

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 3847 of 2014 (O&M)
Date of decision: August 10 , 2016

Punjab Alkalies & Chemicals Limited

.. Petitioner

v.

Government of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Arun Nehra & Mr. Sant Kashyap, Advocates for the
petitioner.

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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Rajesh Bindal J.

1. The petitioner has filed the present petition impugning the order dated 17.12.2013 (Annexure P-15), whereby the request of the petitioner for extension of period of benefit for exemption from payment of sales tax was rejected.

2. Learned counsel for the petitioner submitted that the petitioner is a public limited company engaged in the manufacture and sale of caustic soda and other in-organic chemicals. It had been promoted by the Punjab

State Industrial Development Corporation Limited (for short, 'PSIDC'),

which is wholly owned Punjab Government Company. PSIDC holds 44% shares of the petitioner-company. New Industrial Policy, 1996 (hereinafter described as “the 1996 Policy”) was notified by the Government on 20.3.1996, which provided for various benefits to the new industrial units as well as the industrial units expanding their capacity. The petitioner-company was incorporated in the year 1975 and came into commercial production on 30.1.1984. After the 1996 Policy was notified, the petitioner after making huge investments increased the capacity for manufacturing caustic soda from 100 metric ton per day to 154 metric ton per day. The commercial production started on 18.12.1998. As per the 1996 Policy and the Punjab General Sales Tax (Deferment & Exemption) Rules, 1991 (for short, 'the Rules'), the petitioner is entitled to the benefit for a period of 120 months from the date of production with a cap of 300% of fixed capital investment. After the unit of the petitioner came into commercial production on 18.12.1998, it applied for issuance of eligibility certificate on 4.6.1999, which was granted on 22.9.2000 effective from 18.12.1998 for a period of 120 months or till such time the maximum amount of exemption is availed of, whichever is earlier. Thereafter, application was filed for grant of exemption certificate, which was granted on 3.1.2001. The petitioner started availing the benefit of exemption from payment of tax on 1.4.2003 and during the period of eligibility could avail of benefit to the extent of ₹ 58.33 crores only.

3. Before the expiry of the period of eligibility, the Principal Secretary, Department of Industries wrote a DO letter to the Financial Commissioner, Department of Excise and Taxation claiming that period of eligibility be made effective from 1.4.2003, the date from which the

petitioner started availing the benefit. Vide letter dated 22.9.2008, the petitioner-company also made a request to the Principal Secretary, Department of Industries in the same line. The issue was considered in the meeting held under the Chairmanship of the then Chief Secretary on 13.1.2010 and it was decided that PSIDC should move a case for extension. Thereafter, PSIDC made a request on 11/26.2.2010 to the Financial Commissioner, Department of Excise & Taxation. PSIDC vide communication dated 3.6.2010 conveyed the petitioner that request for extension of period was rejected by the Department of Excise and Taxation vide memo dated 24.5.2010. Challenging the same, the petitioner filed CWP No. 15831 of 2013—Punjab Alkalies and Chemicals Ltd. v. Government of Punjab and others, which was dismissed as withdrawn on 26.7.2013 with liberty to the petitioner to seek appropriate remedy in accordance with law. Again a representation was made by the company on 16.8.2013 to the Financial Commissioner, Department of Excise and Taxation and Principal Secretary, Department of Industries and Commerce for the same relief, which was rejected vide communication dated 17.12.2013.

4. Impugning the aforesaid communication, learned counsel for the petitioner submitted that there is specified period provided under the Rules for issuance of eligibility certificate and the exemption certificate after the application is filed. The petitioner had fulfilled all the pre-requisite conditions for issuance of eligibility certificate, but still the authorities delayed issuance thereof and as a result, the petitioner could not avail of the benefit to the extent of its entitlement. Once the maximum limit for which the benefit could be availed of by the petitioner had not expired and merely the period had expired, the extension should have been granted. The

provision provides for the benefit to be availed from the date of production, which is not possible as issuance of eligibility and exemption certificates will always take some time. As there was delay of 1-1/2 years in issuance of eligibility certificate after the application was filed, the petitioner is entitled to extension for that period. The provisions of the Rules also envisage issuance of provisional eligibility and exemption certificates. Those should have been adhered to. He further referred to the fact that in similar circumstances, M/s Godrej & Boyce Mfg. Co. Ltd., was granted extension.

5. On the other hand, learned counsel for the State submitted that once the earlier writ petition filed by the petitioner was dismissed giving liberty to the petitioner to avail of its appropriate remedy, the same was not by way of a representation, rather, the petitioner should have availed of its statutory remedy provided under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The same could not be a fresh representation. He further submitted that application for issuance of eligibility certificate filed by the petitioner was initially rejected vide communication dated 11.10.1999 as the petitioner failed to complete the requirements. The order was challenged by the petitioner in appeal. The appellate authority remitted the matter back to the competent authority on 23.12.1999 giving liberty to the petitioner to supply the requisite documents. It was thereafter that the petitioner fulfilled the requisite conditions and was issued eligibility certificate on 22.9.2000. The validity thereof as per the provisions of the Rules was from the date of production for a period of 10 years or till such time the petitioner avails of the maximum amount of benefit admissible i.e., ₹ 168.66 crores, whichever is earlier.

6. It was further submitted that though the petitioner was granted exemption certificate on 3.1.2001, however, it did not avail of the benefit immediately thereafter, rather, started the same about more than two years thereafter w.e.f. 1.4.2003. That shows that the petitioner was, in fact, not interested in availing the benefit of exemption from payment of tax. Had the petitioner been serious, it would have claimed the benefit immediately from the date of issuance of exemption certificate. During this period, the petitioner collected the tax and deposited with the Government. The period of eligibility expired on 18.12.2008. Immediately after the eligibility and exemption certificates were issued to the petitioner, it did not raise the issue regarding the date of entitlement, as the certificates clearly mentioned that the same were valid from the date of production. It was strictly in terms of the provisions of the Rules. First representation by the petitioner was made on 22.9.2008. After considering the fact that PSIDC had substantial stake in the company, the matter was considered at different levels and was finally rejected on 24.5.2010, which was conveyed to PSIDC as well as the petitioner-company. The order was impugned by the petitioner more than three years thereafter by filing CWP No. 15831 of 2013, which was dismissed as withdrawn with liberty to avail of any other remedy in accordance with law. The delay in filing the writ petition impugning the rejection of the claim of the petitioner has not been explained at all. Thereafter, again without availing the statutory remedy as provided for under the Act against the orders passed by the authorities, the petitioner thought of filing fresh representation only, which was again rejected vide communication dated 17.12.2013.

7. The submission is that firstly there is no provision under the Rules, which provide for extension of period of eligibility. The Rules strictly provide that period for availing the benefit will start from the date of production and will end either when the maximum permissible period is over or the maximum permissible amount of benefit is exhausted, whichever is earlier. Though there are provisions for issuance of provisional eligibility and exemption certificates, but the petitioner never invoked the same. In fact, the conduct of the petitioner shows that it was not interested in availing the benefits, as firstly the application for issuance of eligibility certificate was rejected on account of non-compliance of the requisite formalities. Thereafter, when the exemption certificate was issued, the petitioner did not start availing the benefit for a period of more than two years. Further, when request of the petitioner for extension in period of eligibility was rejected, the communication was impugned by filing a writ petition more than three years thereafter. The case of M/s Godrej & Boyce Mfg. Co. Ltd. is different, as there is a provision made in the Rules therefor. It was a case of deferment of tax and not exemption from payment of tax, as in the case of the petitioner. Now the scheme of taxation has changed with the introduction of Value Added Tax. The units, which were allowed exemption or deferment from payment of tax under the Act, were permitted to avail of the benefits under the Punjab Value Added Tax Act, 2005, but it is too late now to grant benefits.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts, which are not in dispute, are that expanded capacity of the petitioner to manufacture caustic soda came into commercial

production on 18.12.1998. As per the provisions of the Rules, the petitioner applied for issuance of eligibility certificate for availing the benefit of exemption from payment of tax. The application was initially rejected as the petitioner failed to fulfil the requirements provided for under the Rules. In appeal, the order was set aside and the matter was remitted back vide order dated 23.12.1999. Thereafter, eligibility certificate was issued to the petitioner on 22.9.2000, valid from 18.12.1998, the date of production for a period of 120 months with a maximum limit of ₹ 168.66 crores, whichever expires earlier. The exemption certificate was issued in favour of the petitioner on 3.1.2001. At that stage, the petitioner did not raise any plea regarding extending the period of eligibility from the date of issuance of eligibility or exemption certificates, rather, the conduct of the petitioner shows that it was not interested in availing the benefits. As is evident from the fact that exemption certificate was issued in favour of the petitioner on 3.1.2001, but for the reasons best known to the petitioner, it started availing the benefit only from 1.4.2003, after a gap of more than two years.

10. Though earlier Chairman of the petitioner-company, who was none else than the Secretary of the Department of the Industries, Govt. of Punjab, wrote a DO letter to the Financial Commissioner, Department of Excise and Taxation for extending the period of eligibility on 11/26.2.2010, however, first representation was made by the company on 22.9.2008 when the period of eligibility was going to expire. The same was considered at various levels keeping in view the fact that in the petitioner-company, PSIDC, which is government owned company, had 44% stake, but still as the request of the petitioner could not be acceded to in view of the clear provisions of the Rules, the same was rejected vide communication dated

24.5.2010. It was conveyed to PSIDC as well as the petitioner. The petitioner kept quiet and was satisfied with the decision so conveyed, though at that time the petitioner could have availed of its statutory remedy under the Act. For the first time, CWP No. 15831 of 2013 was filed in this court impugning the communication dated 3.6.2010, more than three years thereafter. There is no explanation for this delay. The same was dismissed on 26.7.2013 with the following order:

“After addressing arguments for some time, counsel for the petitioner prays that the writ petition may be dismissed as withdrawn with liberty to the petitioner to seek such other remedy as may be available to it, in accordance with law.

Dismissed as withdrawn with the aforestated liberty.”

11. Even though the representation filed by the petitioner had already been rejected by the authorities and remedy of a second representation, unless the earlier order was set aside by any competent authority, could not be visualised as the remedy available to the petitioner in accordance with law, but still the petitioner preferred representation again to the Financial Commissioner, Department of Excise and Taxation and Principal Secretary, Department of Industries and Commerce, who is none else than the Chairman of the Company. Even that representation was rejected and was bound to be rejected as there are no enabling provisions in the Rules under which the period for which the benefit could be availed of by an industrial unit could be extended for any reason whatsoever, as the Rules clearly provide that benefit has to be from the date of production. Even otherwise, in the case in hand, the petitioner is seeking to claim that there was delay in issuance of eligibility certificate to the petitioner on

account of lapse on the part of the respondents. There is nothing on record to suggest that. As per the stand taken by the respondents, the application was initially rejected on account of non-compliance of the requisite formalities. It was only in appeal that the order was set aside and the matter was re-examined.

12. Though the issue regarding provisional eligibility and exemption certificates was sought to be raised, but the fact remains that the petitioner made no effort for issuance thereof. The case of M/s Godrej & Boyce Mfg. Co. Ltd. cannot be compared as for granting the benefit to that company, there is a provision made in the Rules. This court in exercise of extra-ordinary jurisdiction cannot direct the authorities to frame the Rules.

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

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

August 10, 2016
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No