(2014) 01 P&H CK 0182

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 13872 of 2005, 3936, 7200, 17561 of 2006, 12462, 13287 and 13494 of 2012

Shree Shree Radha Swamy Plastics Ltd. APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2014) 70 VST 423

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

Bench : Division Bench

Advocate : Sandeep Goyal, Akshay Bhan, Avneesh Jhingan and Zorawar Singh, Advocate for the Appellant; Rajiv Kawatra, Senior Deputy Advocate-General, Haryana and Binderjit Singh, Advocate for the Respondent

Judgement

Rajive Bhalla, J.—By way of this order we shall dispose of Civil Writ Petition Nos. 13872 of 2005, 7200, 17561, 3936 of 2006, 12462, 13287 and 13494 of 2012, as they involve adjudication of similar questions of law and facts. Facts for adjudication of these petitions are being taken from Civil Writ Petition No. 13872 of 2005, but where necessary facts of each case shall be narrated. The petitioner prays for issuance of a writ of certiorari declaring notification, dated October 15, 2001 (annexure P1), ultra vires of article 14 of the Constitution of India and for quashing order dated April 26, 2005 (annexure P21), passed by the High Level Screening Committee, constituted under rule 28C of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules"), declining to treat the petitioner as a "unit in pipeline."

2. Counsel for the petitioner submits that the petitioner was incorporated in 1996 with the object of manufacturing and selling HDPE woven fabrics and other packing material. The petitioner purchased land in village Patti Kalyana on April 3, 1996 and obtained change of land use certificate on August 18, 1997. The petitioner was in the process of setting up a unit, when it received information,

based on an advertisement issued, by the State of Haryana in Hindustan Times, on June 30, 2000, that exemption would be granted to "units in pipeline" as on April 30, 2000. The petitioner immediately sent a communication, dated July 5, 2000, to the General Manager, District Industries Centre, Panipat, praying that his unit be included in the list of "units in pipeline". The petitioner had already applied for registration of its unit with the District Industries Centre, Panipat, by way of an application dated May 17, 2000. The petitioner had invested Rs. 28,97,705 up to March 31, 2001 by way of constructing a building. The petitioner obtained sales tax registration on April 30, 2001. A certificate was issued on April 30, 2001, effective from September 7, 2000. The petitioner also obtained a no dues certificate from the Haryana Pollution Control Board, dated December 14, 2001, an electricity connection from the Uttar Haryana Bijli Vitran Nigam, on January 17, 2002 and went into commercial production on March 30, 2002. On the basis of these investments and permissions, the petitioner filed an application on July 26, 2002 for grant of tax concessions. The application has been rejected by the Higher Level Screening Committee vide order dated April 26, 2005 (annexure P21) by holding that the petitioner was not registered in the office of General Manager, District Industries Centre, on April 30, 2000, etc.

3. Counsel for the petitioner submits that the petitioner''s application for being registered/treated as a "unit in pipeline" has been rejected on the ground" that the petitioner was not registered with the Department of Industries before May 28, 2000 and, therefore, cannot be treated as a "unit in pipeline" under rule 28C(3)(o) of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules"). The State of Haryana has granted exemptions, from payment of sales tax by incorporating rules 28A and 28B in the Rules. On July 28, 2000, the State of Haryana introduced rule 28C, in the Rules to grant deferment from payment of tax to units that fulfill conditions set out in the aforesaid Rules. Rule 28C inserted on July 28, 2000 provides that an "eligible industrial unit" holding a valid entitlement certificate shall be entitled to concession of deferment of payment of sales tax, including Central sales tax, on the sale of goods manufactured by the unit. Rule 28C defines an "eligible industrial unit" but did not define "units in pipeline". Sub-clause (iv) however, provided exemption to a "unit in pipeline" as on April 30, 2000 or on any other later date to be notified by the Government. The eligibility of "units in pipeline" was to be determined by a High Powered Committee or a High Level Screening Committee depending upon the nature of the unit. Thus, if a unit was a "unit in pipeline" as on April 30, 2000, or any other later date to be notified by the Government, it would be treated as an "eligible unit". The operative period for availing of concessions under rule 28C(3)(e) of the Rules is from November 15, 1999 to April 30, 2000, except in the case of "units in pipeline" where the date is April 30, 2000 or any other later date to be notified by the Government. The State of Haryana without considering that rule 28C(3), was in operation and units like the petitioner had already taken steps to set up a unit, issued notification dated October 15, 2001, amending rule 28C(3) with effect from November 15, 1999, by enacting sub-rule

(o) to define "units in pipeline" in the following terms:

(i) is registered with the Department of Industries;

(ii) has arranged land or premises by way of purchase, allotment, lease or rent;

(iii) has applied for finances from a regular financial institutions; and

(iv) would start production within two years, i.e., before the May 1, 2002.

4. The amendment was notified on October 15, 2001 but operates retrospectively from November 30, 1999 up to April 30, 2000, thereby excluding units that do not fall within the definition of "units in pipeline" from concessions provided by rule 28C of the Rules. A perusal of the aforesaid rule reveals that the expression "units in pipeline" was not defined but it was left to the discretion of the Higher Level Screening Committee, to determine on the facts of each unit. The expression "units in pipeline" as understood in common parlance, denotes a unit, that has taken steps to commit itself to an industrial project. The petitioner had purchased land well before enactment of rule 28C of the Rules and was in the process of complying with other statutory requirements, when vide notification dated October 15, 2001, sub-clause (o) was suddenly inserted into rule 28C(3) of the Rules, with retrospective effect from November 15, 1999, to define "units in pipeline", thereby rendering the petitioner, ineligible. Sub-clause (o), inserted vide notification dated October 15, 2001, makes an attempt to define "units in pipeline" as (a) unite registered with the Department of Industries; (b) have arranged land or premises by way of purchase, allotment, lease or rent; (c) have applied for finance from a regular financial institution; and (d) would start production within two years of May 1, 2002. The first three conditions were to be complied by or on April 30, 2000, whereas production was to commence by May 1, 2002. The amendment having been notified on October 15, 2001, it was impossible for the petitioner and similarly situated units to comply with these conditions, by April 30, 2000. The notification was issued almost 1 1/2 years after the cut-off date of April 30, 2000.

5. Counsel for the petitioner further submits that units like the petitioner, who has purchased land that were in the process of registration, securing finance, etc., have been disqualified by the retrospective definition of "units in pipeline". The notification is illegal as rules, which are notified in the exercise of power of delegated legislation cannot be made applicable retrospectively. A delegate can only notify rules with retrospective effect, if such a power is specifically conferred by the statute. The definition inserted with retrospective effect from November 15, 1999 has caused serious prejudice to the petitioner, as it is impossible for the petitioner and similarly situated units to comply with the definition of "units in pipeline". It is further submitted that the definition is unreasonable as a person, who was in the process of setting up a unit could not possibly conceive that such conditions would be notified retrospectively and even otherwise it is impossible to fulfill these conditions, by April 30, 2000, as the notification was itself issued on October 15, 2001, 1 1/2 years after April 30, 2000. It is further submitted that

the definition of "unit in pipeline" is merely clarificatory and was enacted so as to put at rest inconsistencies in orders passed by the Higher Level Screening Committee and, therefore, cannot be interpreted to divest a party of a vested right, to be considered for exemption. The notification operates to the prejudice of the rights of the petitioner and may, therefore, be declared prospective. It is prayed that the writ petition may be allowed, the impugned notification as well as the impugned order holding that the petitioner is not a "unit in pipeline", may be set aside.

6. Counsel for the State of Haryana submits that incentives, concession and exemptions are not legally enforceable and, therefore, do not confer any right upon the petitioner to seek issuance of a writ. The petitioner is not covered by the expression "units in pipeline" as it was not registered on the relevant date and, therefore, its claim has been rightly rejected. The Sales Tax Incentive Scheme for Industries was introduced on June 13, 1988, with effect from April 1, 1988 to May 17, 1989, under sub-rule (2)(a) of rule 28A of the Rules. In the year 1997, the State of Haryana introduced a new industrial policy applicable from August 1, 1997 valid up to May 18, 1999 and for the said purpose introduced sub-rule (3)(a) of rule 28B. The Industrial Policy of 1999 came into effect on November 15, 1999. During the Chief Minister''s conference on sales tax reforms, it was decided that all States would furnish a list of cases in pipeline as on cut-off date regarding discontinuation of taxes and incentives. The State of Haryana adopted the cut-off date of April 30, 2000. Accordingly, sub-rule (3)(1) of rule 28C provided a cut-off date of April 30, 2000 or any other later date that may be notified by the Government. The Haryana General Sales Tax Act was amended and a new sub-section (2A) was inserted in section 64, vide Act No. 11 of 2001, dated June 26, 2001, conferring power to amend rules and sub-rules, retrospectively and it was declared that rules 28A, 28B and 28C of the Haryana General Sales Tax Rules, 1975 shall have retrospective effect from April 1, 1988, August 1, 1997 and November 15, 1999, but such retrospective operation shall not operate to the prejudice of any person to whom these rules may be applicable. It is further argued that as power to enact rules retrospectively has been conferred by amendment of section 64, by inserting sub-section (2A) in section 64 of the Haryana General Sales Tax Act, the petitioner''s submission that retrospective operation of the notification is illegal and the definition of "unit in pipeline" is without authority of law is incorrect. The petitioner submitted an incomplete application to claim sales tax concession, to the General Manager, District Industries Centre, Panipat, on July 26, 2002 and after adverse observations, the matter was placed before Higher Level Screening Committee, which after due deliberation, rejected the petitioner''s application. It is further submitted that on the relevant date, the petitioner was not interested in setting up a unit as it is rather surprising that, though, the petitioner purchased land in 1996, it did nothing after 1996, to set up a unit as all acts relevant for seeking exemption were carried out after April 30, 2000. The petitioner cannot be granted or considered as a "unit in pipeline" with or without the amendment and,

therefore, the writ petition may be dismissed.

7. We have heard counsel for the parties, perused the paper book, considered the statutory provisions as well as the impugned order.

8. The dispute in the present case is whether the amendment defining "units in pipeline" set out in rule 28C(3)(o), by notification dated October 15, 2001, is ultra vires of any provision of the Constitution of India or the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the Act"), whether the said definition operates to the prejudice of the petitioner and whether the order rejecting the petitioner''s application for treating the petitioner as a "unit in pipeline" as on April 30, 2000 is legal and valid. The petitioner has advanced as his first submission that as rule-making power is exercised by a delegate, the rule could not be enacted with retrospective effect. The submission, though, well founded ignores the fact that sub-section (2A) of section 64 of the Act, enacted vide Act No. 11 of 2001, on June 26, 2001, empowers enactment of rules with retrospective effect. Sub-section (2A) of section 64 of the Act, reads as follows:

(2A) The power to make rules under sub-sections (1) and (2) with respect to clauses (ff) and (oo) of sub-section (2) shall include the power to give retrospective effect to such rules, i.e., from the date on which policy for incentives to industry is announced by the State and for this purpose rules 28A, 28B and 28C of the Haryana General Sales Tax Rules, 1975, shall have retrospective effect, i.e., with effect from 1st April 1988, August 1, 1997 and November 15, 1999, respectively, but such retrospective operation shall not prejudicially affect the interests of any person to whom such rules may be applicable.

9. A perusal of the sub-section reveals that power to enact rules shall include power to enact them retrospectively from the date on which policy for incentives to industry is announced by the State Government and for this purpose, rules 28A, B, C of the Rules shall have retrospective effect from April 1, 1988, August 1, 1997 and November 15, 1999, respectively. Thus, a rule, notified to achieve objects of the policy granting incentives to industry, can be notified retrospectively, thereby negating the argument raised by counsel for the petitioner that the Act does not empower amendment of rules, with retrospective effect. The question whether the amended rule operates to adversely affect the rights of any party is a question apart and shall be dealt later but in view of sub-section (2A) of section 64 of the Act, there can be no further debate about power to enact rules retrospectively. Thus, challenge to the retrospectively of definition of "units in pipeline", on the ground of want of statutory sanction is rejected.

10. The second question is whether the definition of "units in pipeline" takes away any right that may have vested in the petitioner under rule 28, before introduction of sub-clause (o). Rule 28C(3)(o) of the Rules, defining "units in pipeline" and whether the said amendment works in any manner to the prejudice of the petitioner.

11. Sections 13B and 25A of the Haryana General Sales Tax Act, 1973 empower the State to provide concessions/exemptions from sales tax. The State of Haryana has from time to time enacted provisions to exempt and or defer payment of sales tax, by notifying rules 28A and 28B. On July 28, 2000, the State of Haryana introduced rule 28C to grant deferment from payment of sales tax, for the operative period, i.e., November 15, 1999 to April 30, 2000, as set out in rule 28C(e) of the Rules. Rule 28C defines an eligible industrial unit, as follows:

28C(c) ''eligible industrial unit'' means.--(I) A new industrial unit or a unit undertaking expansion or diversification which, on the date of commercial production of new/expanded/diversified unit, fulfils the following conditions:

(i) holds a certificate of registration under the Act, if it is a new unit;

(ii) to (v) ...

(vi) has come into commercial production during the operative period; or was in pipeline as on 30th April, 2000 or any other later date notified by the Government.

Note: The eligibility of units in pipeline shall be determined by High Powered Committee in case of prestigious units and by Higher Level Screening Committee in other cases. The decision of High Powered Committee/Higher Level Screening Committee shall be final.

(II) to (VIII) ...

12. A perusal of the aforesaid rule, insofar as it is relevant for the present controversy, reveals that as per sub-clause (iv), an eligible industrial unit includes "units in pipeline" as on April 30, 2000 or any other later date notified by the Government. Section 28C, however, did not define "units in pipeline" as it was left to the discretion of the High Powered Committee to determine whether a unit is or is not a "unit in pipeline".

13. By way of amendment dated October 15, 2001, sub-clause (o) was inserted with retrospective effect from November 15, 1999 to define "units in pipeline" and reads as follows:

Rule 28C(3)(o). ''Units in pipeline'' means an industrial unit which as on the 30th April, 2000, fulfils the following conditions:--

(i) is registered with the Department of Industries;

(ii) has arranged land or premises by way of purchase, allotment, lease or rent;

(iii) has applied for finances from a regular financial institutions; and

(iv) would start production within two years, i.e., before the May 1, 2002.

14. Sub-rule (o) requires that for "units in pipeline" to be eligible, they should be

registered with the Department of Industries, should have arranged land or premises by way of purchase, allotment, lease or rent and should have applied for finances from a regular financial institution; and would start production within two years. The first three conditions are required to be fulfilled by April 30, 2000, whereas the fourth condition is to be completed by May 1, 2002.

15. The petitioner contends that retrospective operation of the definition of a "units in pipeline" has caused serious prejudice to the petitioner as even though the petitioner had taken steps to install a unit, he has been held ineligible for failure to comply with conditions set out in the amendment, namely, that he was not registered with the Department of Industries before April 30, 2000. In addition, it is contended that the amendment reveals that the definition of "units in pipeline" would not apply if it is prejudicial to the interest of an applicant. The retrospective operation of the definition adversely affects the rights of the petitioner to claim concession from payment of sales tax, as the petitioner could not have possibly conceived that such conditions would be imposed with retrospective effect.

16. The arguments, in our considered opinion, are misconceived if not altogether fallacious. The definition of "eligible industrial unit", as enacted before the amendment required an industrial unit, including "units in pipeline" to be registered and holding a registration certificate. The amendment enacted by sub-rule (o) merely reiterates this part of the original provision and says nothing more. The petitioner, admittedly, was not registered with any Department of the Government before April 30, 2000. Admittedly, the petitioner applied for registration with the Department of Industries pursuant to an application made on May 17, 2000 and was granted a provisional registration certificate on May 24, 2000, i.e., after April 30, 2000, the cut-off date. The petitioner applied for registration as a unit on May 17, 2000 and was registered on May 24, 2000, thereby failing to fulfill the first condition. The petitioner purchased land on April 3, 1996, obtained a certificate for change of land use on August 18, 1997 but did not take any steps to set up an industrial unit from August 18, 1997 to April 30, 2000. A perusal of the facts further reveals that all formalities relating to setting up of the unit, supply of machinery, etc., were set into motion after the cut off date of April 30, 2000. The mere fact that the petitioner may have gone into commercial production on March 30, 2002 and made its first sale on March 30, 2002, would not confer any benefit on the petitioner as it does not fall within the definition of "units in pipeline". The question whether the retrospective amendment has caused any prejudice to the petitioner, must also be answered against the petitioner. The right to claim exemption as "units in pipeline" as on April 30, 2000, required the petitioner to comply with the four conditions set out in the definition of "units in pipeline". The power to define "units in pipeline" with retrospective effect having been affirmed and as the petitioner as per his own showing not being registered with any Department as on April 30, 2000, the notification ''cannot be said to operate to the prejudice of the petitioner. The order passed by the Higher Level Screening Committee is in consonance with the

facts of the case as the petitioner failed to establish its credential as a "unit in pipeline" as on April 30, 2000.

17. In this view of the matter, we have no hesitation in holding that the petitioner is not entitled to be treated as a "unit in pipeline" and as a consequence the writ petition must fail. In view of what has been stated hereinabove, the writ petitions are dismissed.