
(2000) 08 P&H CK 0184
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8082 of 1999

Rakesh Rice Mills

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 03-08-2000

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 39, 39(1), 39(2), 39(5)

Citation : (2001) 122 STC 415

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

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; Jaswant Singh, Deputy Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The petitioner has prayed for quashing of the orders, annexures P4, P7 and P11 passed by the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, Fatehabad (hereinafter described as "the Assessing Authority"), the Joint Excise and Taxation Commissioner (Appeals), Hissar (hereinafter described as "the appellate authority") and the Sales Tax Tribunal III, Haryana (for short, "the Tribunal"), respectively.

2. For the purpose of deciding the issue raised by the petitioner, it is sufficient to mention that the petitioner had challenged the order of the Assessing Authority by filing an appeal u/s 39(1) of the Haryana General Sales Tax Act, 1973 (for short, "the Act") along with an application under proviso to Section 39(5) for exemption from payment of tax, interest and penalty amounting to Rs. 80,916. The Joint Excise and Taxation Commissioner (Appeals), Hissar, rejected the application of the petitioner but the second appeal filed by it was allowed by the Tribunal vide order dated March 25, 1997 (annexure P6) with the direction that the appeal be heard on merits subject to deposit of the 25 per cent of the tax demand and furnishing of surety bond for the balance demand to the satisfaction of the Deputy Excise and Taxation Commissioner, Hissar. The petitioner deposited

the amount in terms of the said order. After hearing its representative, the appellate authority finally dismissed the appeal on August 1, 1997. The petitioner challenged that order by filing an appeal u/s 39(2) of the Act along with an application under proviso to Section 39(5) of the Act for grant of exemption from payment of tax, etc. This time, the Tribunal declined to entertain its prayer and vide order dated October 22, 1998 it directed the petitioner to deposit the disputed amount within 45 days. The petitioner sought review of that order by filing an application u/s 41 of the Act which was dismissed by the Tribunal on March 23, 1999.

3. The petitioner has sought invalidation of the impugned orders on the following grounds :

(i) that the order dated October 22, 1998 suffers from an error of law, inasmuch as, while declining its prayer for exemption from payment of tax, etc., the Tribunal completely overlooked the previous order dated March 25, 1997 under which the petitioner's appeal was ordered to be entertained subject to the condition of depositing 25 per cent of the tax demand and furnishing of surety bond for the remaining amount ;

(ii) that the orders passed by the Assessing Authority, the appellate authority and the Tribunal are vitiated by arbitrariness and discrimination because while holding the petitioner liable to pay tax, interest, etc., and declining its prayer for exemption, the Tribunal has ignored the order dated March 31, 1998 passed in S.T.R. Nos. 59 and 60 of 1997-98 in the case of D.D. Rice Mills ; and

(iii) that in view of the order dated March 31, 1999 passed by the Sales Tax Tribunal IV, Haryana in S.T.A. No. 320 of 1998-99, Jai Durga Rice & General Mills v. State of Haryana and 11 connected appeals, the levy of purchase tax has been rendered void ab initio.

4. The respondents have defended the impugned orders by contending that the levy of purchase tax is consistent with the provisions of the Act and the Haryana General Sales Tax Rules, 1975. According to them, the Tribunal has rightly declined to entertain the application filed under proviso to Section 39(5), because the petitioner did not produce any evidence about its financial incapacity to pay the tax, interest and penalty stipulated in the assessment order.

5. We have heard Shri K.L. Goyal and Shri Jaswant Singh. In our opinion, it is not necessary to examine the legality and correctness of the orders passed by the Assessing Authority and the appellate authority because we are convinced that order, annexure P11, dated October 22, 1998 passed by the Tribunal deserves to be quashed on the ground that it suffers from a patent error of law. A perusal of the record shows that the application filed by the petitioner under proviso to Section 39(5) for exemption from payment of tax, etc., was dismissed by the appellate authority but that order was substantially set aside by the Tribunal with the direction that the appeal be entertained subject to the deposit of 25 per cent of the tax demand and furnishing of surety bond for the remaining amount.

However, without any change in the status of the petitioner, the Tribunal declined its request for exemption made vide application filed under proviso to Section 39(5) along with the appeal which the petitioner had preferred against the final order passed by the appellate authority. While doing so, the Tribunal did not even advert to the order dated March 25, 1997 and rejected the prayer for exemption from payment of tax simply by making a reference to the judgment of the Full Bench of the High Court in Emerald International Ltd. Vs. State of Punjab and Others, . In our opinion, rejection of the petitioner's prayer for exemption is liable to be declared illegal because no tangible reason has been assigned by the Tribunal to justify its conclusion that the petitioner had failed to prove its financial incapacity.

6. Shri Jaswant Singh made a half-hearted attempt to defend the impugned order by arguing that an inference about the change of the petitioner's status can be drawn from the fact that it was a running industry. However, we have not been able to persuade ourselves to agree with him because the written statement filed on behalf of respondents Nos. 1 and 3 is conspicuously silent on this issue. The respondents have not averred that the petitioner's unit was closed at the time of rejection of its application by the appellate authority and that, later on, it had become operational. Even during the course of arguments, the learned Deputy Advocate-General, could not draw our attention to any document to show that the petitioner's status had undergone a change between March 25, 1997 and October 22, 1998. In view of this, we are constrained to observe that the decision of the Tribunal not to entertain the petitioner's prayer for exemption is wholly arbitrary and vitiated by an error of law.

7. In the result, the writ petition is allowed. Order annexure P11 dated October 22, 1998 is declared illegal and quashed with the direction to the Tribunal to hear and decide the appeal filed by the petitioner on merits. The representative of the petitioner is directed to appear before the Tribunal on September 1, 2000. We hope that within next three months, the Tribunal will decide the appeal.