
(2009) 02 SC CK 0104

In the Supreme Court Of India

Case No : Civil Appeal No's. 1973, 1976, 1982, 1983 and 1986 of 2006 and 350 of 2007

State of Haryana and Others

APPELLANT

Vs

Baldev Spinners Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

General Clauses Act, 1897 — Section 19, 21
Haryana General Sales Tax Act, 1973 — Section 13B, 25A
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(2), 28A(3), 28A(4), 28A(5)
Punjab General Clauses Act, 18

Citation : (2009) AIRSCW 5385 : (2009) 5 JT 237 : (2009) 4 SCALE 79 : (2009) 13 SCC 319 : (2009) 2 SCR 1156 : (2009) 3 UJ 1298 : (2009) 11 Vat Reporter 90 : (2009) 21 VST 463

Hon'ble Judges : R. V. Raveendran, J;P. Sathasivam, J

Bench : Division Bench

Advocate : Manjeet Singh,A.A.G. and T.V. George, for the Appellant;
Subramonium Prasad, Kusum Choudhary and Himanshu Shekhar, for the Respondent

Final Decision : Allowed

Judgement

R.V. Raveendran, J.—These appeals by special leave by the State of Haryana raise the common question about the validity of withdrawal of the Eligibility Certificate issued under Rule 28A of the Haryana General Sales Tax Rules 1975 ('Rules' for short).

2. We may first refer to the relevant legal provisions. Sections 13B and 25A of the Haryana Sales Tax Act, 1973 (for short 'the Act') enabled the state government, if satisfied that it is necessary and expedient so to do in the interest of industrial development of the state, to exempt from payment of tax, or defer the payment of tax, by such class of industries, for such period, subject to such conditions as may be prescribed. Chapter IV-A of the Rules consisting of Rule 28A dealt with class of industries, period and other conditions for exemption/

deferment from payment of tax. The definitions of eligibility certificate, exemption certificate and entitlement certificate in Clauses (j), (k) and (l) of Sub-rule (2) of Rule 28A are extracted below:

(j) 'Eligibility certificate' means a certificate granted in form S.T. 72 by the appropriate Screening Committee to an eligible industrial unit for the purpose of grant of exemption/deferment.

(k) 'Exemption certificate' means a certificate granted in form S.T.73 by the Deputy Excise and Taxation Commissioner of the District to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as the case may be;

(l) 'Entitlement certificate' a certificate granted in form S.T. 73 by the Deputy Excise and Taxation Commissioner of the District to the eligible industrial unit holding eligibility certificate which entitles it to get deferment of sales tax.

2.1 Sub-rule (3) gave an option to an eligible industrial unit either to avail benefit of tax exemption or deferment. Sub-rule (4) dealt with quantum and period of tax exemption/deferment. Sub-rule (5) dealt with the procedure for applying and obtaining eligibility certificate. Sub-rule (8) dealt with withdrawal of eligibility certificate. Relevant portions thereof, that is, Clauses (a) of Sub-rule (4), Clauses (a), (b) and (h) of Sub-rule (5) and Clauses (a) and (b) of Sub-rule (8) are extracted below:

4(a). Subject to other provisions of this rule, the benefit of tax exemption or deferment shall be given to an eligible industrial unit holding exemption or entitlement certificate, as the case may be to the extent, for the period, from year to year in various zones from the date of commercial production or from the date of issue of entitlement/exemption certificate as may be opted, as under:

Quantum and period of tax exemption/tax deferment:

(i) New Industrial Units.

Name of the Zone and Small Scale Medium Scale/large Time Limit the area comprised scale therein

Zone 'B' comprising 125% of fixed 100% of fixed capital 7 years areas other than Zones capital investment but not 'A' and 'C' investment exceeding Rs. 1.5 crores

Provided that in the case of exemption, the benefit shall extend to tax on gross turn over and in the case of deferment, it shall extend to tax on the taxable turn over of goods manufactured by the unit.

5(a). Every Eligible Industrial Unit which is desirous of availing benefit under this Rule shall make an application in Form ST-70 in triplicate along with attested copies of the documents mentioned therein to the General Manager, District Industries Centre within 90 days of the date of its going into commercial

production or the date of coming into force of this rule whichever is later. No application shall be entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him in this behalf.

5(b). Applications from small scale units will be considered by the Lower Level Screening Committee and those from Medium/Large scale units by the Higher Level Screening Committee.

Xx xx xx 5(h). The Eligibility Certificate will be issued by the General Manager, District Industries Centre in cases approved by the Lower Level Screening Committee and by the Director of Industries or any officer nominated by him not below the rank of Additional Director in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production or from the date of issue of entitlement exemption certificate as the case may be for a period as laid down under Sub-rule (4) unless cancelled or withdrawn. A copy of the Eligibility Certificate shall also be sent to the Deputy Excise and Taxation Commissioner concerned.

Xx xx xx 8(a). The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate screening committee, in the following circumstances-

(i) if it is discovered that it has been obtained by fraud, deceit, misrepresentation, misstatement or concealment of material facts;

(ii) discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of fire, flood and other natural calamities, riots, strike or lock- out which in the opinion of the committee concerned is beyond the control of the unit;

(iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity:

Provided that no order of withdrawal of the eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit.

8(b). When the eligibility certificate is withdrawn, the exemption/ entitlement certificate shall be deemed to have been withdrawn from the 1st day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it.

(emphasis supplied)

2.2 Thus, small scale industries requiring an eligibility certificate had to apply in the prescribed form (Form ST-70) with an affidavit to the General Manager, District Industries Centre for consideration by the Lower Level Screening

Committee ('LLSC' for short). Para (3) of the application form for Eligibility Certificate required the applicant to produce the following annexures with the application:

- (i) Certificate from Chartered Accountant regarding estimated liability of sales tax for the period which application is made.
- (ii) Certificate from the Chartered Accountant regarding fixed assets on the date of commercial production including the assets of the unit as erected at site and paid for within 60 days to commercial production.
- (iii) Latest copy of partnership deed/Memorandum and Articles of Association, list of Directors and 10 major share-holders/partners.
- (iv) Copy of the power of attorney or certified copy of resolution passed by the Board of Directors authorizing a particular person to apply for the grant of eligibility certificate.
- (v) In case of agricultural land permission from the authority concerned for converting the same for non-agricultural use; and
- (vi) Copy of Registration No. /Letter of Intent/Industrial Licence/ DGTD Registration.

(emphasis supplied)

2.3 It is evident from requirement No. (v) that where agricultural land was used for the non-agricultural purpose of constructing or putting up an industrial unit, such change in land use had to be permitted/certified by the Town and Country Planning Development by issue of a No Objection Certificate/Change of Land Use Certificate ('NOC/CLU Certificate' for short).

Civil Appeal No. 1973/2006

3. The first respondent (for short 'respondent'), a small scale industry, was registered as a dealer under the Act. The respondent made an application dated 14.11.1995 to the General Manager, District Industries Centre, Panipat in the prescribed form (ST-70) for grant of an eligibility certificate and enclosed therewith the following annexures:

- (1) Application form in prescribed format.
- (2) Option letter seeking exemption to be given from the date of Commercial Production.
- (3) Affidavit duly attested by a First Class Magistrate.
- (4) Chartered Accountant's Certificate regarding Fixed Assets at site.
- (5) Certificate from Chartered Accountant regarding projected Sales Tax to be exempted for the period of eligibility.

(6) Copy of Resolution.

(7) Memorandum and Article of Association and list of Directors.

(8) Copy of Permanent SSI Registration.

(9) Copy of Registration certificate under the Act.

The respondent did not produce the NOC/CLU certificate, which was a document to be produced, if the land was an agricultural land (Sl. No. (v) of list of annexures to be produced, as per the prescribed application form). The application was processed and on 21.5.1996, the Lower Level Screening Committee resolved to grant the eligibility certificate to the respondent. In pursuance of it, an eligibility certificate was issued on 12.6.1996 stipulating the period of eligibility as from 1.9.1995 to 31.8.2002 for availing exemption from payment of tax of Rs. 41,94,722/-. The respondent accordingly availed the exemption.

4. The LLSC at its meeting held on 19.6.1997 decided to withdraw the eligibility certificate issued to the respondent, and the said withdrawal was communicated to the respondent, by the District Industries Centre, by letter dated 30.6.1997. That was challenged by the respondent in CWP No. 11383 of 1997. The High Court by judgment dated 22.12.1997 allowed the said petition and quashed the withdrawal of the eligibility certificate without notice or opportunity of hearing as illegal, reserving liberty to the State government to proceed afresh in the matter after affording an opportunity to the respondent to show cause against the proposed action.

5. Thereafter the District Industries Centre, Panipat issued a show-cause notice dated 4.3.1998 proposing to withdraw the eligibility certificate on the ground that the respondent had not complied with the basic requirement of furnishing a NOC/CLU Certificate from the Town and Country Planning Department for change of land use along with its application in Form ST- 70. The respondent sent a reply dated 26.3.1988 stating that as its unit was situated in an area surrounded by a large number of factories, the area should be considered as a non-agricultural area. It also contended that the department was not earlier insisting upon the production of such NOC/CLU certificate if the industry was situated in an area, where several industries were situated. The LLSC gave a hearing on 3.11.1998 to the respondent. During the hearing, the respondent's Director was informed that the District Town Planner, Panipat on verification had informed the LLSC that the respondent's unit fell in an area where, for setting up an industry, a NOC/CLU certificate was required from the Town Planning Department. The respondent's director admitted that respondent had not obtained such NOC/CLU Certificate. The LLSC therefore took a decision to withdraw the eligibility certificate issued to the respondent for non-production of NOC/CLU certificate. The General Manager, District Industries Centre, Panipat, by letter dated 26.11.1998 informed the respondent about the decision of LLSC to withdraw the eligibility certificate. The appeal filed by the respondent against the said decision was rejected by the

Higher Level Screening Committee by order dated 1.7.1999. The respondent challenged the said decision in CWP 13865/2000. The High Court by order dated 10.10.2000 directed the appellant authority to hear the appeal and pass a fresh order. The appeal was heard again and dismissed on 6.2.2001. The appellate authority noted that in spite of several opportunities being granted, the respondent had failed to produce the NOC/CLU Certificate. It further held that in view of the non-production of NOC/CLU certificate, the eligibility certificate issued to the respondent was void ab initio. The respondent challenged the said withdrawal of the eligibility certificate and the order of the appellate authority in CWP No. 9545 of 2001. The said petition was allowed by order dated 10.12.2002. The High Court held that the eligibility certificate once granted could be withdrawn only in one of the three circumstances enumerated in Clause (a) of Sub-Rule 8 of Rule 28A; and as non-production of NOC/CLU certificate was not a ground on which the eligibility certificate could be withdrawn under the said provision, the withdrawal was illegal and not justified.

6. The said order is challenged in this appeal by special leave. The Appellant has urged the following contentions:

(i) The grounds for withdrawal of an eligibility certificate, enumerated in Clause (a) of Sub-rule 8 are not exhaustive. The power to withdraw an eligibility certificate on valid grounds is implied in the power to grant the certificate, having regard to Section 19 of the Punjab General Clauses Act. Therefore, the eligibility certificate could be withdrawn for any valid reason, even if such reason was not enumerated in Clause (a) of Sub-rule 8.

(ii) Having regard to the law relating to town and country planning, no agricultural land or land in green belt could be used for industrial purposes without obtaining a NOC/CLU certificate. Therefore, the prescribed application form for eligibility certificate specifically required the applicants to produce the NOC/CLU certificate to ensure that the industry does not violate the relevant law; and where such a certificate is not produced, the industrial unit is not entitled to an eligibility certificate. Where an eligibility certificate had been wrongly issued on account of the small scale industry suppressing the fact the land where its unit is situated is agricultural land, it is liable to be withdrawn along with all consequential financial benefits extended under the State Industrial Policy.

(iii) The High Court, in rendering the impugned judgment ignored a binding decision of a Co-ordinate Bench in *Nice Spinners Pvt. Ltd. and others Vs. State of Haryana and others. (and other Cases)*, wherein it was held that the requirement regarding production of NOC/CLU certificate, contained in Form No. ST-70 prescribed under the Rules was a mandatory requirement.

7. On the contentions urged, the following two questions arise for our consideration:

(i) Whether an eligibility certificate issued under Sub-rule (5) of Rule 28A could be withdrawn on a ground other than those specified in Clause (a) of Sub-rule 8

of Rule 28A.

(ii) Whether in this case, withdrawal can be said to be on any of the grounds mentioned under Clause (a) of Sub-rule 8 of Rule 28A.

Re: Question (i):

8. Sub-rule (8) provided for withdrawal of the eligibility certificate in three specific circumstances mentioned in Clause (a) thereof. Clause (b) of Sub-rule (8) provided that where the eligibility certificate is withdrawn, the exemption/entitlement certificate shall be deemed to have been withdrawn from the first date of its validity and the unit becomes liable to pay tax, interest and penalty as if no entitlement certificate has ever been granted to it. This penal provision was attracted only when the withdrawal was on any of the grounds mentioned in Clause (a) of Sub-rule (8). It is not possible to hold that the penal consequences under Clause (b) of Sub-rule (8) would apply even where the specified circumstances/grounds in Clause (a) of Sub-rule (8) did not exist or occur. Where the rules prescribe the conditions for grant of a benefit and also the conditions for withdrawal of such benefit, then the benefit can be withdrawn only if any of the conditions prescribed exist, and not otherwise, unless the provision relating to withdrawal/rescission also reserves discretion to the authority concerned to exercise the power of withdrawal wherever warranted.

9. The appellant placed reliance upon Section 19 of the Punjab General Clauses Act, which provides that where any State Act confers a power to issue a notification or orders, rules or bye-laws, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions (if any) to add to amend, vary or rescind any notification, orders, rules or bye-laws so issued. The question is, where the rules contain a specific provision as to the circumstances in which the power to grant an eligibility certificate can be exercised and the specific circumstances in which the eligibility certificate once granted can be withdrawn, whether reliance can be placed upon the implied power to rescind or withdraw u/s 19 of the General Clauses Act, de hors the specific provision in the statute. Section 19 of the Punjab General Clauses Act (corresponding to Section 21 of General Clauses Act, 1897) merely embodies a rule of construction which can be displaced to the extent, the provisions, the scheme and the object of any particular statute indicate a contrary intention. It is intended to apply only where the rules in question do not contain a specific provision governing or regulating the matter. The question whether or not the said rule of construction (the implied power to rescind or withdraw an order) would apply or not, will depend on the subject matter, context and the effect of the relevant provisions of the statute/rules under which the order is issued. Therefore, the scheme, its object and all relevant provisions have to be examined to decide the application of the said rule of construction. See : The State of Bihar Vs. D.N. Ganguly and Others, ; State of Kerala and Others Vs. K.G. Madhavan Pillai and Others, ; H.C. Suman and another Vs. Rehabilitation Ministry Employees Co-operative House Building Society Ltd. New Delhi and others, and

Justice G.P. Singh's principles of Statutory Interpretation (11th Edition), pages 999 & 1000.

10. As noticed above, Clause (a) of Sub-rule (8) specifically enumerated three circumstances in which eligibility certificate is liable to be withdrawn. They were : (i) discovery that the certificate had been obtained by the applicant by fraud, deceit, misrepresentation, misstatement or concealment of material facts; (ii) discontinuance/closing down of the business by the holder of the certificate; and (iii) disposal/transfer of fixed assets by the holder of the certificate, adversely affecting its manufacturing or production capacity. It did not empower the appropriate screening committee to withdraw the eligibility certificate under any other circumstance. Nor did it confer a general power upon the screening committee to withdraw the certificate. It however required that such withdrawal shall be after affording a reasonable opportunity of hearing to the affected unit. Clause (b) of Sub- rule (8) prescribed certain penal consequences when the eligibility certificate was withdrawn. Obviously, penal consequences could not be visited upon an assessee on grounds or circumstances which were neither specified in the rules, nor stipulated in the eligibility certificate. The legislative intent as can be gathered from the scheme contained in the rules was that the eligibility certificate could be withdrawn only in the circumstances enumerated in Clause (a) of Sub-rule (8) and for no other reason. As a result, we reject the contention of the appellant that the eligibility certificate issued under Sub-rule (5) of Rule 28A could be withdrawn, if the circumstances warrant, on a ground other than the ground specified in Clause (a) of Sub-rule (8).

11. The contention that High Court failed to follow the decision of a co-ordinate Bench in *Nice Spinners* (supra) does not have any merit. *Nice Spinners* dealt with a situation where the request for an eligibility certificate was rejected under Sub-rule (5) and did not deal with a situation relating to withdrawal of an eligibility certificate already granted. Once an eligibility certificate was granted, it can only be withdrawn in the circumstances mentioned in Clause (a) of Sub-rule (8). Therefore, 'non-production of NOC/CLU certificate' by itself cannot be a ground for withdrawal as it is not one of the grounds/circumstances mentioned in Clause (a) of Sub-rule (8).

Re : Question (ii)

12. But the matter does not end there. The next question will be whether the non-production of NOC/CLU Certificate had any bearing on the three circumstances or grounds for withdrawal enumerated in Clause (a) of Sub- rule (8). Circumstances (ii) and (iii) mentioned in Clause (a) of Sub-rule (8) do not admittedly apply as this is neither a case of discontinuance/closure of business nor a case of disposal of fixed assets. What therefore remains to be considered is whether it can be said that the eligibility certificate was obtained by the respondent by fraud, deceit, misrepresentation, misstatement or concealment of facts.

13. The prescribed form of application required the applicant to produce certain documents as annexures to the application. Requirements (i) to (iv) and (vi) of the prescribed form (extracted in para 2.3 above) were specific. Requirement (v) was slightly different. It required "in case of agricultural land", permission from the authority concerned for converting the same for non-agricultural use. This meant that where the unit was situated in non- agricultural urban area, there was no need to produce the NOC/CLU certificate. But, if the industrial unit was situated in an agricultural land, then a NOC/CLU Certificate was required to be produced. The respondent did not produce the NOC/CLU certificate. Nor did it disclose in its application that its unit was situated in an agricultural land. It merely gave a list of the documents produced, where NOC/CLU certificate did not find a place. It remained silent about requirement (v). This amounted to suppression and concealment of a material fact or an implied misrepresentation that NOC/CLU certificate was not required to be produced. Where the NOC/CLU Certificate was not produced, and the applicant did not state that the land was agricultural land, there was every likelihood of the concerned authority proceeding on the assumptions that the industry was not situated in an agricultural land and therefore the applicant was not required to produce the NOC/CLU Certificate. But if the unit was situated in an agricultural land, it was mandatory to either produce the NOC/CLU Certificate under requirement (v) or disclose the fact that though the unit was situated in an agricultural land, it did not possess the required certificate. The suppression of the fact that the land was agricultural was a material concealment and misrepresentation which led the LLSC to assume that the applicant had fulfilled the legal requirements. If the fact that the land was situated in an agricultural land had been disclosed, the eligibility certificate, would not have been issued, in the absence of NOC/CLU Certificate. Therefore, while the non-production of the 'NOC/CLU Certificate' by itself may not be a ground to withdraw the eligibility certificate under Sub-rule (8), the omission to disclose that the land was an agricultural land and that it did not possess or that it was not able to produce the NOC/CLU Certificate, was a concealment, misstatement and misrepresentation of a material fact. When it was discovered on enquiry that the land was agricultural land and the respondent did not produce the NOC/CLU Certificate, the department was entitled to withdraw the eligibility certificate under Clause (a)(i) of Sub-rule (8).

14. A faint attempt was made to contend that the ground of rejection was 'non-production of NOC/CLU Certificate' and not suppression or mis- representation of a material fact relating to nature of land. There is no merit in this contention. If the respondent had disclosed that the land was an agricultural land, but failed to produce the NOC/CLU Certificate, and if the department had issued the eligibility certificate, then it might not have been possible for the department to withdraw the Certificate. In such an event, the assessee could have contended that it had not suppressed any information and the requirement was waived, or that it was not being insisted upon and that therefore non-production was not a ground for cancellation. But where the NOC/CLU Certificate was required because the unit

was situated in an agricultural land, but the applicant suppressed the fact that the land where the unit was situated was an agricultural land, to avoid production of the NOC/CLU Certificate, then it is a concealment and misrepresentations of a material fact, which squarely falls under Rule 8(a) (i). When the eligibility certificate is withdrawn for non-production of NOC/CLU Certificate, and the fact that land was agricultural land was not disclosed, the withdrawal can be traced to the ground (i) under Sub-rule 8(a) (i) of Rule 28A.

15. In view of the above, the appeal is allowed, the judgment of the High Court is set aside and the challenge to the withdrawal of eligibility certificate is rejected.

Civil Appeal Nos. 1976/2006, 1982/2006, 1983/2006, 1986/2006 and 350/2007.

16. The facts in these appeals are similar to those in Civil Appeal No. 1973/2006. In all these cases also, the eligibility certificates issued to the respective respondent was withdrawn on the ground that they did not produce the NOC/CLU certificate. The High Court allowed the writ petitions filed by the respective respondent in these appeals (by order dated 2.2.2004 in CWP No. 79/2004, order dated 9.12.2003 in CWP No. 15989/2003, order dated 7.1.2003 in WP No. 13058/2002, order dated 7.1.2003 in CWP No. 11967/2002 and order dated 10.2.2004 in CWP No. 9715/2003) by following its decision dated 10.12.2002 in Baldev Spinners Private Ltd. which is the subject matter of CA No. 1973/2006 considered above. These appeals also stand allowed in terms of CA No. 1973/2006.