

**(2013) 01 SC CK 0114**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 705 of 2013 (Arising out of Special Leave Petition (Civil) No. 25464 of 2011)

State of Haryana and Another

APPELLANT

Vs

Polar Industries Ltd.

RESPONDENT

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**Date of Decision :** 23-01-2013

**Acts Referred:**

Haryana General Sales Tax Act, 1973 — Section 13B, 25A, 6

Haryana General Sales Tax Rules, 1975 — Rule 28, 28A, 28A(11), 28A(2), 28B

**Citation :** AIR 2013 SC 1845 : (2013) 76 KarLJ 65 : (2013) 4 PLR 765 : (2013) 4 RCR(Civil) 121 : (2013) 2 SCALE 545 : (2013) 14 SCC 763 : (2013) 60 VST 506

**Hon'ble Judges :** Ranjan Gogoi, J;H.L. Dattu, J

**Bench :** Division Bench

**Final Decision :** Allowed

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## **Judgement**

1. Delay condoned.
2. Leave granted.
3. This appeal is directed against the judgment and order passed by the High Court of Punjab and Haryana in C.W.P. No. 2545 of 1997 dated 31.03.2010.
4. The State Government in exercise of its powers u/s 13-B of the Haryana General Sales Tax Act, 1973 ("the Act" for short), has promulgated an exemption scheme, inter alia, granting certain exemptions to the industries which are set up in the specified areas in the State of Haryana. For the purpose of granting exemption from payment of sales tax u/s 13-B of the Act, the legislature has incorporated Rule 28-B providing conditions for availing exemption from payment of sales tax to eligible industrial units. We will advert to these provisions once over again after noticing the facts of the case in nutshell.
5. The Respondent company is a public limited company engaged in the business of manufacturing electrical motors, fans, etc. The industry was granted Eligibility Certificate on 25.1.1993 and was granted Sales Tax Exemption Certificate in the

prescribed form on 28.01.1994. The exemption that was granted was for the period 20.04.1991 to 19.04.1996 and the same was subject to a ceiling of Rs. 2,22,50,000/-. The Eligibility Certificate provides certain conditions which requires to be complied by the Respondent company in order to take benefit of the exemption granted. Clause 3 of the Certificate provides that the unit shall remain in production for a period of not less than six years after availing the benefits. Clause 4 of the said Certificate envisages that the Certificate shall cease to be operative with effect from the date the unit reaches the ceiling of deferred/exempted amount of tax prescribed in the Eligibility Certificate. Clause 7 is relevant for the purpose of this case, and therefore it is extracted and reads as under:

(7) The eligibility certificate can be cancelled on contravention of any condition mentioned herein above or in Rule 28-A after affording an opportunity to the party of being heard.

6. Since the Assessing Authority was of the view that the Assessee/Respondent company has violated/breached the conditions incorporated in the Eligibility Certificate, the said authority had issued a show cause notice dated 30.12.1996, inter alia, directing the Respondent to show cause why the Eligibility Certificate granted earlier should not be cancelled and the tax for the assessment years 1991-92, 1992-93, 1993-94, 1994-95 and 1995-96 (upto 7.9.1995) should not be demanded and collected with interest and penalty. In the show cause notice so issued, the Assessing Authority had specifically noticed that the Respondent industry has contravened Rule 28A(11)(a)(ii) of the Rules.

7. After receipt of the reply to the show cause notice issued, the Assessing Authority has passed the order dated 31.1.1997 by confirming the show cause notice issued earlier. In the order passed, the Assessing Authority has stated that the Respondent industry has availed tax exemption from 20.04.1991 to 07.09.1995 for Rs. 2,21,87,594/- but made sales outside the State of Haryana by way of transfer of goods manufactured by it and therefore, the industry has contravened the provisions of Rule 28A(11)(a)(ii) of the Rules.

8. Being aggrieved by the order so passed, the Assessee had filed Writ Petition before the High Court, numbered as Writ Petition No. 2545 of 1997. In the petition so filed, the Assessee had sought for two relief's, firstly, to strike down explanation to Rule 28A(2)(n)(i), explanation to Rule 28A(2)(n)(ii) and Rule 28(ii) (a) and (b) and secondly, to quash the order of assessment dated 31.01.1997, primarily on the ground that no tax can be imposed on the goods transferred by the Respondent company to its godown outside the State of Haryana by way of transfer of consignment of goods manufactured by it. The Court, while considering the issue that fell for its consideration and decision has come to the conclusion that the State is imposing tax on the inter-State sales transaction or branch transfers which is impermissible in view of the specific bar under the Constitution of India and Central Sales Tax Act and accordingly has allowed the petition and has set aside the order of assessment passed by the Assessing

Authority. However, the High Court has not adverted to the vires of Rules Explanation to Rule 28A(2)(n)(i), Explanation to Rule 28A(2)(n)(ii) and Rule 28A(2)(ii)(a) and (b) of the Rules.

9. We have heard Shri R.P. Bhatt, learned senior counsel for the Appellant and Shri Praveen Kumar, learned Counsel for Respondent company. Shri Bhatt would reiterate the submissions that was made before the High Court and would further contend that sales effected by way of branch transfers or consignment sales outside the State of Haryana is taken only for the purpose of quantifying "notional tax liability" and not for any other purpose and further would contend that since the Assessee has violated/breached conditions stipulated in the exemption certificate and Rule 28A of the Rules and in particular Rule 28A(2)(ii) (b) of the Rules, the Assessing Authority has cancelled the Eligibility Certificate granted earlier and has directed the Assessee to pay tax with interest for the period in question. In aid of this submission, the learned senior counsel has taken us through the relevant portions of the Eligibility Certificate, Section 13-B of the Act, which authorises the State Government to grant exemption and the relevant Rule, namely Rule 28A of the Rules.

10. Section 6 is the charging provision. Section 13-B of the Act authorises the State Government, if it is satisfied that it is necessary or expedient so to do in the interest of an industry, may, by issuing a notification exempt any class or persons from the payment of tax under the Act on the purchase or sale of any goods subject to certain conditions as may be specified in the notification. For the purpose of Section 13B and Section 25A of the Act, the State Government has framed Rule 28A of the Rules, which provides for computation of the quantum of tax incentive available to a dealer in view of eligibility certificate issued by the department. In order to regulate the exemption scheme the concept of "Notional Sales Tax Liability" is incorporated vide Clause (n) of Rule 28-A(2)(n) of the Rules. The said clause reads:

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the local sales tax law but for an exemption computed at the maximum rates specified under the local sales tax law as applicable from time to time; and

Explanation- The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in form C on the basis that the sales are eligible to tax under the said Act.

Explanation- The branch transfers or consignment sales outside the State of Haryana shall be deemed to the sale in the course of inter-State trade or

commerce.

Note- The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and the rules made thereunder.

11. Rule 28-A(2)(n) includes within its ambit the sales which were otherwise exigible to sales tax, namely, local sales and inter-State sales and secondly, the Rule also includes branch transfers or consignment sales outside the State and sales made on consignment basis or branch transfers within the State by treating them as deemed sales, which two transactions were otherwise not exigible to sales tax for any other unit not availing exemption. Alternatively, it can be stated that Notional Sales Tax Liability as defined in Rule 28(A)(2)(n), as a condition for grant of exemption.

12. The benefit of tax exemption/deferment under Rule 28A of the Rules shall be subject to condition prescribed under Sub-rule 11(a) of the Rules. The said rule reads:

(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary industrial unit after having availed of the benefit-

(i) shall continue its production atleast for the next five years not below the level of average production for the preceding five year; and

(ii) shall not make sales outside the State for next five years by way of transfer of consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in Clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it;

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the units:

Provided further that a unit shall not be called upon to pay sum under this clause without having been given reasonable opportunity of being heard.

13. If there is a violation of any one of the conditions stipulated in Sub Rule 11(i) and (ii), the Sales Tax Authorities are at liberty to cancel the Exemption Certificate issued under the scheme and call upon the Assessee to make payment of the exemption availed with interest thereon.

14. Having noticed the relevant rules, we will revert back to the facts in the present case. The Assessee-company had availed benefit of the sales tax exemption under the Exemption Scheme issued by the State Government. The

Eligibility Certificate for sales tax exemption provides for certain conditions which requires to be complied by the Assessee-company to take benefit of exemption under the Scheme. The Condition No. 7 of the Eligibility Certificate provides that the certificate can be cancelled if there is contravention of any condition mentioned in the certificate or Rule 28-A, after affording an opportunity to the party of being heard. In the show cause notice it is specifically alleged that the Assessee had dispatched goods on consignment basis during the assessment period 1995-1996, 1996-1997 and 1997-1998 and therefore the Assessee has breached Rule 28-A of the Rules and in particular Sub-rule 11(a)(ii) of the Rules, which prescribes that the benefit of tax exemption shall be subject to the condition that the Assessee having availed the benefit of tax exemption shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it. Since the Assessee did not dispute the specific contravention pointed out by the assessing authority after cancelling the exemption certificate issued has quantified the tax liability and the interest payable thereon. The order so passed, in our view, is in consonance with the scheme of exemption notified by the State Government and also in accordance with the rules prescribed u/s 13B of the Act.

15. The High Court while allowing the petition filed by the Assessee has proceeded on a wrong assumption, that, the assessing authority has levied tax on inter-State sales and on consignment transfer and accordingly has quashed the assessment order passed by the assessing authority. In view of our conclusion stated earlier, we cannot sustain the judgment and order passed by the High Court. Accordingly, we allow this appeal and set aside the impugned order.

16. We are informed by learned Counsel for the parties that in the light of the judgment and order passed by the High Court, the assessing authority has completed the assessments for the period in question. Since we have set aside the judgment and order of the High Court, we direct the assessing authority to pass fresh assessment order for the periods in dispute after affording opportunity of hearing to the Assessee.

Ordered accordingly.

C.A. No. 708 of 2013 @ SLP (C) No. 25465 of 2011

17. Delay condoned.

18. Leave granted.

19. The facts in extenso need not be noticed by us. Suffice it to state that the Appellants are before us aggrieved by the judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 6688 of 1999 (O&M), dated 31.03.2010. By the impugned judgment and order, the High Court has set aside the order of assessment passed by the assessing authority, wherein the Assessee was directed to refund the amount which was availed by

way of tax exemption/deferment of tax under the exemption scheme.

20. The Respondent company is a private limited company. It is engaged in the business of manufacturing re-claimed rubber. The company has its manufacturing plant in the specified place as notified by the State of Haryana.

21. u/s 13B of Haryana General Sales Tax Act, 1973, ("the Act" for short) the Government is empowered to exempt certain class of industries from payment of taxes under the Act for a specified period. Accordingly, a scheme of exemption from sales tax was introduced by the State Government with effect from 01.04.1998, in the interest of industrial development in the State. The scheme of exemption as notified is subject to such conditions as may be prescribed under Rule-28A of Haryana General Sales Tax Rules, 1975 ("Rules, 1975" for short). The Rule deals in detail with the matters relating to the Grant of exemption to industries established in the notified area.

22. Pursuant to the scheme of exemption so issued, on a request made by the Respondent-industry, the District Industries Centre, Sonapat had granted the "Eligibility Exemption Certificate", inter alia, exempting the Respondent from payment of tax for the period 01.04.1992 to 31.03.1997, subject to the conditions prescribed under Rule 28-A of the Rules, 1975. The quantum of benefit quantified based on notional sales tax liability was at Rs. 68,00,000/- (Sixty Eight Lakhs Only).

23. Since the Respondent had contravened the provisions of Rule 28-A of the Rules, the assessing authority had issued a Show Cause Notice to the Respondent, inter alia, directing it to show cause, why the exemption availed by the Respondent-industry should not be asked to be refunded with interest thereon. On receipt of the reply, the assessing authority has completed the assessment. Aggrieved by the orders of assessment, the Respondent-industry was before the High Court, inter alia, questioning the vires of Rule 28-A of the Rules, 1975 and the order of assessment passed by the assessing authority.

24. The High Court has disposed of the Writ Petition primarily on the ground that the assessing authority has imposed tax on the inter-state sales or the branch transfers and this in the view of Court could not have been done by the assessing authority in view of the prohibition contained both under Constitution and also under the provision of Central Sales Tax Act. Accordingly has set aside the orders passed by the assessing authority. However, the High Court has not gone into the vires of Rule 28-A of the Rules, 1975.

25. Rule 28-A of the Rules, 1975 is framed under Sections 13B and 25-A of the Act. Rule 28-A deals with computation of the quantum of tax incentive available to a dealer in view of eligibility certificate is issued by the department. In order to regulate the exemption scheme the concept of "Notional Sales Tax Liability" is incorporated vide Clause (n) of Rule 28-A(2)(n) of the Rules, 1975. The said clause reads:

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the local sales tax law but for an exemption computed at the maximum rates specified under the local sales tax law as applicable from time to time; and

Explanation- The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in form C on the basis that the sales are eligible to tax under the said Act.

Explanation- The branch transfers or consignment sales outside the State of Haryana shall be deemed to be the sale in the course of inter-State trade or commerce.

Note- The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and the rules made thereunder.

26. Rule 28-A(2)(n) includes within its ambit the sales which were otherwise exigible to sales tax, namely, local sales and inter-State sales and secondly, the Rule also includes branch transfers or consignment sales outside the State and sales made on consignment basis or branch transfers within the State by treating them as deemed sales, which two transactions were otherwise not exigible to sales tax for any other unit not availing exemption. Alternatively, it can be stated that Notional Sales Tax Liability as defined in Rule 28(A)(2)(n), as a condition for grant of exemption.

27. The benefit of tax exemption/deferment under Rule 28A of the Rules, 1975 shall be subject to condition prescribed under Sub-rule 11(a) of the Rules, 1975. The said rule reads:

(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary industrial unit after having availed of the benefit-

(i) shall continue its production atleast for the next five years not below the level of average production for the preceding five year; and

(ii) shall not make sales outside the State for next five years by way of transfer of consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in Clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it;

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the units:

Provided further that a unit shall not be called upon to pay sum under this clause without having been given reasonable opportunity of being heard.

28. If there is a violation of anyone of the conditions stipulated in Sub-rule 11(i) and (ii), the sales tax authorities are at liberty to cancel the exemption certificate issued under the scheme and call upon the Assessee to make payment of the exemption availed with interest thereon.

29. Having noticed the relevant rules, we will revert back to the facts in the present case. The Assessee-company had availed benefit of the sales tax exemption under the Exemption Scheme issued by the State Government. The Eligibility Certificate for sales tax exemption provides for certain conditions which requires to be complied by the Assessee-company to take benefit of exemption under the Scheme. The Condition No. 7 of the Eligibility Certificate provides that the certificate can be cancelled if there is contravention of any condition mentioned in the certificate or Rule 28-A, after affording an opportunity to the party of being heard. In the show cause notice it is specifically alleged that the Assessee had dispatched good on consignment basis during the assessment period 1995-1996, 1996-1997 and 1997-1998 and therefore the Assessee has breached Rule 28-A of the Rules, 1975 and in particular Sub-rule 11(a)(ii) of the Rules, 1975, which prescribes that the benefit of tax exemption shall be subject to the condition that the Assessee having availed the benefit of tax exemption shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it. Since the Assessee did not dispute the specific contravention pointed out by the assessing authority after cancelling the exemption certificate issued has quantified the tax liability and the interest payable thereon. The order so passed, in our view, is in consonance with the scheme of exemption notified by the State Government and also in accordance with the rules prescribed u/s 13B of the Act.

30. The High Court while allowing the petition filed by the Assessee has proceeded on a wrong assumption, that, the assessing authority has levied tax on inter-state sales and on consignment transfer and accordingly has quashed the assessment order passed by the assessing authority. In view of our conclusion stated earlier, we cannot sustain the judgment and order passed by the High Court. Accordingly, we allow this appeal and set aside the impugned order.

31. We are informed by learned Counsel for the parties that in the light of the judgment and order passed by the High Court, the assessing authority has completed the assessments for the period in question. Since we have set aside the judgment and order of the High Court, we direct the assessing authority to

pass fresh assessment order for the periods in dispute after affording opportunity of hearing to the Assessee.

C.A. No. 700 of 2013 @ SLP (C) No. 25459/2011, C.A. No. 703 of 2013 @ SLP (C) No. 25458/2011 and With C.A. No. 710 of 2013 @ SLP (C) No. 25466/2011:

32. Delay condoned.

33. Leave granted.

34. In view of the order passed in Civil Appeal @ SLP (C) No. 25465 of 2011, these appeals are also disposed of on the same terms, leaving the parties to bear their respective costs.