

(2009) 11 SHI CK 0046
In the High Court Of Himachal Pradesh

Siri Ganesh Rice and General Mills

APPELLANT

Vs

State of H.P and Others

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Himachal Pradesh General Sales Tax Act, 1968 — Section 42(1)

Citation : (2009) 11 SHI CK 0046

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—The main point involved in this writ petition is with regard to the interpretation of the incentives and concessions announced by the State of Himachal Pradesh as per the Industrial Policy Scheme of 1999 and the notification dated 23rd July, 1999 issued for grant of incentives and concessions under the Himachal Pradesh General Sales Tax Act, 1978.

2. Briefly stated the facts of the case are that the State of Himachal Pradesh with a view to encourage the setting up industrial units in the State framed an Industrial Policy in which certain incentives and concessions were given to the industries. We are concerned with Clause 7.1.1 which reads as follows:

7.1.1 Village Industries/Tiny units: New Industries with fixed capital investment upto Rs. 10 lakhs and financed wholly by HPKVIB/KVIC shall be exempted from payment of sales tax for a period of 8 years in industrially backward areas and in priority sector, and for a period of 5 years for units in industrially developing areas. In respect of other new village industries and tiny units, sales tax shall be leviable at a concessional rate of 25% of the applicable rate on the sale of products upto Rs. 60.00 lacs per annum for a period of 8 years in industrially backward areas & in priority sector; and up to sales turn over of Rs. 45 lacs per annum for a period of 5 years in industrially developing areas. This concession will not be admissible to the produce of breweries/distilleries, non fruit/vegetable based wineries and bottling plants (both for Country Liquor and Indian Made Foreign Liquor).

3. It would be pertinent to mention that the units in question would also be entitled to concession on GST on the raw material, processing and packaging material etc. The notification under the H.P General Sales Tax Act was published in the H.P Rajpatra on 27th July, 2009 wherein the concessional rates were fixed. Relevant portion of the same reads as follows:

(1) In exercise of the powers conferred by Sub-section(1) of Section 42 of the Himachal Pradesh General Sales Tax Act, 1968 (Act No. 24 of 1968) the Government of Himachal Pradesh is pleased to direct that no tax shall be levied u/s 6 of the aforesaid Act, on the sale of goods [other than those manufactured by breweries, distilleries, non-fruit/vegetable based wineries and bottling plants (both of country liquor and Indian Made Foreign liquor) manufactured by the dealers running such new Village Industrial Units:- Which have fixed capital investment upto Rs. 10.00 lakhs and which are wholly financed by the Commission constituted under the Khadi and Village Industries Act, 1956 or the Board constituted under the Himachal Pradesh Khadi and Village Industries Board Act, 1966:

(i) for a period of 8 years in case the unit is located in the Industrially Backward areas or in case the unit is a priority industrial unit, and

(ii) for a period of 5 years in case the unit is located in the Industrially Developing areas; from the date of commencement of commercial production or from the date of this notification, whichever is later.

2. The Governor is further pleased to direct that the tax shall be levied at the rate of 25 per cent of the rates notified or specified u/s 6 of the aforesaid Act on the sale of goods [other than those manufactured by the breweries, distilleries, non-fruit/vegetable based wineries and bottling plants (both of country liquor and Indian Made Foreign Liquor) manufactured by the dealers running new village industrial unit (other than those specified in para 1 of this notification) and new tiny industrial units:

(i) for a period of 8 years in case the unit is located in the Industrially Backward areas or in case the unit is a priority industrial unit, and

(ii) for a period of 5 years in case the unit is located in the Industrially Developing areas; from the date of commencement of commercial production or from the date of this notification, which is later.

3. The Governor is further pleased to direct that the concession of partial exemption contained in Para 2 of this notification shall be admissible only if:

(i) the annual turnover, in respect of the unit located in the industrially backward areas or in respect of a priority sector, does not exceed Rupees Sixty Lakhs and

(ii) the annual turnover, in respect of the unit located in the industrially developing areas or in respect of a priority unit, does not exceed Rupees Forty lakhs.

4. According to the petitioner, the notification issued under Clause 3 of the H.P General Sales Tax Act must be read in consonance with the incentive policy and the benefit of concessional rate of tax or exemption from payment of tax should be available upto the prescribed annual turnover. On the other hand, the stand of the State is that if the turnover of the concerned unit goes over the prescribed limits of Rs. 45 lacs and Rs. 60 lacs, then the unit is liable to pay sales tax at full rates even on the turnover upto the limit of Rs. 45 lacs and Rs. 60 lacs.

5. A perusal of the Incentive Policy clearly shows that it was held out to the investors that if a village industry/tiny unit with a fixed capital investment upto Rs. 10 lacs is financed wholly by the HPKVIB/KVIC then the unit is entitled to total exemption of sales tax for a period of eight years if the unit is located in industrially backward areas and falls in the priority sector and for a period of five years in industrially developing areas. However, in respect of other new village industries and tiny units with fixed capital investment upto Rs. 10 lacs, sales tax shall be leviable at a concessional rate of 25% of the applicable rate on the sale of products upto Rs. 60 lacs per annum for a period of eight years if the unit is located in industrially backward areas and produces goods mentioned in the priority sector and for a period of five years upto sales turnover of Rs. 45 lacs per annum in case of industrially developing areas.

6. The State contends that in terms of Clause 3 of the said notification, the concession shall not be admissible in case the annual turnover of the unit located in industrially backward areas and in priority sector exceeds Rs. 60 lacs or Rs. 45 lacs in case of a unit located in industrially developing areas. When we read the Incentive Policy alongwith the notification of the Government including Clause 2, it is apparent that the intention was to make the exemption/concession available to the units for the period prescribed upto certain prescribed limits. In case of units falling in the priority sector and located in the industrially backward areas, the concession was for a period of eight years and in case of other units, the concession was available only for a period of five years.

7. Sh. Ram Murti Bhisht, learned Deputy Advocate General appearing on behalf of the State contends that if the turnover of the unit crosses the prescribed limit then it is not entitled to any benefit of concession/exemption and will have to pay full sales tax as prescribed in the rules.

8. We are unable to accept this contention of the State. This would make the very Incentive Policy infructuous. We must remember that sales tax is an indirect tax which the producer has to collect from the customer. In case the unit is located in the industrially backward area and falls in the priority sector as per the notification for eight years, no tax had to be paid upto a turnover of Rs. 60 lacs per annum. We may take the example of a unit where the turnover for the entire year is Rs. 61 lacs. If the argument made on behalf of the State is accepted then the result would be that the unit would have to pay sales tax on the entire sales of Rs. 61 lacs at the full prescribed rate whereas on sales upto Rs. 60 lacs it will not have collected any sales tax from the customers. It will make the units

totally uneconomic and unviable. How can an assessee who has not collected sales tax be directed to deposit the sales tax?

9. The only logical interpretation which can be given to sale tax notification to make it workable in accordance with the incentive policy is that the eligible units will be entitled to the exemption/concession upto the prescribed limit of Rs. 60 lacs and Rs. 45 lacs and if the turnover exceeds the aforesaid prescribed limits then it will have to pay full sales tax on the sales exceeding the prescribed limit. This will lead to certainty in the mind of the entrepreneur. He knows that upto Rs. 45 lacs or Rs. 60 lacs, he is entitled to either a concessional rate of sales tax or full exemption. Thereafter, he has to pay full sales tax on the sales exceeding over and above the prescribed limit.

10. The second question which has been raised in this petition is whether the petitioner falls in the category of units which are entitled to full exemption or concessional exemption. Admittedly the petitioner is not fully financed by the HPKVIB or KBIV. It has only been provided margin money under the scheme. Therefore, it does not fall in the first part of the Clause 7.1.1 and is not entitled to full concession.

11. It has been urged on behalf of the petitioner that in the alternative, it is entitled to concessional rate of 25% of the applicable sales tax rates upto the limits prescribed since it is a tiny unit and declared to be such vide Annexure P/12. No doubt the General Manager of the District Industries Centre has issued this eligibility certificate. However, this matter is being contested by the State and according to the State, the petitioner has manipulated the facts and that the petitioner is not a tiny unit entitled to the concessions.

12. Sh. Ram Murti Bisht, learned Deputy Advocate General has submitted that for purposes of availing of the concessional rates not only has a unit to produce an eligibility certificate in Form-1 but must be granted a certificate in Form-E by the assessing authority.

13. Admittedly in the present case, certificate in Form-E has not been issued by the assessing authority. The question whether the petitioner is entitled to the benefit of concessional rates under Clause 7.1.1 is a question of fact to be decided by the assessing authority. The assessing authority is not bound by the certificate issued in Form-1 by the General Manager of the District Industries Centre. The assessing authority has to consider the case independently and can come to the conclusion that a unit is not entitled to the benefit of the incentives. This however, can only be done after the concerned unit as well as the Department are granted reasonable opportunities to prove their case.

14. In view of the above discussion, the writ petition is disposed of with a direction that the notification dated 23rd July, 1999 shall be read in a manner indicated here-in above. As far as the prayer of the petitioner that it be declared a full financed unit of the Khadi Board is concerned, the same is rejected. Whether the petitioner is entitled to concessional rates is a matter to be decided

by the assessing authority after giving the petitioner as well as the Department reasonable opportunity of proving their case. No order as to costs.