(2020) 02 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17162 Of 2001

State Of Haryana — APPELLANT

Vs

M/S Parul Food Specilities Pvt. Ltd. And Another — RESPONDENT

Date of Decision : 10-02-2020

Acts Referred:
Haryana General Sales Tax Rules, 1975 — Rule 28A, 28A(2)(a)

Citation : (2020) 02 P&H CK 0094

Hon'ble Judges : Ajay Tewari, J;Avneesh Jhingan, J

Bench : Division Bench

Advocate : Mamta Singh Talwar, Alok Mittal

Final Decision : Dismissed

Judgement

Avneesh Jhingan, J

The State of Haryana has filed the writ seeking quashing of orders dated 19.2.2001 and 27.3.2001 passed by the Commissioner and Secretary,

Industries Department, Haryana allowing the appeal of respondent No. 1-assessee (hereinafter described as 'the assessee') and dismissing the review

application filed by the department.

The assessee was registered at Kurukshetra under the Haryana General Sales Tax Act, 1973 (for short, 'the Act') as well as Central Sales Tax Act,

1956. An industrial unit was set up in 1994 at village Khanpur Kolian, District Kurukshetra, producing Butter Oil and ghee. The commercial production

started on 1.9.1994. Exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules') was granted for 9 years i.e.

from 1.9.1994 to 31.8.2003. In 1995, a diversified unit was set up to produce Milk Powder, Dairy Whitener, Desi Ghee etc. The diversified unit was also allowed exemption for a period of 9 years i.e. from 22.12.1995 to 21.12.2004. An expansion of the diversified unit was undertaken. The expanded

unit started commercial production on 15.4.1999. Application in form ST-70 was submitted on 30.6.1999 claiming exemption under Rule 28A of the

Rules. The application was rejected by the Higher Level Screening Committee (for short, 'HLSC') on 25.5.2000 holding that the product i.e. desi ghee

is covered under negative list of Rule 28B. The statutory appeal filed by the assessee was allowed by Commissioner of Industries on 19.2.2001. The

petition for review of the department was rejected, hence the present petition.

The challenge in the writ petition to the impugned orders is on the ground that at the time of commercial production Rule 28B of the Rules was in

operation, the product fell in the negative list and hence benefit of exemption could not have been granted. Secondly, no land was purchased hence the

case could not have been considered under Rule 28A of the Rules.

Before dealing with the contention, definition of 'operative period' as per Rules 28A(2)(a) and 28B(3)(a) are quoted below:

â??Â Â (RULE-28A)

(CLASS OF INDUSTRIES, PERIOD AND OTHER CONDITIONS FOR EXEMPTION DEFERMENT FROM PAYMENT OF TAX)

xx xx xx

(2) For the purpose of this Chapter, unless the context otherwise requires,

Â (a) â??operative periodâ? means the period starting from the 1st day of April, 1988 and ending on the date on which new policy for incentive to

industry is announced by the government of Haryana in industries department.

xx xx xx

(Rule 28-B)

[CLASS OF INDUSTRIES, PERIOD AND OTHER CONDITIONS FOR EXEMPTION/ DEFERMENT FROM PAYMENT OF TAX]

xx xx xx

(3) For the purpose of this Chapter, unless the context otherwise requires,-

(a) â??operative periodâ? means the period starting from the 1st day of August, 1997, and ending on the date on which the policy for incentive to

industry is terminated/revised by the Government of Haryana in Industries Department.

Provided that the benefit of exemption/deferment shall be admissible under rule 28A to the Industrial units which have taken following effective steps:

(i) Land has been purchased for the project or taken on lease or rent;

(ii) The Industrial Unit has got its building plans approved in case the unit is located in the controlled area as defined by the Department of Town and

Country Planning. In case the unit is located outside the controlled area, the building plans should be approved by the approved Architect; 50% cost of

the civil works of the approved plan of the building should have been completed and paid for by 31st July, 1997.

(iii) 50% machinery has been booked by placing confirmed orders with atleast 10% amount paid as advance as on 31st March, 1998.

To get benefit under the Old Industrial Policy, 1992, all the abovementioned conditions should be fulfilled. In case any one of these conditions is not

met with, the industrial unit would be given the benefit of incentives as per the New Industrial Policy of 1997 if found otherwise eligible thereunder.

xx xx xxâ??

It would be important to note at this stage that Rule 28B of the Rules was inserted vide GSR No. 47 dated 18.5.1999 but was made effective from

1.8.1997, it is on the said basis that first contention is raised by the petitioner.

The submission is not well founded. Rule 28A(2)(a) of the Rules defines 'operative period'. The period started from Ist day of April, 1988 and ends on

the date when new industrial incentive policy is announced. There is no quarrel that as per the definition under Rule 28A, the operative period had

come to an end on 15.4.1999 when the commercial production started but this does not help the case of the petitioner. The definition of 'operative

period' under Rule 28B of the Rules has a proviso by which the benefit under Rule 28A was extended to the units who had taken three effective

steps, firstly the land for the project had been purchased or taken on lease or rent, secondly the building plans were got approved in case of units

located in controlled area and in other cases the building plans should be approved by the Architect, 50% of cost of civil works should have been

completed and paid by 31.7.1997 and lastly 50% of machinery had been booked and atleast 10% amount paid in advance as on 31.3.1998. All the

three conditions were required to be fulfilled.

The ground for rejection of exemption claim by HLSC could be sustained if the case was made out that any one of the conditions of proviso to Rule

28B(3)(a) of the Rules were not met. It was in that eventuality that application was to be dealt with under Rule 28B and the negative list would have

relevance. Merely because by the time the application was submitted on 30.6.1999, Rule 28B of the Rules was inserted will not automatically bring the

application for exemption under Rule 28B. If that is so, the proviso to sub-rule (3)(a) to Rule 28B would be rendered otiose. The proviso has extended

the applicability of Rule 28A of the Rules. There cannot be any serious objection with regard to fulfilment of the three conditions as the unit had

started commercial production on 15.4.1999 i.e. prior to insertion of Rule 28B of the Rules. The Appellate Authority rightly allowed the appeal by

considering the exemption application under Rule 28A of the Rules.

The second contention that no land was purchased or taken on lease or rent is against the record. The diversified unit which started commercial

production in 1995 was expanded and its capacity was extended from 10 metric tonnes to 14 metric tonnes. The land was already with the unit. It was

not the case either before the HLSC that the land was not purchased or before the Appellate Authority, rather the departmental representative before

the Appellate Authority conceded that three conditions of proviso to Rule 28B(3)(a) were fulfilled. The relevant portion of the order is quoted below:

â??7. I am also satisfied that the case of the appellant unit is covered under proviso to clause (a) of Rule 28-B and has rightly applied under rule 28-A

and is entitled to benefit of exemption under the said rule as the unit fulfills all the three conditions provided in the aforesaid proviso. The land stood

purchased in 1992, building plan stood approved by the approved Architect, more than 50% of the amount stood paid for as the cost of civil work upto

31st July, 1997. The departmental representatives have not rebutted the grounds of appeal on this point and have rather conceded. It is, therefore, held

that the appellant unit is entitled to the benefit if incentive under Rule 28-A of Haryana General Sales Tax Rules, 1975.â??

There is another aspect of the matter that to verify the claim, a report is sought from the Deputy Excise and Taxation Commissioner (for short,

'DETC'), in the said report dated 26.11.1999, the DETC specifically mentioned that the dealer had purchased the land in 1994.

No case is made out for interference in the impugned orders.

The writ petition is dismissed.