
(2000) 08 P&H CK 0123

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No"s. 9005, 9006, 9007, 9008, 9010, 9012, 9013, 2704, 2705, 2706, 2707, 9203, 9394, 9395, 9396, 9397, 9398, 9399, 9400, 9401, 9402, 10459, 10460, 10461, 10462, 10463, 10464, 10494 and 10828 of 2000

Nice Spinners Pvt. Ltd. and others

APPELLANT

Vs

State of Haryana and others. (and other Cases)

RESPONDENT

Date of Decision : 21-08-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 13B, 64, 64(1), 64(2)

Citation : (2000) 08 P&H CK 0123

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : D.D. Verma, O.P. Goyal, Bhuwan Luthra and Rajesh Bindal, for the Appellant; Jaswant Singh, for the Respondent

Judgement

G.S. Singhvi, J.—These petitions are being disposed of by a common order because all the petitioners have prayed for quashing of the decision taken by the Higher Level Screening Committee (for short, "HLSC") in its 58th meeting held on July 1, 1999.

2. For the sake of convenience, we may notice the facts of C.W.P. No. 9005 of 2000 (M/s. Nice Spinners Pvt. Ltd. v. State of Haryana).

3. The petitioner is engaged in the manufacturing of yarn in its factory situated at Panipat. It is registered as a dealer under the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act") and the Central Sales Tax Act, 1956 (for short, "the 1956 Act"). In 1996, its representative submitted an application under rule 28A(5) of the Haryana General Sales Tax Rules, 1975 (for short, "the 1975 Rules") for grant of eligibility certificate. The Lower Level Screening Committee (for short, "LLSC") rejected the same on account of non-submission of change of land use certificate (for short, "CLU certificate"). The same was conveyed to it by the General Manager, District Industries Centre, Panipat vide memo dated

January 27, 1997 (annexure P6). The appeal filed by the petitioner against the decision of the LLSC is said to have been allowed by the HLSC in its 57th meeting held on March 19, 1999, but, later on, vide memo, annexure P7, the Director of Industries, Haryana, informed the General Manager, District Industries Centre, Panipat and the petitioner that the HLSC has rejected the appeal because of non-submission of permission/NOC from the Town and Country Planning Department for change of land use. Similar communications were sent to other petitioners on the basis of the decisions taken by the LLSC and HLSC.

4. The petitioners have averred that the 1975 Rules do not contemplate production of CLU certificate as a condition precedent to the grant of eligibility certificate and, therefore, the decisions taken by the LLSC and the HLSC to reject their applications/appeals on that account should be declared illegal. They have further averred that the decision of the HLSC should be declared void because it did not have the jurisdiction to review the decision taken by it in its 57th meeting held on March 19, 1999 and in any case, no adverse decision could have been taken against them without giving notice and opportunity of hearing.

5. Sarv Shri D. D. Verma, Advocate, Shri O. P. Goyal, Senior Advocate assisted by Shri Bhuwan Luthra, Advocate and Shri Rajesh Bindal, Advocate appearing for the petitioners argued that the decision of the HLSC should be declared as void on the ground of violation of the principles of natural justice and mala fides. Learned counsel referred to the averments made in the petitions to show that the appeals filed by the petitioners were considered and allowed by the HLSC in its 57th meeting held on March 19, 1999 on the premise that eligibility certificates had been granted to other similar industries without insisting on the production of CLU certificate, but due to some extraneous reasons, the said Committee again considered the matter in its 58th meeting held on July 1, 1999 and dismissed the appeals without giving notice and opportunity of hearing to the petitioners. Shri Verma referred to the provisions of section 13B of the 1973 Act and rule 28A(5) of the 1975 Rules and argued that the requirement of production of CLU certificate is not mandatory and non-compliance thereof cannot be made basis for declining the prayer for grant of eligibility certificate. Shri O. P. Goyal referred to the Notification No. GSR 100/H.A. 20/73/S.64/98 dated September 16, 1998 and the Notification No. G.S.R. 47/H.A. 20/73/S.64/99 dated May 18, 1999 published in the Haryana Government Gazette dated May 18, 1999 vide which rule 28B was inserted in the 1975 Rules and submitted that the express incorporation of the requirement of producing CLU certificate in the newly inserted rule is clearly indicative of the intention of the rule-making authority not to treat condition No. 3 enshrined in form ST-70 as mandatory. Learned counsel then argued that the violation of directory provision, like the one contained in rule 28A(5)(a) read with form ST-70 cannot constitute a valid ground for rejection of the applications submitted by the petitioners for grant of eligibility certificates.

6. Shri Surya Kant, learned Advocate-General, Haryana and Shri Jaswant Singh,

Deputy Advocate-General, Haryana argued that form ST-70 is a part of rule 28A(5)(a) of the 1975 Rules and, therefore, the conditions embodied therein must be treated as statutory and non-compliance thereof justified rejection of the applications submitted by the petitioners. Shri Surya Kant conceded that in the 57th meeting of the HLSC held on March 19, 1999, some decision favourable to the petitioners appears to have been taken, but argued that they cannot take advantage of such decision because the same did not take the shape of an order and in the subsequent meeting, the HLSC decided to reject their appeals on the ground of non-production of CLU certificates. He also conceded that the petitioners were not given notice and opportunity of hearing by the HLSC before it decided to reject the appeals filed by them.

7. During the course of arguments, learned Deputy Advocate-General filed an affidavit of Shri Surinder Pal Singh Chauhan, Joint Director of Industries, Haryana to show that the draft minutes of the meeting held on March 19, 1999 had been prepared but, later on, the same was destroyed.

8. We have thoughtfully considered the respective submissions and have carefully gone through the record of the writ petitions, the affidavit of Shri Surinder Pal Singh Chauhan and the file produced by the learned Advocate-General.

9. We shall first deal with the argument of the learned counsel for the petitioners that the requirement of producing CLU certificate embodied in form ST-70 is directory and, therefore, the applications submitted by their clients could not have been rejected on the ground of non-production thereof. For the purpose of appreciating this argument in a correct perspective, we may refer to the provisions of section 13B of the 1973 Act, rule 28A(5)(a), (b), (d) and (h) of the 1975 Rules and the extracts of form ST-70. The same are reproduced below :

"Section 13B of the 1973 Act :

Power 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 and subject to such conditions as may be prescribed.

Rule 28A(5)(a), (b), (d) and (h) of the 1975 Rules :

28A. Class of industries, period and other conditions for exempting/deferring from payment of tax.

..... (5)(a) Every eligible industrial unit holding eligibility certificate which is desirous of availing benefit under this rule shall make an application in form ST-70 in triplicate along with attested copies of the documents mentioned therein to the General Manager, District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be entertained if not preferred within time. An application with incomplete or

incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made, if the applicant fails to complete it on an opportunity afforded to him in this behalf.

(b) Applications from small-scale unit will be considered by the Lower Level Screening Committee and those from medium/large scale units by the Higher Level Screening Committee.

..... (d) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the small-scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations along with comments, if any of the Deputy Excise and Taxation Commissioner concerned for its decision.

..... (h) The eligibility certificate will be issued by the General Manager, District Industries Centre in cases approved by the Lower Level Screening Committee and by the Additional Director of Industries in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production, or from the date of issue of entitlement/exemption certificate, as the case may be, for a period as laid down under sub-rule (4) unless cancelled or withdrawn. A copy of the eligibility certificate shall also be sent to the Deputy Excise and Taxation Commissioner concerned.

Extracts of form ST-70 :

Form ST-70

[See rule 28A(5)]

Application form for the issue of eligibility certificate

To

The General Manager,

District Industries Centre,

..... District.

Sir,

In accordance with rule 28A of the Haryana General Sales Tax Rules, 1975, I, (name) on behalf of the industrial unit as mentioned hereunder hereby apply for the grant of eligibility certificate for tax exemption/deferment for a period of years and opts to avail the benefit from the date of commercial production or from the issue of entitlement certificate.

..... 3. The following annexures are submitted herewith :-

- (i) Certificate from Chartered Accountant regarding estimated liability of sales tax for the period for which application is made;
- (ii) Certificate from the Chartered Accountant regarding fixed assets on the date of commercial production including the assets of the unit as erected at site and paid for within 60 days of commercial production;
- (iii) Latest copy of partnership deed/Memorandum and Articles of Association, list of directors and the 10 major share-holders/partners;
- (iv) Copy of power of attorney or certified copy of resolution passed by the Board of Directors authorising a particular person to apply for the grant of eligibility certificate;
- (v) In case of agricultural land permission from the authorities concerned for converting the same for non-agricultural use; and
- (vi) Copy of Registration No./Letter of intent/Industrial licence/DGTD Registration.

10. Verified that the statements made hereinabove are true as per information derived from my/our record which I believe to be correct. In case any of the statements made above is found to be incorrect or false, the Government will be at liberty to withdraw the benefit of deferment/exemption from the date it was granted and to recover in lumpsum or otherwise the amount of tax already exempted/deferred along with interest.

11. It is agreed and understood by me/us that the rules for sales tax exemption/deferment have been gone through by me/us and I/we shall abide by these rules.

Yours faithfully,

(Signature of the applicant) Name Date (in block letters) Status (proprietor/ partner/Chairman/Managing Director/Director)."

12. An analysis of the scheme of the 1973 Act and the provisions quoted above shows that while empowering the Government to levy tax on sale and purchase of goods, the Legislature has, with a view to achieve the object of accelerated industrial development of the State, incorporated section 13B under which the Government can exempt specified class of industries from payment of tax. The procedure for exercise of this power and the conditions subject to which an applicant can avail exemption are prescribed under rule 28A of the 1975 Rules and as the said rule has been framed by the Government in exercise of the power vested in it u/s 64(1) and (2) of the 1973 Act, the provisions contained therein are to be treated as a piece of delegated legislation having the force of law.

13. We shall now consider the question as to whether form ST-70 is a part of the 1975 Rules and whether the stipulations contained therein are mandatory and non-compliance thereof can constitute a ground for rejection of an application for

grant of eligibility certificate. A reading of the plain language of rule 28A(5)(a) shows that an eligible industrial unit which is desirous of availing benefit under rule 28A is required to make an application in form ST-70 along with attested copies of the documents mentioned therein to the General Manager and an application which is incomplete or which does not contain correct particulars or which is not accompanied by the required documents has to be treated non est, if the applicant fails to remove the deficiencies on being called upon to do so. Therefore, there cannot be any manner of doubt that form ST-70 is a part of the 1975 Rules and non-compliance of the conditions stipulated therein can entail rejection of the application.

14. There is another reason for taking the view that the requirement of producing CLU certificate embodied in form ST-70 is mandatory. As stated above, the Legislature has made provision for grant of exemption from payment of tax to achieve the object of rapid industrialisation of the State. However, with a view to maintain balance between the need of industrialisation and the check on haphazard and unregulated development of the State, the Government has, while exercising the rule-making power vested in it u/s 64 of the Act, prescribed various conditions including the production of CLU certificate. The purpose of doing so appears to be to prevent misuse of agricultural land because the agriculture constitutes not only the core of the economy but is also the main source of livelihood of the majority of population of the State. As a logical corollary to this, we are of the view that no exception can be taken to the decision of the LLSC and the HLSC to insist on the rigorous compliance of the requirement of producing CLU certificate or permission/NOC from the Town and Country Planning Department.

15. The next question which merits consideration is whether the petitioners have acquired a legal right to get eligibility certificates on the basis of the so-called decision taken by the HLSC in its meeting held on March 19, 1999 and whether the rejection of their applications by the said Committee in its 58th meeting is vitiated on account of violation of the principles of natural justice.

16. A careful reading of the records of these petitions and the file produced by the learned Advocate-General gives an impression that in the 57th meeting of the HLSC held on March 19, 1999, a decision was taken to accept the applications of the petitioners without insisting on the production of CLU certificates on the ground that other industries which had not submitted such certificates were earlier granted eligibility certificates, but, in our opinion, the said decision cannot be relied upon for issuance of a writ in the nature of mandamus directing the respondents to issue such certificates to the petitioners. The reasons for this conclusion of ours are :

(a) The so-called decision taken by the HLSC on March 19, 1999 has not taken the shape of an order of the Government and, therefore, the same cannot be relied upon for granting relief to the petitioners- Bachhittar Singh Vs. The State of Punjab, .

(b) The so-called decision of the HLSC to entertain and accept the applications of the petitioners without insisting upon the production of CLU certificates prima facie appears to be contrary to the mandate of the 1975 Rules and, therefore, such decision cannot be made basis for issuing a writ under article 226 of the Constitution of India.

17. Notwithstanding the aforementioned conclusion, we are inclined to accept the submission of the learned counsel for the petitioners that the decision taken by the HLSC in its 58th meeting held on July 1, 1999 should be quashed on the ground of violation of the rules of natural justice and arbitrariness. A recapitulation of the facts and perusal of the file produced by the Advocate-General shows that the appeals filed by the petitioners were considered by the HLSC in its 57th meeting held on March 19, 1999 and it was decided to accept the same. However, before that decision could be given the shape of an order, the matter came to the notice of the Chief Minister, who pressed the view that no incentive should be given to the units which have not obtained CLU permission from the Town and Country Planning Department and in view of the notice dated May 4, 1999 prepared by the Principal Secretary to the Chief Minister, the matter was re-considered by the HLSC in its 58th meeting held on July 1, 1999. It is also borne out from the record that notice of 57th meeting of the HLSC was given to the appellants/petitioners, but nothing of that sort was done about the 58th meeting and the decision adversely affecting the petitioners was taken without hearing them. In view of this fact situation and the candid admission made by the learned Advocate-General that notice and opportunity of hearing had not been given to the petitioners by the HLSC before rejecting their appeals, we hold that the rejection of their appeals is vitiated due to violation of the rule of audi alteram partem which forms integral part of the principles of natural justice.

18. We are further of the view that the decision of the HLSC is vitiated by arbitrariness because it has relied upon rule 28B of the 1975 Rules to justify the rejection of the appeals though that rule was not in existence at the time of consideration of the appeals.

19. For the reasons mentioned above, the writ petitions are allowed. The decision taken by the HLSC in its meeting held on July 1, 1999 is declared illegal and quashed with the direction that the appeals filed by the petitioners against the rejection of their applications shall be heard by the HLSC and decided afresh by passing a speaking order. Learned Advocate-General stated that the HLSC has been re-constituted. Therefore, we direct that the appeals shall be heard by the newly constituted HLSC and it shall take decision without being influenced by what had happened earlier. We, further, direct that the appeals of the petitioners shall be heard and decided afresh within two months of the submission/receipt of a certified copy of this order before/by the Director of Industries, Haryana.

20. Copies of this order be given dasti on payment of fee prescribed for urgent applications.

21. Writ petitions allowed.