IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL MISC. NO.7723 OF 2014 in/and
CIVIL WRIT PETITION NO.14863 OF 2013(O&M)
DATE OF DECISION: 27.04.2015

Rubber Reclaim Company of India Pvt. Ltd. .....**Petitioner**

Versus

State of Haryana and others .....**Respondets**

CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE GURMEET SINGH SANDHAWALIA

Present: Mr.Sumeet Mahajan, Senior Advocate with
Mr.Rohit Khanna, Mr.Suman Jyoti Khaitan, Mr.Vikas Kumar and
Mr.Amit Kohar, Advocates for the petitioner

Ms. Mamta Singla Talwar, Assistant Advocate General,
Haryana for the respondents.

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G.S.SANDHAWALIA, J.

In the present writ petition, the petitioner-company has raised challenge to Rule 28-A(11)(A)(II)(B) of the Haryana General Sales Tax Rules, 1975 (hereinafter referred to as "the Rules") as ultra vires the Sick Industrial Company (Special Provisions) Act, 1985 (hereinafter referred to as "the SICA") and prohibiting the respondents from raising any demand on the petitioner as per exemption certificate dated 1.2.1994.

The pleaded case of the petitioner-company is that it was duly registered under the provisions of the Act and having registration certificate dated 17.5.1966. The petitioner-company had suffered heavy losses as on 31.3.1990 to the tune of Rs.113.45 lacs against the paid capital of Rs.18.86 lacs and reserves of Rs.53.39 lacs. Accordingly, it had approached the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of SICA and

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direction had been issued on 15.3.1991 (Annexure P/1) for package of revival to which the financial institutions were also parties including the Haryana Financial Corporation.

The petitioner-company was granted sales tax deferment for five years from 1.4.1992 to 31.3.1997 along with various other reliefs as per letter dated 21.12.1992 (Annexure P/2) by the State and sales tax exemption to the tune of Rs.68 lacs was also granted.

A notice dated 4.5.1998 (Annexure P/6) was issued to the petitioner-company that it had violated the conditions contained in Rule 28-A of the Act and it was liable to pay the whole amount of tax exemption with interest. The petitioner had approached this Court in Civil Writ Petition No.6689 of 1998 challenging the said notice and the vires of the Rules. The said writ petition was disposed on 13.5.1998 (Annexure P/7) without going into question of vires with a direction to the petitioner-company to file reply to the show cause notice and the Assessing Authority would consider the matter after giving the petitioner-company an opportunity of hearing. Subsequently, vide assessment order dated 16.3.2005 (Annexure P/8), the liability of the petitioner-company was assessed under the Central Sales Tax Act, 1956 to the tune of Rs.54,33,480/-.

The said order was challenged before this Court by filing Civil Writ Petition No.6688 of 1999 which was allowed on 31.3.2010 (Annexure P/10) without going into the vires of the Act and on the ground that inter State transfer of consignment was not transaction of sale. The State preferred Special Leave Petition No.25465 of 2011 against the said decision of the Division Bench of this Court which was allowed on 23.1.2013 (Annexure P/12) and the order of the Division Bench was set aside. Since the vires had never been adjudicated upon, the present writ petition has been filed on 8.4.2013.

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Learned senior counsel for the petitioner-company has sought to argue the matter on the ground that once the petitioner-company was sick and it was only an inter State transfer the benefit of exemption could not have been withdrawn.

The State has placed reliance upon the rule to submit that since the petitioner-company had started taking transfer of consignments which was contrary to the statutory conditions, and the exemption was rightly withdrawn and that since 1998 multiple litigations had been raised to avoid the tax liability, The principal amount itself was Rs.68 lacs plus interest. The petitioner-company was well aware of the exemption granted and after having availed the benefit it could not challenge the conditions imposed upon it.

After hearing counsel for the parties, we are of the view that the present writ petition as such cannot be entertained once the matter has itself been decided interse the parties by the Apex Court itself. It is not disputed the initially the dispute was raised on 4.5.1998 (Annexure P/6) wherein a show cause notice was issued to the petitioner-company that they had dispatched goods on consignment basis amounting to Rs.95 lacs (approx.) and also consignment sales to the tune of Rs.4 crores (approx.) during the period of exemption. The petitioner-company had approached this Court and it had been given liberty to file reply to the show cause notice. Thereafter, liability was assessed vide assessment order dated 16.3.2005 (Annexure P/8) under the Central Sales Tax Act, 1956 to the tune of over Rs.54 lacs and exemption also was sought to be withdrawn and dealer was accordingly assessed as a normal dealer. The assessment order was sought to be challenged apart from challenging the vires of the Rules by filing Civil Writ Petition No.6688 of 1999 and also pleading that the company had been declared sick which was decided by this Court vide order dated 31.3.2010 (Annexure P/10). The decision of this Court dated 31.3.2010 in favour of the petitioner-company was set aside by the Apex Court

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vide order in **State of Haryana and another Vs. Rubber Reclaim Co. of India (2013) 14 SCC 763** by specifically noting that if there was a violation of any one of the conditions of the Rule, the sales tax authorities are at liberty to cancel the exemption certificate and call upon the assessee to make payment of the tax with interest. Further direction was issued to the assessing authority to pass fresh assessment order for the periods in dispute after affording opportunity of hearing to the assessee. The order withdrawing the exemption was accordingly upheld. The relevant observations read as under:-

> "12. 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.
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> 13. 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 Rules 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

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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 under Section 13B of the Act.

14. 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 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.

15. 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."

A perusal of the above order of the Apex Court would go on to show that no liberty was granted to the petitioner-company to re-agitate the issue of the vires of the Rules which is now sought to be questioned by filing the present civil writ petition. We do not subscribe to the argument that issue regarding the vires of the Rules had never been adjudicated upon because it was open to the petitioner-company to seek liberty from the Apex Court to leave the said question open and to take permission to file a fresh petition or get the matter remanded. Rather in view of the observations of the Apex Court made above the issue in our opinion finally stands closed for all intents and purposes. Once the Civil Appeal has been allowed, the question of raising the issue afresh does not arise by challenging the vires for the second time. The State is well justified to argue that the matter has been delayed since 1998 and challenges have been laid to the

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show cause notice and the recovery of outstanding dues has been delayed by resorting to litigation.

Accordingly, we are of the view the present writ petition in which amendment has also been sought by wanting to place on record the sales tax returns which has seriously been opposed by the State, in our opinion, would also be not relevant for deciding the issue in controversy, and would not help the court to adjudicate on the matter in controversy. Thus, the matter between the parties having been adjudicated upon by the Apex Court itself, the jurisdiction of this Court would be barred by the principle of constructive Res-Judicata in the peculiar facts and circumstances of the case. Reliance can be placed upon the observations made by the Apex Court in **M.Nagabhushana Vs. State of Karnataka (2011) 3 SCC 408 which read as under:-**

> "12. The principles of Res Judicata are of universal application as it is based on two age old principles, namely, `interest reipublicae ut sit finis litium' which means that it is in the interest of the State that there should be an end to litigation and the other principle is `nemo debet his ve ari, si constet curiae quod sit pro un aet eademn cause' meaning thereby that no one ought to be vexed twice in a litigation if it appears to the Court that it is for one and the same cause. This doctrine of Res Judicata is common to all civilized system of jurisprudence to the extent that a judgment after a proper trial by a Court of competent jurisdiction should be regarded as final and conclusive determination of the questions litigated and should for ever set the controversy at rest.
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> 13. That principle of finality of litigation is based on high principle of public policy. In the absence of such a principle great oppression might result under the colour and pretence of law in as much as there will be no end of litigation and a rich and malicious litigant will succeed in infinitely vexing his opponent by repetitive suits and actions. This may compel the weaker party to relinquish his right. The doctrine of Res Judicata has been evolved to prevent such an anarchy. That is why it is perceived that the plea of Res

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Judicata is not a technical doctrine but a fundamental principle which sustains the Rule of Law in ensuring finality in litigation. This principle seeks to promote honesty and a fair administration of justice and to prevent abuse in the matter of accessing Court for agitating on issues which have become final between the parties."

Accordingly, the present writ petition is dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S.SANDHAWALIA)
JUDGE

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