
(2000) 07 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1143 of 1999

M/s. Sai Beverages (P) Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 04-07-2000

Acts Referred:

Citation : (2000) 07 P&H CK 0017

Hon'ble Judges : N.K. Sud, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : Hemant Kumar, for the Appellant; M.L. Sarin, Advocate General, Haryana with Mr. N.K. Joshi . Assistant Advocate General, Haryana, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Petitioner is a private limited company with its registered office at Sonapat. It was granted a franchise in the year 1988 by M/s. Modern Food Industries-a Government of India undertaking-for the manufacture and bottling of "Rasika" a food beverage. It may be mentioned that Rasika was introduced by M/s. Modern Food Industries as a food beverage based on fruit pulp and the Petitioner was one of the five undertakings which were granted franchise in the country. Due to the failure of the beverage in the market the Petitioner suffered heavy losses and it is alleged that the beverage failed because various multi-national companies entered the market selling their own beverage, Petitioner being an "eligible industrial unit" was granted an eligibility certificate by the Director of Industries for a sum of Rs. 86.5 lacs valid for a period of 7 years from 1st June, 1989 to 31st May, 1996. It was also granted an exemption certificate issued by the Deputy Excise and Taxation Commissioner entitling the Unit to avail of exemption from the payment of sales/purchase tax. This exemption certificate was renewable from year to year during the period for which the eligibility certificate was valid. The Deputy Excise and Taxation Commissioner after satisfying himself that the applicant is a bona fide industrial unit and has not

misused the exemption certificate renews that certificate within 30 days of the making of the application for renewal. The exemption certificate of the Petitioner had been renewed upto June, 1994 and it applied for the renewal thereafter. The competent authority made inquiries and found that the industrial unit was lying closed since July, 1993 and the statement of the security guard was recorded in this regard. A notice was issued to the Petitioner to show cause why the exemption certificate be not cancelled under Sub-rule (9)(i) for Rule 28-A of the Haryana General Sales Tax Rules, 1975 (for short the Rules). In response to the notice the Petitioner appeared through its Accountant and produced the record from which it was verified that there had been no production after 17th August, 1993. The Petitioner, however, contended that it had not closed its business permanently and that it would start the same as soon as fresh arrangements were made with some new principal. The explanation furnished by the Petitioner was not considered satisfactory and by an order dated 11th July, 1994 the exemption certificate was cancelled under Sub-rule (9)(i) of Rule 28-A of the Rules. A sum of Rs. 13,35,301/- was ordered to be recovered from the Petitioner on account of the sales tax exemption availed of by the Petitioner during the previous years including interest thereon. Feeling aggrieved by this order, the Petitioner preferred an appeal. In pursuance to the directions issued by this Court on 1st December, 1998 in Civil Writ Petition No. 18051 of 1998 the appellate authority had been directed to entertain and decide the appeal in view of the weak financial position as accepted by the Sales Tax Tribunal in its order, dated 31st October, 1998 without insisting on pre-deposit of the assessed amount. The appeal was fixed for 6th January, 1999 when the present writ petition was filed challenging the vires of Sub-rule (10)(v) of Rule 28-A of the Rules. The fact that the industrial unit of the Petitioner is lying closed with effect from July, 1993 is not in dispute.

2. The argument of the learned Counsel for the Petitioner is that the provisions of Sub-rule (10)(v) of Rule 28-A of the Rules have the effect of cancelling the exemption certificate with retrospective effect which is impermissible and, therefore, the provisions are ultra vires and unconstitutional. It is contended that withdrawal of exemption from the date when the certificate was granted is unjust, arbitrary and harsh for a sick unit which is already facing financial problems. Reliance in this regard has been placed on a Division Bench judgment in *State of Gujarat v. Patel Kalidas Naranbhai*, (1966) 17 SCT 245. *M.C. Aggarwal v. Sales Tax Officer, Kesinga and another*, (1987) 64 SCT 298 *Dhannilal Labchand and Ors. v. Sales Tax Officer, Seoni and Anr.* (1988) 69 STC 117 and *Kitchen Aid v. State of M.P. and Ors.* (1998) 110 STC 109. The question of vires of the Rule would not arise nor is it necessary for us to decide the same in view of the interpretation that we have placed on the provisions of Rule 28-A of the Rules in *M/s. A.S. Fuels (P) Limited v. State of Haryana and others*, Civil Writ Petition No. 19870 of 1988 decided today wherein we have held that upon cancellation of exemption certificate under Sub-rule (9)(i) of Rule 28-A of the Rules the dealer could be required to deposit the tax benefit availed of by it only for the year

during which the default had occurred and it cannot be required to deposit that benefit for all the earlier years. We have also held that on a conjoint reading of sub-rules (9)(i) and (10)(v) of Rule 28-A of the Rules, an exemption certificate can be cancelled by the Deputy Excise and Taxation Commissioner only when the same is in force and has not already expired. In the present case, the exemption certificate granted to the Petitioner was cancelled on 11th July, 1994 after it had expired on 30th June, 1994. The said cancellation is, therefore, not in order and in any case on the basis of that order the Petitioner could not be required to refund the sum of Rs. 13,35,301/- which is amount of tax exemption already availed of by it upto 30th June, 1994. In the normal course we would have sent this case back to the appellate authority for decision of the appeal filed by the Petitioner on merits but since the matter is squarely covered in favour of the Petitioner by our decision rendered today in A.S. Fuel's case (supra), no useful purpose would be served in adopting that course because the appellate authority has to follow the same. In this view of the matter, we hold the impugned order illegal and quash the same.

3. Before parting, we may refer to the argument of the learned Advocate General that even on the facts of the case, as they are, it was open to the department to withdraw the eligibility certificate under Sub-rule (8) of Rule 28-A of the Rules and, therefore, we should not quash the impugned order of cancellation. We are not impressed with this argument. As already observed by us in A.S. Fuel's case (supra), if the department has a case for proceeding against the Petitioner under Sub-rule (8) of Rule 28-A of the Rules it will be open to it to do so and nothing stated hereinabove will prejudice the right of the department in that regard.

4. For the reasons recorded above, the writ petition is allowed with no order as to costs.

Sd/- N.K. Sud, J.