
(2001) 12 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7005 of 1998

Shreyans Spinning Mills

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 13-12-2001

Acts Referred:

Citation : (2002) 127 STC 154

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : H.L. Sibal and P.K. Palli, Sapan Dhir, Samima Dhir and Sulekh Chand, for the Appellant; M.C. Berry, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—Was the petitioner entitled to exemption from payment of purchase tax/sales tax to the tune of Rs. 8 crores or Rs. 6 crores under the industrial policy announced by the Government ? This is the short question that arises for consideration in this writ petition. A few facts may be noticed :

The petitioner is engaged in the manufacture of yarn. It had started commercial production on March 30, 1991. It claimed exemption from payment of purchase tax/sales tax in pursuance of the industrial policy and the incentive code issued by the State Government on March 30, 1989. The request was accepted. On December 6, 1991, an eligibility certificate was issued in favour of the petitioner by the General Manager, District Industries Centre, Ludhiana. It was certified that the petitioner "is eligible to take sales tax/purchase tax (exemption) for 10 years from March 30, 1991 to March 30, 2001--up to 8 crores of rupees". Even a letter to this effect was sent by the General Manager to the Assistant Commissioner, Excise and Taxation Department in January, 1992.

2. On April 21, 1995, the Excise and Taxation Commissioner issued an exemption certificate under the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, certifying that the petitioner shall be entitled to

exemption to the extent of Rs. 6 crores during the period from March 1991 to March 2001. A copy of this certificate is at annexure P4. The petitioner submitted various representations. However, its request for extension of exemption from Rs. 6 crores to Rs. 8 crores was not accepted.

3. The petitioner approached this Court through Civil Writ Petition No. 10325 of 1997. It was noticed by the Bench that the policy provided for exemption to the extent of Rs. 6 crores while under the Code, the limit was fixed at for Rs. 8 crores, There was "some confusion in view of the two notifications bearing No. 4/15/89-41BIII/2919 and 4/15/89-41BIII/2929 dated 30th March, 1989". The Bench directed that "in view of the conflict between two notifications" the petitioner may make "a comprehensive representation to the Secretary, Industries, Punjab within a period of two weeks from today and on the receipt of such a representation the Secretary, Industries, Punjab will take a decision thereon by passing a speaking order and after hearing the petitioner as well as the representative of Excise and Taxation Department, Punjab". A copy of the order dated January 8, 1998 has been produced as annexure P10.

4. In pursuance of the directions given by the Bench, the petitioner submitted a representation. It was considered and rejected by the Secretary vide his order dated May 5, 1998. A copy of this order is at annexure P 12 with the writ petition. The petitioner complains that the order is not in conformity with the rules. Thus, the petitioner claims that the order be quashed and exemption of Rs. 8 crores be granted.

5. The respondents contest the petitioner's claim. A written statement has been filed on behalf of respondent Nos. 2 to 4--Department of Excise and Taxation, by Mr. H.S. Heera, Excise and Taxation Officer-cum-Assessing Authority, Ludhiana. In this reply, it has been, inter alia averred that under the Industrial Policy the petitioner was entitled to "an exemption up to the limit of Rs. 6 crores only--The Department of Industries either should get the approval of the Council of Ministers to amend the basic Industrial Policy 1989 to make a provision of exemption up to Rs. 8 crores or amend the rules which are subordinate to the policy to bring in conformity with the provisions of the Industrial Policy, 1989 and the corresponding notification issued under the Punjab General Sales Tax Act, 1948". These respondents maintain that the petitioner having availed of the maximum limit of exemption of Rs. 6 crores by June 30, 1997, it was liable to pay the sales tax after that date.

6. A separate reply has been filed on behalf of respondent Nos. 1 and 5, viz., the Department of Industries. The claim made by the petitioner regarding the setting up of the unit has been admitted. It has been averred that "the unit was set up by the company in "No Industry Block" and as such it was a pioneer unit, eligible to avail of incentives up to Rs. 8 crores". It has been further averred that "a letter from the Joint Secretary, Industries was sent to Financial Commissioner, Excise and Taxation, Punjab on October 24, 1989 to restrict sales tax/purchase tax benefit up to Rs. 6 crores. This being a communication from Government to

Excise and Taxation Department, did not come to the notice of the Director of Industries, Punjab and General Manager, District Industries,....." A copy of the letter dated October 24, 1989 is at annexure R1 with this reply. However, the respondents maintain that the impugned order is legal and valid.

These are broadly the pleadings of the parties.

7. On behalf of the petitioner, it was initially contended that the State Government had framed an Industrial Policy and Incentive Code in the year 1989. For the implementation of the policy, the Government had notified detailed rules. In the rules, a specific provision for grant of exemption from payment of sales tax/purchase tax to the extent of Rs. 8 crores was made in paragraph 6.2. It was specifically provided as under :

6.2. Quantum of entitlement

(1) Sales/purchase tax exemption or sales tax deferment shall be available to units in different growth areas subject to maximum benefits to be regulated as per Table I.

Table I

Maximum benefit of sales/purchase tax exemption and sales tax deferment

Growth area category

Small-scale industry

Medium & large scale

Total time-limit within which concession shall be available

No industry block

Nil

125% of FCI (Fixed Capital Investment) with a maximum of Rs. 8 crores. (Only pioneer units) shall be eligible.

10 years

8. On the basis of the above, it was contended that the Department of Industries had rightly issued an exemption certificate. The petitioner was entitled to exemption up to Rs. 8 crores.

9. On behalf of the respondents, the petitioner's claim was controverted.

10. During the course of the hearing, we had directed Mr. Berry to produce the original record. Learned counsel has produced the files. He has also given to us a note submitted by Mr. K.S. Brar, Deputy Director, Department of Industries, Punjab. It is taken on record as mark "A" on the paper book. In this note, it has been, inter alia, mentioned as under :

1. The Industrial Policy, 1989 was approved by the Governor in Council meeting held on February 19, 1989. The notification was issued on March 30, 1989.

2. The rules to implement the industrial policy were notified on March 30, 1989. These rules were not sent to the Governor in Council. These were notified by the Government.

3. The Joint Secretary, Industries intimated the Financial Commissioner and Secretary to Government of Punjab, Department of Excise and Taxation vide letter dated October 24, 1989 that "the maximum benefits should be restricted to 6 crores to be in consonance with the decision of Governor in Council."

(A copy of this letter has been produced alongwith the note).

4. In pursuance to the decision of the Government conveyed vide letter dated October 24, 1989, the Government of Punjab in the Department of Industries had issued a notification dated November 9, 1989. By this notification, Rule 6.2. was amended.

11. An extract from the office noting has also been produced. A perusal of the notification dated November 9, 1989 shows that various provisions of the rules had been amended. In particular, it may be mentioned that Rule 6.2. was amended as follows :

Amendment of Rule 6.2, :

In table I under Rule 6.2, of the Punjab Industrial Incentives Code under the Industrial Policy Scheme, 1989, under column 3 (against the entry No. Industry block) the figure Rs. 8 crores shall be substituted with figure Rs. 6 crores.

12. Mr. Sibal, learned counsel for the petitioner, had produced before us a photo copy of the Punjab Government Gazette of November 17, 1989, by which the above-noted amendment/corrigendum was duly published in the gazette. The amendment of Rule 6.2. was duly notified.

13. In the background of the above-noted factual position, the short question that arises for consideration is :

Was the petitioner entitled to claim exemption from payment of sales tax/purchase tax beyond an amount of Rs. 6 crores ?

14. On a perusal of the pleadings of the parties and the documents on record, it appears that the Industrial Policy, 1989 was notified on March 30, 1989. In this policy, a provision for grant of exemption from payment of sales tax/purchase tax up to Rs. 6 crores was specifically made. Despite this specific provision in the policy, it was provided in the rules that the exemption shall be up to Rs. 8 crores. This was obviously contrary to the policy as notified on March 30, 1989. It appears that the mistake was noticed. A communication dated October 24, 1989 was sent by the Joint Secretary, Department of Industries, to the Financial Commissioner, Department of Excise and Taxation. Still further, amendment was

made in the rules. This amendment was duly notified and published in the Government Gazette of November 17, 1989. It was categorically provided that "the figure Rs. 8 crores shall be substituted with figure Rs. 6 crores". In view of this amendment, as notified by the Government, no industrial unit could have been granted exemption from payment of sales tax/purchase tax beyond the limit of Rs. 6 crores. Thus, no industrial unit, including the petitioner, could have claimed exemption beyond Rs. 6 crores.

15. It has been pointed out on behalf of the petitioner that an eligibility certificate was issued on December 6, 1991. By this certificate, the petitioner was held entitled to the grant of exemption "up to 8 crores of rupees". Still further, it has also been pointed out that even in response to the Civil Writ Petition No. 10325 of 1997 filed in this Court it, was not pointed out that the rule had been amended vide notification dated November 17, 1989. In fact even while passing the order, the Secretary to the Government had proceeded on the assumption that there was "a dichotomy between the policy and the rules on the issue of quantum of exemption.....".

16. It appears that there were a series of mistakes on the part of the departmental authorities. Despite the issue of notification dated November 17, 1989, nobody in the Department of Industries had ever bothered to notice that the exemption limit had been fixed at Rs. 6 crores. The provision in the rule, which mentioned the exemption of Rs. 8 crores, had been duly modified. In fact, neither in response to the petitioner's writ petition, which was filed in the year 1997, nor at any subsequent stage did the respondents care to notice the correct factual position. Even when the Secretary, Department of Industries was deciding the petitioner's representation in pursuance to the directions of this Court, the notification dated November 17, 1989 was not noticed. On the contrary a perusal of the order dated May 5, 1998 passed by respondent No. 1 clearly shows that the correct factual position was totally forgotten.

Why? There is no explanation.

17. Keeping in view the notification dated November 17, 1989, it is clear that the petitioner was not entitled to exemption beyond Rs. 6 crores. The petitioner's claim as made in this petition cannot be sustained. However, what deserves notice is that prima facie there has been a serious dereliction of duty at all levels in the Department of Industries. Neither the Directorate, nor the officers of the Government have cared to see the notification which had been issued in the year 1989. A cursory perusal of the file would have shown that the industrial policy had prescribed a limit of Rs. 6 crores. The rule had been framed to implement the policy, containing the provision for grant of exemption up to Rs. 8 crores. There was an apparent mistake. If the concerned officer had cared to apply his mind and examine the file, it would have been clear that the mistake had been duly noticed. Remedial measures had been adopted. The requisite correction had been made. It is only on scrutiny of the records during the course of proceedings in this Court that the correct position has emerged. Negligence in the

performance of duties is writ large on the record of the case. But for the negligence of the officers, a lot of litigation and wastage of time would have been avoided. Their failure to perform the duties properly has resulted in the petitioner's approaching this Court on more than one occasion and even the Supreme Court. The omission resulted in the filing of the present petition too.

18. In view of the above, so far as the petitioner's case is concerned, we find that it is not entitled to the relief as prayed for by it. The writ petition is dismissed.

19. However, we feel it is necessary to call upon the officers in the Department of Industries to explain their position. A notice shall issue to the Secretary, Industries, who passed the order dated May 5, 1998 (a copy of which is at annexure P12), the Director of Industries, who issued the order dated October 20, 1996 (a copy of which is at annexure P7) and the General Manager, District Industries Centre, Ludhiana, who issued the certificate dated January 20, 1992 (a copy of which is at annexure P3) to show cause as to why the Government be not directed to proceed against them for failure to perform their duties and to take care of the public funds in the performance of their official functions. They shall file their replies by January 7, 2002. The case shall be posted for consideration by the Bench on January 11, 2002.

20. Mr. Sibal has made a prayer for compensating the petitioner by award of costs. He submits that the petitioner has been put to an avoidable expense on account of the negligence of the officers. This matter shall be considered when we get the response of the officers.

21. A copy of this order (certified by the court Reader) shall be issued to the counsel for the parties for further action. The Registry shall get a photo copy of the paper book prepared and give it to Mr. H.L. Sibal, who has been requested to assist the court as amicus curiae. Mr, Sibal may ask his junior to assist him.