

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 14277 of 2014 (O&M)

Date of decision : 21.10.2016

M/s Mehta Engineers Limited

.. Petitioner

versus

The State of Haryana and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Darshan Singh**

Present: Mr. Sandeep Goyal and Mr. Varun Chadha, Advocates,
for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

1. The petitioner has approached this Court impugning the order dated 24.12.2013 (Annexure P-11) passed by the Director of Industries and Commerce, Haryana, vide which the appeal filed by it against the order passed by the General Manager-cum-Joint Director, DIC, Rewari, dated 28.2.2013 (Annexure P-9), was dismissed. The issue is regarding demand of interest.

2. Learned counsel for the petitioner submitted that the petitioner set up a unit to manufacture Sheet Metal Components, Tubular, Components, Machined of Manufacture components at Dharuhera, District Rewari. It came into commercial production on 9.9.1997. In terms of provisions of Rule 28-B of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules'), the petitioner applied for issuance of eligibility certificate for availing benefit of deferment of payment of tax. The eligibility certificate was issued to the petitioner on 20.1.2000. The period of

eligibility was from 9.9.1997 to 8.9.2006. The total amount for which the petitioner could avail benefit of deferment of tax was ₹ 44.68 lacs. As per the provisions of Rule 28-B(12)(iv) of the Rules, the amount of sales tax deferred was to be paid after the expiry of seven years from the date it was due.

3. The State of Haryana notified a scheme for conversion of deferred sales tax into interest free loan on 16.12.1992 (hereinafter to be referred as 'the Scheme'). It provided for eligibility, procedure for claiming benefit, repayment of loan and power of recovery in case of default. As per the scheme, repayment of interest free loan was to be done after a period of five years. The loan was sanctioned to the petitioner on 31.3.2000. Immediately thereafter the amount due upto that date was paid to the Sales Tax Department and thereafter it was regularly paid after raising loan. As for the reasons beyond its control, the petitioner could not continue in business, in terms of conditions laid down in Rule 28-B of the Rules, the eligibility certificate granted to the petitioner was withdrawn in the meeting of the Higher Level Screening Committee held on 16.2.2006. The order was conveyed to the petitioner vide letter dated 6.7.2006. However, by that time, entire amount of tax had already been paid to the Excise and Taxation Department and even the interest free loan had also been returned to the Industries Department. As a consequent of withdrawal of eligibility certificate, the assessing authority vide order dated 28.6.2006, calculated the interest due from the petitioner. The amount was determined at ₹ 36,79,875/-. Aggrieved against the order, the petitioner preferred appeal. The Joint Excise & Taxation Commissioner (Appeals), Faridabad, vide order dated 20.5.2009, accepted the appeal and directed for re-calculation of

interest, as the Excise & Taxation Department had received the amount of tax after the petitioner raised interest free loan from the Industries Department. Thereafter, vide order dated 16.6.2010, the Assessing Authority re-calculated interest due from the petitioner at ₹ 7,74,302/-. Vide communication dated 28.2.2013, the General Manager-cum-Joint Director, DIC, Rewari, directed the petitioner to pay the interest, which was difference of the amount earlier assessed by the Excise & Taxation Department and subsequently assessed. Aggrieved against the communication, the petitioner preferred appeal before the Director of Industries, Haryana, who vide order dated 24.12.2013, dismissed the same.

4. Learned counsel for the petitioner submitted that in the Scheme for interest free loan as notified by the Government of Haryana, clause 7 provides for power to recover the loan. In case of non-payment, it could be recovered as arrears of land revenue. In case of any default or delay in repayment of loan interest/penalty was chargeable as provided under the Haryana General Sales Tax Act, 1973 (for short, 'the Act') and the Rules framed thereunder. The provision does not in any manner provide for charging of interest in case the amount is paid on or before the due date. There is no default in repayment of loan in terms of Clause 5, which was due to be repaid after five years and was, in fact, paid within that period.

5. Clause 7 of the Scheme invokes the provisions of the Haryana Public Money Recovery Act for recovery of the loan, in case of default or delay in repayment of loan. For levy of interest and penalty, the provisions of the Act could be invoked.

6. The Scheme is an independent incentive scheme. The beneficiaries thereof have no concern with the provision of Rule 28-B of

the Rules. The claim of the Sales Tax Department was satisfied, moment the amount of the tax was paid. There is no condition in the Scheme for a unit to remain in production as is envisaged in Rule 28-B (10) of the Rules. In support of his plea reliance was placed upon judgments of Hon'ble the Supreme Court in State of Punjab and others vs Atul Fasteners Limited (2007) 7 VST 278, India Carbon Limited vs State of Assam (1997) 106 STC 460, Union of India vs A. L. Rallia Ram (1964) 3 SCR 164 and judgment of this Court in LPA No. 412 of 2003 – State of Haryana etc. vs M/s Haryana Organics, decided on 3.3.2009.

7. On the other hand, learned counsel for the State submitted that as per eligibility certificate issued to the petitioner, he could avail of the benefit of deferment of payment of tax to the tune of ₹ 44.68 lacs. The period of entitlement was from 9.9.1997 to 8.9.2006. During the currency, the petitioner availed benefit to the tune of ₹ 43,90,396/- and thereafter partly sold the plant and partly it was leased out. As per the record, there was no production from 30.6.2000. She further referred to condition nos. 3, 5 and 6, as contained in the eligibility certificate, which provide for the period the unit is to remain in production and further the liability to pay interest. The reference was also made to Rule 28-B(10)(a) and (b) of the Rules providing for certain conditions under which the eligibility certificate granted to a unit could be withdrawn. Rule 28-B(12)(iv) of the Rules was also referred to submit that the payment of deferred amount was to be made after expiry of a period of seven years. In addition, while referring to Clauses 5 and 7 of the Scheme, it was submitted that the conditions contained in the Scheme and the object for which it was framed have to be read in conjunction with Rule 28-B of the Rules. The default has to be

considered with reference to the conditions laid down in Rule 28-B of the Rules, without the aid of which the petitioner was not entitled to the benefit of interest free loan. It is only an eligible industrial unit under Rules 28-A and 28-B of the Rules, which could avail of benefit of interest free loan.

8. Learned counsel for the State further submitted that Clause 7 of the Scheme provides that in case of default, the provisions of the Act and the Rules will be applicable. It is a case of default where the petitioner had closed down the manufacturing activity even during the currency of eligibility certificate. Once eligibility certificate is withdrawn, as a consequence right to avail benefit of interest free loan was taken away. In these circumstances, there is nothing wrong in raising demand of interest from the petitioner. She further submitted that none of the judgments cited by learned counsel for the petitioner is relevant for the controversy in issue. The interest free loan was sanctioned to the petitioner from time to time in terms of the amount due under the Act. The conditions in the sanction letter clearly established that the provisions of the Rules and the Scheme cannot be de-linked as the amount of loan was to be debited from one account of the State to be credited to other account. It was not a loan raised from a third party.

9. In response, learned counsel for the petitioner submitted that Clause 7 of the Scheme has been invoked 11 years after the petitioner had admittedly gone out of production and three years after the proceedings under the Act concluded wherein it was opined that the interest for the period, the tax had been paid to the Excise and Taxation Department, may be after raising loan from the Industries Department, no interest was leviable under the Act.

10. Heard learned counsel for the parties and perused the paper book.
11. Relevant paras of the interest free loan scheme are extracted below:-

“HARYANA GOVERNMENT
INDUSTRIES DEPARTMENT
ORDER

To give relief to industries, the Governor of Haryana is pleased to formulate a new scheme for conversion of deferred sales tax into interest free loan. The salient features of this scheme are as under:-

OBJECTIVE

With a view to promote industry at an accelerated pace, the State Government has formulated an industrial policy which provides a number of financial8 fiscal incentives to the new as well as existing entrepreneurs. One such incentive is the grant of sales tax exemption1 deferment. Under the existing policy/ Notification of the Excise and Taxation Department, an industrial unit is eligible for tax exemption/ deferment as under :-

	<i>Small scale</i>	<i>Medium Scale/ Large Scale</i>	<i>Time Limit</i>
Zone A : Comprising centrally and state identified backward areas.	150% of fixed capital investment.	125% of fixed capital investment but not exceeding Rs. 6 crores.	9 years.
Zone B : Comprising centrally areas, other than zones A&C.	125% of fixed investment.	100% of fixed capital investment but not exceeding Rs. 4.5 crores.	7 years.
Zone C : Comprising Faridabad, Ballabgarh Complex Administration.	100% of fixed capital investment.	90% of fixed capital investment but not exceeding Rs. 3 crores.	5 years.

In case of electronics Industry, the tax benefit is uniform for 7 years upto 500% of fixed capital investment.

UNITS UNDERTAKING EXPANSION/ DIVERSIFICATION:

<i>Zone</i>	<i>Small scale</i>	<i>Medium / Large Scale</i>	<i>Time Limit</i>
A	100% of additional fixed capital investment.	90% of additional fixed capital investment but not exceeding Rs. 5 crores.	9 years.
B		90% of additional fixed	
C	100% of additional fixed capital investment.	90% of additional fixed capital investment but not exceeding Rs. 2 crores.	5 years.

The procedure for claiming sales tax exemption/ deferment has been laid down in the State Government, Excise and Taxation Department Notification No. GSR46/H.A.20/73/S-64/89, dated 17.5.89 State Government has amended the notification from time to time to make the procedure simpler.

It has been brought to the notice of Government that deferred tax which is recoverable after the period of five years is being considered as income of the assessee for the purpose of computing his income tax liability under section 43-B of the Income Tax Act. The State Government has, therefore, decided to provide interest free loan through this scheme, to the extent of sales tax liabilities of an Industrial Unit which has opted for its deferred payment under the industrial policy of the State Government.

2. Eligibility

- i) Industrial units in whose favour eligibility certificate has been issued by the Industries Department.
- ii) Industrial units in whose favour Entitlement Certificate has been issued by the concerned DETC, will be eligible to avail themselves of this scheme.

EXPLANATION : The eligible industrial units holding eligibility and entitlement certificates can avail themselves of the benefit of the scheme by opting to convert the tax deferred for the previous years into Interest Free Loan provided assessment under the Income Tax Act for those

years has not been finalized.

3. PROCEDURE

Industrial units opting for conversion of deferential amount of sales tax into Interest Free Loan shall give their option at the time of applying for grant / renewal of entitlement certificate to the concerned Deputy Excise and Taxation Commissioner. The option once exercised will be final. The Deputy Excise and Taxation Commissioner concerned shall forward the consent of the industrial unit alongwith a copy of the entitlement certificate to the General Manager District Industries Centre concerned and inform the unit about the same. Deputy Excise and Taxation Commissioner shall not (*sic*) for any bank guarantee/ personal sureties/ mortgage/ hypothecation of assets agreement etc. as provided in the scheme of Sales Tax Deferment of the Excise and Taxation Department from such entrepreneurs.

The General Manager District Industries Centre will sanction the interest free loan equivalent to the estimated tax liabilities of the year, if it is being issued for the first year. For subsequent years, the loan will be sanctioned after taking into account the difference in the actual and the estimated tax liability of the previous year, the total entitlement and the period, as indicated in the eligibility certificate. This process will be completed within one week of receipt of consent and entitlement/ renewal certificate. He will simultaneously ask the industrial unit to furnish the security as provided in this scheme and the agreement deed for execution.

Industrial units which are availing themselves of the benefit of the scheme sales tax deferment and are now desirous of getting the same converted into interest free loan, for the whole of the year or industrial units which have availed the sales tax deferment but their Income Tax return have not been finalized so far, can also apply to the General

Manager, District Industries Centre concerned for conversion of Sales Tax into interest free loan for the whole of the year or for the earlier period if they furnish fresh agreement deed and transfer the securities in favour of the General Manager, District Industries Centre concerned. However, in such cases the date of repayments shall remain the same as decided and agreed by the Excise & Taxation Department and as provided in the Haryana General Sales Tax Act and rules made thereunder.

Taking into account the quarterly return filed by the Industrial unit duly certified by the assessing authorities and within the ceiling of the sanctioned loan, General Manager, District Industries Centre will raise a bill on the treasury every quarter for the said amount for crediting under receipt head '0040-Sales Tax-800 Other receipts", and debiting the same amount to the Major Head "6851-Loans for Village & Small Industries -000-Other Loans, in lieu of deferred sales tax payment.

As there will be no cash inflow / outgo on receipt/ expenditure sides, deduct entries will be made under the receipt Head as well as expenditure head as under :-

- a) "0040-Sales Tax-SOO-Other receipts, Deduct amount transferred to Major Head "6851-Loans for Village & Small Industries for granting interest free loan in lieu of deferred sales tax.
- b) "6851-Loans for Village & Small Industries-800-Other Loans. Deduct amount met from Major Head "0040-Sales Tax provided for deferred payment of sales tax.

4. SECURITIES

Eligible Industrial unit will furnish anyone of the following securities :-

- i) 1st charge / Pari-passu charge on the assets on which the deferred tax/loan is being secured;
- ii) 1st charge on the collectral assets having value

equivalent to the loan amount.

iii) 2nd charge in the case the unit is financed by the Central/Sales Financial Institutions. Nationalized/ Scheduled Bank provided sufficient margin is available on the assets.

iv) 15% of the loan amount in the form of bank guarantee / and 85% in the form of personal sureties.

5. REPAYMENT

The interest free loan in lieu of deferred amount of sales tax will be recoverable after a period of five years as provided by the Excise & Taxation Department in Rule 28-A of the Haryana General Sales Tax Act.

The industrial unit has to deposit the amount on or before the due date in the Treasury under the head "6851- Loans for Village and Small Industries-Small Scale Industries Grant of Interest Free Loan in lieu of deferred Sales Tax."

6. POWER TO SANCTION

General Manager of the District Industries centre of the concerned district will have full power to sanction loan in lieu of amount of deferred tax to the extent the eligibility entitlement certificate has been issued in favour of the industrial units.

7. POWER TO RECOVER THE LOAN

General Manager of the District Industries Centre of the concerned district will be fully empowered to recover loan in the case of default as arrears of land revenue under the provision of the Haryana Public Money Recovery Act. In cases of any default or delay in repayment of loan interest / penalty will be charged as provided under the Haryana General Sales Tax Act and the Rules made thereunder. However for proceeding under the Act *ibid*, a show cause notice and personal hearing will be granted to the industrial unit.

8. MONITORING

To assess the financial health of industrial unit the eligible industrial unit will send financial statements every year during the currency of the loan to the General Manager, District Industries Centre within 6 months of the close of the Financial year. The financial statements will include the balance sheet, trading account and the profit and loss statement of the unit.

9. APPEAL

Appeal against the decision of General Manager, District Industries Centre regarding sanctioning of the loan or recovery thereof shall lie to the Director of Industries, Haryana.”

Rule 28-B(10) of the Rules

“Rule 28-B

Class Of Industries, Period And Other Conditions For Exemption/ Deferment From Payment Of Tax (Sections 13-B and 25-A)

xx

xx

xx

10(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, mis-statement 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 lockout 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;

(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 exemption/entitlement certificate had even been granted to it.

(c) In case of sale/transfer of unit, balance amount of benefit of sales tax exemption/deferment shall be passed on to the purchaser/transferee if it continues with the same/higher level of production without disposing of any assets of the unit which would adversely affect manufacturing or production capacity of the unit for the remaining period subject to fulfilment of all the conditions of these rules :

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;”

12. A perusal of the Scheme shows that it was framed with a view to give relief to the industries, which were already entitled to get the benefit of deferment of payment of sale tax. The amount of deferred sales tax was to be converted into interest free loan. In fact, the scheme was notified on 16.12.1992, much prior to even addition of Rule 28-B in the Rules, which was added vide amendment dated 18.5.1999. Vide this notification Rule 28-A was added in the Rules effective from 1.4.1987 to 31.3.1997. The need to frame the scheme arose on account of provisions of Section 43-B of the Income Tax Act, whereby the unpaid sales tax was treated as income of the assessee. With the framing of the scheme, entire amount of deferment of tax was converted into interest free loan to be advanced by the Industries Department to the eligible industrial units, which in turn was to be

transferred to the Excise & Taxation Department. There was no cash transaction. As a consequence, the industrial units were able to claim deduction under the Income Tax Act.

13. Clause 2 of the scheme defines eligibility. Only the units in whose favour eligibility certificate had been issued by the Industries Department and entitlement certificate had been issued by the concerned Deputy Excise & Taxation Commissioner, were eligible to avail the benefit of the scheme. Clause 3 provides for procedure for applying for interest free loan. Clause 4 provided that interest free loan granted in lieu of deferred amount of sales tax was to be recoverable after a period of five years. It may be added that in the scheme for deferment of sales tax under Rule 28-A of the Act, the repayment was to be made after five years, whereas in terms of Rule 28-B (12)(iv) of the Rules, the deferred amount of tax was to be paid after a period of seven years. Though the scheme was not providing specifically for grant of interest free loan for the amount of tax deferred under Rule 28-B, but still benefit thereof was being granted. The beneficiaries were happy even for returning the amount of interest free loan after a period of five years. Clause 7 of the Scheme provided for powers to the General Manager of the District Industries Centre to recover the loan as arrears of land revenue, in case there is any default. In that eventuality, interest/ penalty was also chargeable as provided for under the Act and the Rules.

14. Rule 28-B of the Rules provided for class of industries, period and other conditions for exemption/ deferment from payment of tax. The operative period was from 1.8.1997 ending on the date on which the policy for incentives to industries is terminated/ revised by the Government of

Haryana in Industries Department. The benefits are either for exemption from payment of tax or deferment for payment of tax to eligible industrial units for the period and the extent of amount as mentioned in Sub-Rule 5 thereof. The benefit and time had relevance with the area where the industry was located.

15. As per Rule 28-B(10) of the Rules, the eligibility certificate granted to an industrial unit was liable to be withdrawn at any time during its currency by the appropriate screening committee in case it is found that the same was obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts; or the unit had discontinued its business or closed down the same for a continuous period of six months except in certain specified circumstances or disposal or transfer of its assets by the unit adversely affecting its manufacturing capacity.

16. In case of withdrawal of eligibility certificate, exemption/entitlement certificate is deemed to have been withdrawn from the first day of its validity and the unit was liable to pay interest and penalty under the Act as if no entitlement certificate had ever been granted. As per Rule 28-B (12)(iv) of the Rules, deferred amount of tax was to be paid after expiry of seven years from the date it was due.

17. In the case in hand, as the facts are on record, the validity of the eligibility certificate of the petitioner was from 9.9.1997 to 8.9.2006. The total amount of admissible benefit to the petitioner was ₹ 44.68 lacs, out of which ₹ 43,90,396/- was availed of by the petitioner upto 30.6.2000. Thereafter, the plant and machinery was partly sold and partly it was leased out. From 30.6.2000, the unit is not in production. As the petitioner violated the conditions of eligibility certificate, the matter was put up in 92nd meeting

of the Higher Level Screening Committee on 16.2.2006 and finding violation of the conditions laid down in Rule 28-B of the Rules, the committee decided to withdraw the eligibility certificate. As a consequence, the petitioner became liable to pay the entire amount of tax, interest and penalty in terms of Rule 28-B (10)(b) of the Rules, as if the benefit of deferment of tax/ exemption was not available to the petitioner. As the petitioner had raised loan from the Industries Department to pay the amount of tax to Excise & Taxation Department, the benefit on that account had been availed of. The amount of interest was calculated by the Assessing Authority. Aggrieved against that order, the petitioner preferred appeal claiming that the amount of tax was paid to the department immediately after it became due after raising interest free loan from the Industries Department, hence, no interest was payable. As per provisions of the Act, in case of delayed payment of tax, interest is chargeable under Section 25(5) and the penalty is chargeable under Section 48 of the Act.

18. The primary contention raised by learned counsel for the petitioner is that there is no default in repayment of interest free loan and there is no provision for levy of interest. Under the Scheme, the demand of interest is totally uncalled for. However, we do not find any substance in the contention raised. The provisions of Rule 28-B of the Rules and the Scheme are, in fact, to be read together. The benefit of deferment of payment of tax is available to an industrial unit, in whose favour eligibility and entitlement certificates have been issued under the provisions of Rule 28-B of the Rules. There are certain conditions attached. Any unit availing the benefit has to fulfill those conditions. On failure, the eligibility certificate could be withdrawn during its currency in terms of Rule 28-B(10) of the Rules. As a

consequence, the unit was liable to pay tax, interest and penalty thereon, as if eligibility/ entitlement certificate was never issued.

19. As has already been noticed above, in terms of Section 43-B of the Income Tax Act, deductions on account of taxes were admissible in a particular year only if those were actually paid and not on accrual basis. As the amount of sale tax was not being paid by the units availing benefit of deferment of payment of tax, the amount was being added in their income resulting in levy of income tax. In these circumstances, coming to the aid of the units claiming such benefits, the State frame Scheme for converting the amount of deferred tax into interest free loan. As even the letter sanctioned by the Industries Department suggests that it was merely a book entry from one State department to another. The relevant lines being 'The expenditure so involved shall be credited under receipt Head "0049- Sales Tax- 800- Other Receipts," and debiting the same amount to the Major Head "6851- Loans for Village & Small Industries- 800- other loans, in lieu of deferred sales tax payment.' There was no third party involved.

20. A perusal of the Scheme shows that the benefit of interest free loan could be availed of only by an industrial unit in whose favour eligibility/ entitlement certificate had been issued in terms of the incentive scheme as notified on 17.5.1989 (Rule 28-A of the Rules), however, it is not in dispute that the Scheme was made applicable even to the beneficiaries under Rule 28-B of the Rules. In case a unit is not in possession of the eligibility certificate, he could not claim the benefit of interest free loan under the Scheme. Moment the eligibility certificate is withdrawn, the entire clock has to be put back, namely, that the petitioner availed of certain benefits to which he was not entitled to. The Scheme is not as such

independent as it was inter-woven with the Rules 28-A and 28-B of the Rules.

21. If the contention raised by learned counsel for the petitioner is accepted, that the Scheme is independent, that would mean that even in the cases where the eligibility certificate granted to a unit is withdrawn even before the period for repayment of interest free loan had expired, the amount could not be recovered from such a unit, what to talk of interest, even though unit was not entitled to claim any benefit of interest free loan in the Scheme. Such an interpretation would be totally absurd. We need to see totality of the scheme of interest free loan, the circumstances and the object with which it was framed. If the Scheme is interpreted in the manner the petitioner suggests, it would mean interest free loan even to the units, who are not entitled for availing that benefits. If the book entries in the Government accounts are reversed stating that the petitioner was not entitled to claim benefit of interest free loan from day one, it would be liable to pay interest. No doubt, technically the petitioner having settled the liability of the sale tax department by raising loan from the Industries Department, he would certainly become liable to pay interest at the rate as provided for under the Act for the period the loan amount was utilised by it.

22. The judgments referred to by the petitioner may not of help as the issues dealt with therein were not similar to the facts of the case in hand. If independently the facts of a case are seen, the position may be different. But where two schemes, namely, the provisions of the Rules and the Scheme are inter-dependent, then holistic view has to be taken for interpretation purposes, seeing the nexus with the object to be achieved.

23. For the reasons mentioned above, we do not find any merit in the present petition. The same is accordingly dismissed.

(Rajesh Bindal)
Judge

21.10.2016
vs

(Darshan Singh)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No