the letter dated 3.5.2012 communicating the rejection of the appeal, decided on 22.2.2012, are hereby quashed subject to petitioner''s depositing a sum of Rs. 10,000/- as costs in the Treasury. The petitioner shall appear before respondent No. 2 - Lower Level Screening Committee on 29.11.2012. The Committee shall decide the matter afresh in accordance with law, after affording an opportunity of hearing to the petitioner.

