(2004) 02 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 79 of 2004

R.S. Woollen and Textile Mills APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 02-02-2004

Acts Referred:

Haryana General Sales Tax Rules, 1975 — Rule 28A
Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 — Section 23(3), 6.12

Citation : (2006) 146 STC 55

Hon'ble Judges : N.K. Sud, J;J.S. Narang, J

Bench : Division Bench

Advocate : D.D. Verma, for the Appellant; R.D. Sharma, Assistant Advocate-General and Rajiv Hooda for Kamal Sehgal, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sud and J.S. Narang, JJ.—The only issue involved in this writ petition is as to whether the eligibility certificate granted Under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") can be withdrawn on the ground that the dealer had failed to file change of land use certificate (for short, "the CLU") along with application in form ST-70 on the basis of which it had been granted. This matter was considered by this Court in R.K. Mittal Woollen Mills v. State of Haryana [2001] 123 STC 248 : (2000) 15 PHT 261 and Baldev Spinners Pvt. Ltd. v. State of Haryana [2003] 132 STC 594 : (2003) 21 PHT 459 and it has been held that non-furnishing of change of land use certificate was not a ground on which the eligibility certificate already granted, could be withdrawn.

2. Mr. R.D. Sharma, learned Assistant Advocate-General, Haryana, appearing on behalf of the State contended that it was mandatory for a dealer to file the CLU along with form ST-70 and thus an application which is not accompanied by the CLU is invalid and hence the eligibility certificate granted on the basis of such an application is also void ab initio and non est in law. For this purpose he placed

reliance on the judgment of this Court in Nice Spinners Pvt. Ltd. v. State of Haryana [2001] 121 STC 456 : (2000) 16 PHT 421. According to him, it was also evident from the provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1973, that CLU has to be obtained before setting up a new industry. He further contended that in the present case the dealer has violated the provisions of Sections 6, 12 and 23(3) of the said Act as well.

3. We find no merit in the contention raised on behalf of the respondents. As far as the case of Nice Spinners [2001] 121 STC 456 (P&H) : (2000) 16 PHT 421 is concerned that case pertained to denial of eligibility certificate at the threshold itself. There is no dispute that while applying for eligibility certificate, CLU has to be submitted and non-submission of the same would be a good ground for not granting the eligibility certificate. However, here we are concerned with the applicability of Sub-rule (8) of Rule 28A, which contains the grounds on which the eligibility certificate once granted can be withdrawn. Similarly, the alleged violation of the other Act, i.e., the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1973, has no bearing for adjudication of the point at issue in the present writ petition. We may also mention that the State Government has not initiated any action against the petitioner for the alleged violation, on a query from the Bench it has also been conceded that no action has been initiated against the members of the Screening Committee which had granted the eligibility certificate without the CLU.

4. In view of the above, we are satisfied that the dispute in the present writ petition is squarely covered by the judgments of this Court in R.K. Mittal Woollen Mills case [2001] 123 STC 248 : (2000) 15 PHT 261 and Baldev Spinners'' case [2003] 132 STC 594 : (2003) 21 PHT 459. Therefore, this petition is allowed and the impugned order dated April 21, 2003 (annexure P11) is quashed. However, in the circumstances of the case there shall be no order as to costs.