
(2014) 02 P&H CK 0192
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5990 of 1994

P.S.G. Steels Pvt. Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:

Punjab Electricity (Duty) Act, 1958 — Section 12, 3

Citation : (2014) 175 PLR 53

Hon'ble Judges : Rajive Bhalla, J; Bharat Bhushan Parsoon, J

Bench : Division Bench

Advocate : Gagandeep Wasu, Addl A.G. and Mohnish Sharma for Pardeep Singh Poonia, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ quashing memos dated 27.10.1993 (Annexure P-7) and 07.04.1994 (Annexure P-9), denying to the petitioner, exemption from electricity duty and sales tax etc. Mr. Prem Sagar Garg, Director, M/s. P.S.C. Steels Pvt. Limited, in person, submits that the State of Haryana issued notification on 30.01.1981, Annexure P-1, exempting new industrial units engaged in manufacturing, process and preservation of goods from payment of electricity duty, leviable under Clause III of sub section (1) of Section 3 of the Punjab State Electricity (Duty) Act, 1958 (hereinafter referred to as "the Act"), for five years, provided capital investment is upto Rs. 50 lakhs. The petitioner registered his unit with the Director of Industries, Haryana, Chandigarh, on 15.02.1984. A provisional registration certificate was issued to the petitioner, for manufacture of S.S. Alloy steel and ingots. The provisional registration certificate was extended from time to time. On 30.06.1989, the State of Haryana, issued another notification, in the exercise of power u/s 12 of the Act, whereby all new industrial units engaged in manufacturing, processing and preservation of goods, coming into commercial production in the State of Haryana, on or after 01.04.1988, other than those mentioned in the schedule to

the notification were exempted from payment of electricity duty etc. Clause 17 of the schedule provides that "power intensive units based on electro-thermal/ electro-chemical and electrolytic process" are not entitled to exemption.

2. The petitioner-company completed the factory building, installed machinery and started production of MS ingots, on 31.03.1991. The petitioner-company applied, to the General Manager, District Industries Centre, Yamuna Nagar, for permanent registration. A permanent registration number was issued to the petitioner on 04.06.1991. Upon receipt of the permanent registration number, the petitioner applied for electricity duty and sales tax exemption under the notification, issued on 30.06.1989. The Director, Industries, however, did not issue the requisite eligibility certificate on the plea that the petitioner's unit is not exempted as it is a "power intensive unit". The petitioner raised a protest that as a "power intensive unit" has not been defined, and the unit is not "power intensive", the rejection is illegal. The Director of Industries, Haryana, referred the matter to the Central Electricity Authority, Ministry of Irrigation and Power Sewa Bhawan, Ramakrishna Puram, New Delhi, for clarification. The Central Electricity Authority, vide letter dated 08.12.1989, clarified that 12 industries are categorized "power intensive units" for the purpose of electricity demand, forecasting and planning. The petitioner made another representation referring to the clarification, to the Director, Industries, Haryana, for review of its decision. The Director of Industries, Haryana, once again referred the matter to the Central Electricity Authority. On 07.08.1992, the Chief Engineer, Central Electricity Authority, intimated that list of "power intensive units" mentioned by the Central Electricity Authority does not include M.S. Ingots Steel Industry, but the Chief Engineer relied upon an earlier letter dated 08.12.1989 and rejected the representation.

3. The petitioner submits that in view of the above clarification, the rejection letters, Annexures P-7 and P-9, are illegal and should be set aside. It is further submitted that as the petitioner's unit was granted a provisional registration certificate, in 1984, notification issued on 30.06.1989, does not apply to the petitioner. It is also contended that as the Central Electricity Authority has clarified that the list of "power intensive units" does not include M.S. Ingots Steel Industry, the petitioner is entitled to exemption from electricity duty and sales tax. It is prayed that in this view of the matter, the writ petition may be allowed and the respondents may be directed to grant exemption and issue eligibility certificate, as prescribed by law.

4. Counsel for the State of Haryana submits that exemption cannot be claimed as a matter of right and even otherwise as the petitioner's case falls within the negative list, the petitioner cannot be granted an eligibility certificate/exemption/deferment whether from electricity duty or from sales tax. It is further submitted that mere issuance of a provisional registration certificate is irrelevant for the purpose of claiming incentives. It is further contended that it is not necessary for the government to define "power intensive industries", as it has been clarified by

notification dated 30.06.1989, that "power intensive industries", are industries that have electric power consumption as one of the major components for manufacturing an end product, are not eligible. The petitioner's has installed an induction furnace, which melts iron scrap and produces mild steel. The petitioner, therefore, runs a power intensive industry and is not entitled to the incentives claimed. The petitioner's claim was examined in the light of the advice received from the Central Electricity Authority and as it was found that the petitioner is not eligible for grant of benefit under the aforementioned notification. It is further submitted that the petitioner's case was reconsidered in a meeting held to review the list of negative industries and almost all the members present in the meeting including the Managing Director, Haryana Financial Corporation and Chief Electrical Inspector were of the view that the manufacturing process adopted by the petitioner falls under the negative list.

5. We have heard Shri Prem Sagar Garg, petitioner in person, and counsel for the respondents.

6. The question that arises for adjudication is whether the petitioner's industry falls within Sr. No. 17 of the notification dated 30.06.1989, which disentitles industries mentioned therein to exemption from electricity duty etc. Clause 17 reads as follows:-

17. Power intensive units based on electrothermal/electro-chemical/electrolytic process.

7. A perusal of notification reveals that new industries other than those industries referred to in the schedule, would be entitled to exemption from electricity duty etc., for a period of five years from the date of release of an electric connection. Clause 17 of the schedule refers to "power intensive units based on electro-thermal/electrochemical/electro-lytic process". The petitioner set up a unit to manufacture M.S. Ingots, i.e., an induction furnace, based on induction heating technology. The basic ingredient for melting scrap and converting it into M.S. Ingots is electricity and, therefore, would fall within the expression "power intensive units", used in Clause 17 of the Schedule. The mere fact that the word "M.S. Ingots or "induction heating technology" are not used in entry 17, is irrelevant. The respondents have duly considered the petitioner's representation, advice tendered by the Central Electricity Authority etc. and arrived at a conclusion that the industry set up by the petitioner is an "electricity intensive unit". We find no reason to interfere with this finding as the question whether an industry is electricity intensive or not has to be left to the wisdom of experts. This apart, we are not inclined to interfere in the matter merely because the Central Electricity authority has not referred to M.S. Ingots as it recorded its opinion for the purpose of forecasting electricity consumption. The discretion to grant or not to grant an incentive rests with the State and till such time as the incentive granted or denied is not arbitrary, discriminatory or capricious, a Court should not interfere. In view of what has been recorded hereinabove, the writ petition is dismissed.