

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 9083 of 2014 (O&M)
Date of decision: August 10, 2016

Vardhman Special Steels Ltd.

.. Petitioner

v.

The State of Punjab and another

.. Respondents

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

Present: Mr. Sandeep Goyal, Advocate 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 challenging the order dated 31.10.2006 (Annexure P-21), passed by Financial Commissioner (Taxation); order dated 22.5.2008 (Annexure P-20), passed by Excise and Taxation Commissioner, Punjab and order dated 2.9.2013 (Annexure P-18), passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal'). Vires of the note appended to Rule 4(1) of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, 'the Rules') has also been challenged. Further prayer in the alternative is to read down the provisions of Rule 3(2) of the Rules to mean that the benefit of exemption/deferment for payment of tax shall be available from the date of issuance of exemption/entitlement certificate.

2. Learned counsel for the petitioner submitted that the petitioner is engaged in the manufacture of special and alloys steel for use in automobile and engineering industry. New rolling mill was set up by the

petitioner. As per Punjab Package of Incentives, 1992, as notified on 28.9.1992, the petitioner was eligible to claim benefit of exemption from payment of sales tax for a period of 84 months, subject to a maximum of 150% of fixed capital investment. The unit came into production on 15.9.1993. The application was submitted for issuance of eligibility certificate and consequently the exemption certificate. The application remained pending and finally after a period of 6-1/2 years from the date of production that the eligibility certificate was issued on 3.3.2000. Thereafter, the exemption certificate was issued on 18.4.2000. The period of validity was from 15.9.1993 till 14.9.2000. Meaning thereby the period for which the petitioner could claim benefit of exemption was merely five months. As per Rule 3(2) of the Rules, the benefit is admissible to an eligible industrial unit only after the eligibility certificate is issued in its favour. Rule 4 of the Rules provides the period for which the benefit is admissible to an eligible industrial unit. Different periods and the amount of benefit have been provided for the units located in different areas. In the case of the petitioner, the benefit is admissible for a period of 84 months. The note appended to Rule 4 postulates that benefit is admissible from the date of production. While referring to the aforesaid provisions, learned counsel for the petitioner submitted that there is apparent discrepancy in the aforesaid rule, as an industrial unit cannot be granted eligibility certificate on the date of production. The process is bound to take some time. Once the benefit is to be granted only after the issuance of eligibility certificate, the period for which the benefit is granted also should have been from that date and not from the date of production.

3. He further submitted that in case of M/s Godrej & Boyce Mfg. Co. Ltd., the period which was spent in issuing the eligibility certificate to the company, was extended so as to enable the company to avail of the admissible benefit. There is no specific reply to the contention raised by the petitioner in the writ petition regarding the case of M/s Godrej & Boyce Mfg. Co. Ltd., being similar to the petitioner. The petitioner cannot be discriminated.

4. Learned counsel for the State submitted that after the eligibility certificate was issued to the petitioner, it enjoyed the benefit. The eligibility certificate expired on 14.9.2000. Thereafter, it filed application seeking refund of the amount of tax deposited during the period the petitioner was entitled to exemption from payment of tax, vide letter dated 24.7.2002. The same was rejected by the competent authority vide memo dated 25.11.2002. The communication was challenged by the petitioner by filing CWP No. 2952 of 2003—Vardhman Special Steels v. State of Punjab and others, seeking a direction to the respondents therein to refund the amount of tax deposited during the period of exemption and further that the order passed by the competent authority rejecting the contention of the petitioner was non-speaking. This court, vide judgment dated 15.7.2003, set aside the order dated 25.11.2002 and remitted the matter back to the Excise and Taxation Commissioner, Punjab to pass a fresh order on the application for refund/adjustment of the excess tax, if any, paid under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). It was on the premise that the order passed by the Excise and Taxation Commissioner was non-speaking. The matter was heard by the Excise and Taxation Commissioner, who vide order dated 13.10.2003, rejected the claim of the petitioner. It was for the first

time that before the Excise and Taxation Commissioner, the petitioner raised the issue for extension of time for availing the benefit. The order attained finality as the petitioner did not avail of its appropriate remedy against that order at that stage. Thereafter, the petitioner addressed a letter to the then Chief Minister, Punjab. After considering the request made therein by the Financial Commissioner, Excise and Taxation, Punjab, decision was communicated to the Chairman of the petitioner vide letter dated 31.10.2006. Even at that stage, no remedy was availed of by the petitioner. He filed a fresh representation on 15.1.2007 now praying for extension of time for availing the exemption. The same was rejected by the Excise and Taxation Commissioner vide communication dated 16.8.2011. It was challenged by the petitioner before the Tribunal in statutory appeal. The Tribunal vide order dated 5.3.2012, while setting aside the order passed by the Excise and Taxation Commissioner, remitted the matter back for passing a speaking order. Thereafter, the Excise and Taxation Commissioner passed order on 8.8.2012 rejecting the plea raised by the petitioner. The order was upheld by the Tribunal in appeal filed by the petitioner, as the petitioner was not able to refer to any of the provisions of the Rules, under which the petitioner was entitled to extension of period for availing the benefit of exemption from payment of tax.

5. Learned counsel for the State further submitted that the present petition is highly belated as the claim of the petitioner was rejected by the Excise and Taxation Commissioner by passing order on 13.10.2003 after the matter was remitted back by this court to the Excise & Taxation Commissioner for passing a speaking order. The petitioner kept quiet, though against the order passed by the Excise and Taxation Commissioner,

statutory appeal was maintainable. It was further submitted that once the order passed by the Excise & Taxation Commissioner had attained finality, the petitioner having not challenged the same, any subsequent judgment will not give a cause of action to the petitioner to file a fresh representation by taking a different stand. Thereafter, even a request made by the Chairman of the petitioner-company to the then Chief Minister was considered and the rejection thereof was conveyed to him vide communication dated 31.10.2006. Even at that stage, the petitioner kept quiet. Fresh representation was filed only on 15.1.2007, which was not maintainable in the cases where there are statutory remedies available against the order passed by any authority under the Act.

6. He further submitted that it is too late now to challenge the vires and provisions of the Rules, once the petitioner did not feel aggrieved of the same at the time when the eligibility certificate was issued to it and it availed the benefit initially. It did not raise the issue regarding delay in issuance of eligibility certificate at the appropriate time in case there was any lapse on the part of the department in issuing the eligibility certificate. The petitioner should have availed of its appropriate remedy at that time. Initially, the prayer made about two years after the expiry of the eligibility period was only for refund of the tax deposited during the period of exemption. When the same was rejected, a new plea of extension of period of exemption was raised. By no stretch of imagination, the petitioner could claim the same. He further submitted that the facts in the case of M/s Godrej & Boyce Mfg. Co. Ltd. are different than the case in hand. It was a case of deferment of payment of tax. In that case, amendment was made in the Rules. Neither the vires of that Rule have been challenged nor M/s

7. After hearing learned counsel for the parties, we do not find any reason to interfere in the present petition. As is claimed by the petitioner, the unit set up by it for manufacture of special and alloys steels for use in automobile and engineering sectors came into production on 15.9.1993. It applied for issuance of eligibility certificate. The same was granted to the petitioner on 3.3.2000. Thereafter, the petitioner was granted exemption certificate on 18.4.2000. The validity thereof was from 15.9.1993 to 14.9.2000 as the entitlement of the petitioner was for a period of 7 years to the extent of 150% of the fixed capital investment. There is nothing on record as to what was the reason for delay in issuance of eligibility certificate, as the facts on record suggest that the petitioner availed of the benefit for the period it was entitled to, which expired on 14.9.2000. As is evident from the communication dated 25.11.2002, the petitioner made a representation dated 24.7.2002 for refund of the tax already paid for the period the unit of the petitioner was exempted from payment of tax in terms of the exemption certificate issued in its favour. For that period, as claimed by the petitioner, it had collected and paid the tax to the State. The request made by the petitioner was rejected by the Excise and Taxation Commissioner vide communication dated 25.11.2002 mentioning that the tax charged and paid by the unit cannot be refunded. The order was impugned by the petitioner by filing CWP No. 2952 of 2003 with the following prayer:

“a) XX XX XX

b) Issue a writ in the nature of certiorari for quashing the

impugned order dated 25.11.2002, annexure P-18 vide which the application of the petitioner for the grant of adjustment/refund of sales tax for the period 15.9.1993 to 18.4.2000 has been rejected by totally non-speaking order and without any application of mind and being also against the provisions of Rule 4A of the 1991 Rules and also against the incentive granted to the petitioner vide eligibility certificate, dated 3.3.2000 as well as being violative of Articles 14, 19(1) (g) and 21 of the Constitution of India.

c) Issue a writ in the nature of prohibition/mandamus directing the respondents to refund/adjust an amount of Rs. 225.98 lacs which has been paid as sales tax by the petitioner to the respondents w.e.f. 15.9.1993 to 18.4.2000 as the exemption certificate for exemption of sales tax was granted to the petitioner in accordance with the provisions of the 1991 Rules for a period w.e.f. 15.9.1993 to 14.9.2000 but however the petitioner was actually granted exemption of sales tax from the date of issuance of certificate of eligibility i.e. w.e.f. 18.4.2000 to 14.9.2000, despite the provisions of Rule 4A of the 1991 Rules.

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8. The writ petition was allowed by this court on the ground that the order passed by the Excise & Taxation Commissioner was non-speaking. The communication dated 25.11.2002 was set aside. The matter was remitted back to the Excise & Taxation Commissioner to hear and

decide the same afresh by passing a speaking order. The writ petition was disposed of on 15.7.2003. Thereafter, the Excise & Taxation Commissioner heard the petitioner and rejected the prayer made by the petitioner for refund of the tax charged and deposited by it with the State on 13.10.2003. The claim made by the petitioner that in fact it had not charged the tax from the buyer and had paid the same from its own resources was also considered and rejected. It was at that stage that the petitioner also made a prayer to the Excise & Taxation Commissioner to extend the period of eligibility for the period the application remained pending with the authorities for grant of eligibility and exemption certificates. The same was also rejected vide letter dated 13.10.2003. As per the provisions of Section 20 of the Act, appeal from every original order passed under the Act or the Rules by the Excise & Taxation Commissioner or any officer exercising the powers of the Commissioner was maintainable before the Tribunal. The petitioner kept quiet and did not avail of its statutory remedy of appeal against the order passed by the Excise & Taxation Commissioner on 13.10.2003 as a result, the same attained finality.

9. Thereafter, as is evident from the material on record, the Managing Director of the petitioner-company made a request to the then Chief Minister of Punjab for the same relief, which was considered by the Department of Excise and Taxation and vide letter dated 31.10.2006, the Financial Commissioner, Excise & Taxation, Punjab, conveyed rejection thereof to the Managing Director of the petitioner-company. Though such a representation was not maintainable in the light of the fact that the petitioner had statutory remedy of appeal against the order passed by the Excise & Taxation Commissioner on 13.10.2003. The petitioner did not avail of any

remedy even at that stage. The petitioner thought of filing fresh representation on 15.1.2007 referring to certain judgment and the case of M/s Godrej & Boyce Mfg. Co. Ltd. claiming parity. Such a representation was not maintainable once the petitioner had earlier failed to avail of its statutory remedy against the order passed by the Excise & Taxation Commissioner on 13.10.2003 in pursuance of the directions issued by this court. The representation of the petitioner dated 15.1.2007 was considered and rejected by the Excise & Taxation Commissioner vide communication dated 16.8.2011. The Tribunal, vide order dated 5.3.2012, remitted the matter back to the Excise & Taxation Commissioner opining the order impugned therein to be non-speaking. Thereafter, again the Excise & Taxation Commissioner rejected the representation vide order dated 8.8.2012. The same was upheld by the Tribunal in appeal on 2.9.2013.

10. In the light of the fact that there was statutory remedy available to the petitioner against the order passed by the Excise & Taxation Commissioner on 13.10.2003, any subsequent representation made by the petitioner, that too more than three years thereafter raising any plea was not maintainable and as a consequence all subsequent orders passed thereon have no value at all. The rights between the parties stood settled on 13.10.2003. It is a case where the orders are passed under the Act and the Rules, which is a complete code in itself. There is no question of representation being entertained when the orders are being passed by quasi-judicial authorities against which statutory remedies are available. The petitioner having failed to avail of the same at the appropriate time cannot be permitted to get the issue re-opened merely by filing a representation.

11. There is nothing on record to suggest that the petitioner ever raised any issue regarding the period of its entitlement of exemption from payment of tax immediately after the eligibility and exemption certificates were issued to it. The issue initially was also sought to be raised nearly two years after the expiry thereof. There is no provision in the Rules providing for extension of period of eligibility or changing the dates thereof.

12. It is too late to consider the prayer of the petitioner regarding validity of the provisions of the Rules with reference to the period of entitlement of exemption from payment of tax once the issue had attained finality way back in the year 2003. The plea of discrimination sought to be raised is also to be noticed and rejected for the reason that firstly M/s Godrej & Boyce Mfg. Co. Ltd. was granted deferment from payment of tax and not exemption and further there was an amendment made in the Rules to that effect. The vires of that Rule has not been challenged.

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

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

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