

(2001) 07 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 12108 and 12111 of 2000

Pasupati Haryana Woolen Ltd.

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 19
Haryana General Sales Tax Act, 1973 — Section 13B
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(11), 28A(9)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15(1)

Citation : (2002) 125 STC 463

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : A.K. Mittal, for the Appellant; Palika Monga, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Are the provisions of Rule 28A(11)(a)(i) ultra vires the Constitution? Have the respondents erred in demanding the amount of sales tax found due from the petitioners ? These are the two questions that arise for consideration in these two petitions. The counsel have referred to the facts in C.W.P. No. 12108 of 2000. A brief reference thereto shall suffice.

2. The petitioner is a public limited company. It was incorporated in the year 1986. On March 3, 1990, the petitioner applied to the State Government for the grant of exemption from payment of sales tax. On June 3, 1992, eligibility and the exemption certificates were issued. Copies of the two certificates have been produced as annexures P.4 and P.5 with the writ petition.

3. The petitioner alleges that it suffered huge losses. It filed a petition u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short "SICA"). On July 21, 1995, the petitioner was declared a sick company. An operating agency to prepare a rehabilitation scheme was appointed. On August 27, 1998,

the petitioner was given a notice to show cause as to why the Board should not order the company to be wound-up. On December 15, 1998, orders for its winding up were passed, The petitioner filed an appeal. It was dismissed by the appellate authority vide order dated July 19, 1999. Thereafter, the Deputy Excise and Taxation Commissioner, Rewari, called upon the petitioner to show cause as to why the exemption certificate be not cancelled under Rule 28A(9) of the Haryana General Sales Tax Rules, 1975. It was pointed out that a tax exemption of Rs. 6 crores had been given to the petitioner for the period from January 19, 1990 to January 18, 1999. The record showed that it had discontinued its business during the exemption period. It had not been in production for a continuous period exceeding six months. Thus, the provisions of Rule 28A and the exemption certificate had been violated. Still further, it was also pointed out that the benefit of tax exemption was subject to the condition that the unit shall continue its production for at least five years after availing of the benefit of exemption. Since the petitioner had failed to continue with the production, the exemption certificate was liable to be cancelled.

4. The petitioner showed cause. It filed a reply. A copy has been produced as annexure P.9. After consideration of the matter and hearing the counsel for the petitioner, the second respondent ordered the cancellation of the exemption certificate and the recovery of Rs. 2,08,71,840 alongwith interest.

5. Aggrieved by the order, the petitioner has approached this Court through the present writ petition. It alleges that the order is perverse and legally unsustainable. In view of the provisions of Section 446 of the Companies Act, 1956, no proceedings can be commenced or continued without the leave of the court. The BIFR having ordered the winding up of the company, the orders for cancellation of exemption certificate or the recovery of the dues could not have been passed. The rule that imposes the condition regarding continuance of production, viz., 28A(11)(a)(i) is ultra vires Articles 14 and 19 of the Constitution. On these premises, the petitioner prays that the rule be declared unconstitutional and the impugned order, a copy of which has been produced as annexure P.10 with the writ petition, be quashed.

6. A written statement has been filed on behalf of the respondents. It has been, inter alia, averred that the petitioner has the statutory remedy of appeal under the Act. The exemption certificate was cancelled as the petitioner had closed down its business in the year 1995. Since the petitioner had not continued production in accordance with the provisions of the rules, the order was legal and valid. It has been further stated that the petitioner had never intimated the concerned authority about the existence of any problem regarding labour, etc. Various grounds raised by the petitioner for challenging the validity of the rule as also the order have been controverted. The respondents pray that the writ petition be dismissed with costs.

7. The broad factual position in C.W.P. No. 12111 of 2000 is similar to that in the case of Pasupati Haryana Woollen Ltd. There is only a difference of dates and

figures relating to money.

8. Counsel for the parties have been heard.

9. Mr. Ajay Mittal, counsel for the petitioner, contended that the provisions of Rule 28A should not have been applied in the present case as the unit had not stopped production voluntarily. He further submitted that if the provision is applied to a case like the present one, the rule is liable to be struck down as being ultra vires Article 14. Still further, the petitioner having not collected the sales tax from the customers, it could not be fastened with the liability to pay.

10. The claim made on behalf of the petitioner was controverted by Ms. Palika Monga, Additional Advocate-General, Haryana, for the respondents. She submitted that the petitioner was given the opportunity to show cause against the impugned order. It had failed to satisfy the authority that the loss of production was due to reasons beyond its control. Resultantly, the impugned order had been passed in accordance with law. She further pointed out that the petitioner has an effective alternative remedy of appeal and revision, etc., under the provisions of chapter VII of the Act. If the petitioner has any grievance, it should have resorted to those remedies. She also submitted that the petitioner itself was not serious in the rehabilitation of the unit. The BIFR had noticed the fact that promoters had "disposed of fixed and current assets without depositing the sale proceeds with the Bank/Institution in violation of the directions given u/s 22A of SICA". Thus, the petitioner deserves no sympathy.

11. As noticed at the outset, the two questions that arise for consideration are :

(i) Are the provisions of Rule 28A(11)(a)(i) ultra vires the Constitution ?

(ii) Have the respondents erred in demanding the amount of sales tax found due from the petitioners?

12. Reg : (i)

Section 13B of the Haryana General Sales Tax Act, 1973, empowers the State Government to grant exemption from the payment of sales tax if it is satisfied "that it is necessary or expedient so to do in the interest of industrial development of the State...". The provision further provides that the exemption can be granted "for such period and subject to such conditions as may be prescribed". The purpose is obvious. It is to ensure industrial development. The conditions, etc., have been prescribed in the Haryana General Sales Tax Rules, 1975. Rule 28A contained in Chapter IV-A of the Rules regulates the grant of exemption and the cancellation thereof. Sub-rule (11) of Rule 28A provides as under :

"(11)(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit,--

(i) shall continue its production at least for the next five years not below the level

of average production for the preceding five year ; and

(ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in Clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it :

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the units :

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard."

A perusal of the above provision shows that the exemption is granted subject to the condition that the unit shall continue its production for five years after having availed of the benefit. Otherwise, the unit becomes liable to pay the entire amount of tax along with interest. The first proviso stipulates that in case, the authority is satisfied that the loss of production was due to reasons beyond the control of the unit, its rigour can be relaxed. Hearing has to be given.

The short question is--Does the provision violate Article 14 of the Constitution ?

On a perusal of the provision, we find that it requires the unit to continue the production and maintain the average output so that the object of industrial development is achieved. The condition has a nexus with the object. It is not arbitrary or unfair.

Mr. Mittal contended that the provision operates to the disadvantage of a unit which is forced to close the unit for reasons beyond its control. Thus, it is arbitrary.

We are unable to accept this contention. Firstly, in a case where the production goes down for reasons beyond the control of the company, the competent authority has been empowered to relax the rigour of the provision. Secondly, in the present case and on the material placed before us, it appears that the petitioner itself was not keen to rehabilitate the unit. It had, as observed by the BIFR, sold the assets, moveable as well as immovable, on its own. It had not deposited the sale proceeds with the concerned authorities. Still further, nothing seems to have been pointed out to the authority to show that the production had gone down for reasons beyond the control of the company. It is, thus, clear that the petitioner has to thank itself for the impasse in which it finds itself. It cannot blame the rule or the respondents.

The first question is, accordingly, answered against the petitioner. It is held that the provision has requisite safeguards. It is not arbitrary or violative of Article 14.

13. Reg : (ii)

The record indicates that the petitioner has allegedly not abided by the conditions laid down in the order of exemption. Thus, a show cause notice was given to it. The explanation furnished by the petitioner was considered. Even oral hearing was granted. It was after consideration of the matter that the impugned order, a copy of which has been produced as annexure P. 10 was passed.

Admittedly, the petitioner has the remedies of appeal, revision and review, etc., under the provisions of the Act. Thus, at this stage, we shall say no more.

Mr. Mittal contended that the action of the second respondent in passing the impugned order is violative of the provisions of Section 446 of the Companies Act, 1956.

We are unable to accept this contention. Firstly, the point was not raised before the competent authority. Secondly, the provisions of the Sales Tax Act authorise the authority to recover the dues. Substantial amounts of money due to the State are involved. The petitioners are avoiding to pay on one pretext or the other. Even otherwise, if the petitioner chooses to avail of the remedies of appeal, etc., it can raise the plea before the appropriate authority which shall consider the relevant facts as borne out from the record and the law. However, we find no ground to interfere at this stage. It may be added that the counsel could not even prime facie show that no permission as envisaged under the provision had been obtained.

14. No other point was raised in either of the two cases.

15. In view of the above, we find no merit in either of these petitions. Consequently, both are dismissed. The respondents shall be entitled to their costs.

16. We had pronounced the order immediately on hearing the cases. We have now recorded the reasons.