**(2014) 01 P&H CK 0010**

**In the Punjab And Haryana At Chandigarh**

**Case No :** C.M. No. 23819-CII of 2013 and VATAP No. 160 of 2013 (O&M)

Raju Plastics Industries APPELLANT

Vs

State of Haryana and Others RESPONDENT

**Date of Decision :** 14-01-2014

**Acts Referred:**
Haryana Value Added Tax Act, 2003 — Section 36(2)
Limitation Act, 1963 — Section 5

**Citation :** (2014) 01 P&H CK 0010

**Hon'ble Judges :** Anita Chaudhry, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Advocate :** Rajinder Goyal, Advocates for the Appellant

## Judgement

Ajay Kumar Mittal, J.—This appeal has been filed by the assessee under Section 36(2) of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the orders dated 23.5.2006 (Annexure P-2), dated 25.9.2006 (Annexure P-4) and dated 20.9.2011 (Annexure P-5) claiming the following substantial questions of law:-

i. Whether the impugned order dated 23.5.2006 i.e. Annexure P-2, the order dated 25.9.2006 i.e. Annexure P-4 and the order dated 20.9.2011 i.e. Annexure P-5 passed by respondents no. 2 to 4 being totally illegal, suffering from material irregularities and based upon misreading, misinterpretation of Rule 28-A of the Haryana General Sales Tax Rules, 1975 are liable to be quashed?

ii. Whether the petitioner''s firm who had to close down its production for non-availability of raw material i.e. polythene bags as a result of banned imposed by the State of Haryana and Central Government is still liable to make the payment of entire tax exemption availed of by it along with interest chargeable as if no tax exemption was ever availed to it, even though the petitioner''s unit had to close down its business for reasons beyond the control of the petitioner''s unit?

2. Briefly stated, the facts necessary for adjudication of the present appeal as

narrated therein are that the assessee-firm was established for manufacturing of PVC, Granules out of waste plastic bags, empty bags and was granted exemption under Section 13B of the Haryana General Sales Tax Act, 1973 (in short "the 1973 Act") read with Rule 28A of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules") vide exemption certificate dated 22.10.1993 (Annexure P-1) for the period from 22.4.1993 to 21.4.2000. Accordingly, the firm started its production and availed sales tax exemption of Rs. 1,12,339/- upto the year 2001-02. Thereafter, the assessee closed down its manufacturing activities and disposed of its plant and machinery due to non-availability of raw material i.e. waste plastic bags because of ban imposed on the use of all types of polythene carry bags manufactured from plastic w.e.f. 1.7.1999 by the Haryana Government and Central Government vide notification dated 15.6.1999. Since the unit of the assessee had to close down its production for non-availability of raw materials, it was not able to continue its production after claiming exemption upto the year 2001-02. Respondent No. 4 called for report regarding the status of the unit. The assessing authority visited the unit of the appellant and gave report dated 23.11.2004 that no business activities were carried out by the assessee for the last more than two years and the firm was closed. Thereafter, respondent No. 4 issued a show cause notice dated 10.3.2006 to the assessee to explain reasons regarding the dis-continuation of production. The assessee vide reply dated 10.4.2006 stated that due to ban on the use of all types of polythene carry bags manufactured from plastic w.e.f. 1.7.1999 by the Haryana Government and Central Government, it was not possible to continue production at least for the next five years. Respondent No. 4 vide order dated 23.5.2006 (Annexure P-2) held the appellant to make the payment of entire tax exemption along with interest chargeable if no tax exemption was ever available to it. Accordingly, the assessing authority issued notice dated 29.6.2006 (Annexure P-3) demanding Rs. 2,94,333/-. Feeling aggrieved, the appellant filed an appeal before respondent No. 2. Respondent No. 2 vide order dated 25.9.2006 (Annexure P-4) dismissed the appeal. Still dissatisfied, the appellant filed an appeal before the Tribunal who vide order dated 20.9.2011 (Annexure P-5). Hence, the present appeal.

3. Learned counsel for the appellant submitted that due to the circumstances beyond the control of the appellant, the appellant was unable to continue with the production and, therefore, recovery of the exempted Tax under Rule 28A of the Rules was bad.

4. After hearing learned counsel for the appellant, we do not find any merit in the appeal.

5. It was not disputed that to avail benefit of exemption under Section 13B of the 1973 Act read with Rule 28A of the Rules, the assessee was required to ensure that the production continued during the period of exemption and was not stopped for a continuous period exceeding six months. The appellant had discontinued the business since January 1997 and had, thus, disentitled itself to

 

retain the advantage of exemption already availed under the 1973 Act and the Rules. The Tribunal while rejecting the contention of the appellant had noticed as under:-

"6. The first contention of the petitioner is that as the discontinuance of business by its unit since January, 1997 was on account of non-supply of raw material to it, which was a factor beyond its control, the exemption certificate could not be cancelled. This contention had been rejected by the Prohibition Excise and Taxation Commissioner in his order dated October 29, 1998 on the ground that no material had been placed before him which could enable him to conclude that the unit was closed for any circumstances beyond the Here italicized, control of the petitioner. However, we are of the view that it is unnecessary to go into this issue to decide the validity of the cancellation of exemption certificate under sub-rule (9)(i) of Rule 28A of the Rules. A plain reading of this provision shows that discontinuance of business by a unit or closing down of its business for a continuous period exceeding six months automatically invites the cancellation of the exemption certificate. There are no exceptions provided in this sub-rule which can save its application. It is, absolutely clear that once it is found that the unit had discontinued its business for a period exceeding six months, the cancellation of the eligibility certificate would be justified. It is not open to a dealer to plead that the discontinuance was on account of factors beyond its control. In this view of the matter, it is not necessary for us to go into the merits of the case of the petitioner that the business had been discontinued due to the failure of the District Industries Centre, Rohtak to restore the supply of coal which was a factor beyond the control of the petitioner. In view of the admitted position that the unit had not worked since January 1997, for a period of more than six months, the exemption certificate of the petitioner could be rightly cancelled under sub-rule (9) of Rule 28A of the Rules.

In view of the above situation, we do not find any reasons to interfere with the orders of the authorities below. The appeal is rejected accordingly."

6. In view of the above findings recorded by the Tribunal which were not shown to be perverse or erroneous, no substantial question of law arises in this appeal for consideration. Accordingly, finding no merit in this appeal, the same is hereby dismissed.

7. The appeal is barred by 722 days and an application bearing C.M. No. 23819-CII of 2013 has been filed under Section 5 of the Limitation Act for condonation of 722 days'' delay in filing the appeal. Since, the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is also disposed of as such.

 