

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

VATAP No. 188 of 2014 (O&M)

Date of decision: 23.8.2016

Jamuna Fibres Private Limited

.. Appellant

VS

The State of Haryana and another

.. Respondents

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

Present: Mr. Sandeep Goyal, Advocate, for the appellant (s).
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos. 188 to 204 of 2014, as the common legal issues are involved. Not only that even the appellant is the same, as the appeals pertain to different periods.

2. The facts have been extracted from VATAP No. 188 of 2014.

3. The appellant has filed the present appeal raising the following substantial questions of law arising out of the order dated 27.11.2013 passed by the Haryana Tax Tribunal at Chandigarh in STA Nos. 160-176 of 2013-14:-

“(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in upholding the order of the lower authorities raising the demand prior to the date of cancellation of exemption certificate even though the first appellate authority vide order dated

21.12.2006 had held that tax is recoverable w.e.f. 1.7.2000 and the same had attained finality?

- (ii) Whether on the facts and in the circumstances of the case, the order of first appellate authority dated 21.12.2006 (A-7) operates as res-judicata between the parties as the same had neither been challenged by any of the parties and thus, recovery of tax prior to 1.7.2000 is bad in law?
- (iii) Whether on the facts and in circumstances of the case, the order of Assessing Authority raising demand is violative of principles of judicial discipline?
- (iv) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in making recovery of the tax in terms of Rule 28-A(10)(v) even though the Exemption Certificate has not been cancelled during its validity?
- (v) Whether the Ld. DETC could have cancelled the Exemption Certificate vide his order dated 25.10.2006 even though the Exemption Certificate had already lost its validity on 30.6.2000 as per Rule 28-A(6)(b)?”

4. Learned counsel for the appellant submitted that the appellant had set up an industrial unit to manufacture cotton yarn. It came into production on 20.3.1993. Being an eligible industrial unit in terms of the provisions of Haryana General Sales Tax Act, 1973 (for short, 'the Act'), the appellant applied for issuance of eligibility certificate claiming the benefit of exemption from payment of tax. The eligibility certificate was issued to

the appellant with validity from 20.3.1993 to 19.3.2002. After receipt of eligibility certificate, the appellant applied for issuance of exemption certificate, which was issued on 28.10.1993 entitling the appellant to claim benefit of exemption from payment of tax to the extent of ₹ 72,11,700/-. The appellant continued availing the benefit till the validity of the eligibility certificate as well as the exemption certificate expired. Vide order dated 7.11.2002, passed under Rule 28A(11)(b) of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules'), the Deputy Excise & Taxation Commissioner, withdrew the entire benefit availed by the appellant on the ground that the appellant unit was required to continue its production for next five years after availing the benefit at the average level of last five years. The appellant was directed to deposit the entire amount of benefit availed of along with interest. The appellant preferred appeal against the aforesaid order to the Joint Excise & Taxation Commissioner (Appeals), who vide order dated 28.1.2005 set aside the order and remitted the case back to the Deputy Excise & Taxation Commissioner for passing a fresh order in terms of the observations made in that order. Thereafter, process was initiated to withdraw the eligibility certificate granted to the appellant. The matter was put up in the meeting of Lower Level Screening Committee held on 11.8.2006. The matter was dropped, however, it was observed that the concerned department should have initiated action at its own level under Rule 28-A of the Rules. Thereafter, the matter was taken up under Rule 28A (4) of the Rules and vide order dated 25.10.2006, the Deputy Excise & Taxation Commissioner, cancelled the exemption certificate granted to the appellant with effect from 1.7.2000 and in view of the Rule 28A(10)(v) of the Rules, the appellant was directed to deposit the entire amount along with

interest. The appellant preferred appeal against the aforesaid order to the Joint Excise & Taxation Commissioner (Appeals). The Appellate Authority vide order dated 21.12.2006, upheld the order while noticing the contention raised by learned counsel for the appellant that even though the exemption certificate was cancelled with effect from 1.7.2000, still the assessing authority was demanding the entire amount of tax, even for the period prior thereto. The Appellate Authority upheld the order while noticing that in case the impugned order was being wrongly interpreted by the assessing authority, the order cannot be faulted with.

5. Learned counsel for the appellant further submitted that thereafter vide order dated 11.2.2010, the assessment of the appellant for the year 1997-98 was framed for the first time and demand of tax and interest was raised noticing the fact that the exemption certificate granted to the appellant was not renewed after 1.7.2000. The unit had stopped production. Aggrieved against the order of assessment, the appellant preferred appeal before the Joint Excise & Taxation Commissioner (Appeal), who vide order dated 31.5.2013 dismissed the same. The appeal of the appellant before the Tribunal also met the same fate as the same was dismissed vide order dated 27.11.2013. It is the aforesaid order, which is impugned before this Court raising the aforesaid substantial questions of law.

6. Learned counsel for the appellant submitted that Section 13B of the Act gives power to Government to grant exemption from payment of tax to certain class of industries. In exercise of powers conferred under Section 13B of the Act, Rule 28A was inserted in the Rules. Rule 28A(2)(j) defines eligibility certificate, whereas sub-rule (k) thereof defines exemption certificate. Rule 28A(5) of the Rules provides for the procedure for issuance

of eligibility certificate, whereas sub-rule (6) thereof provides the procedure for issuance of exemption certificate. The validity of exemption certificate is for one year. Sub-rule (7) of Rule 28A of the Rules provides that exemption certificate is to be renewed from year to year, for which application is required to be made on statutory form. Sub-rule (8) of Rule 28A of the Rules provides for the conditions under which eligibility certificate granted to an industrial unit can be withdrawn. If it is so, the exemption certificate is automatically withdrawn and entire amount of tax benefit availed of by the industrial unit is recoverable along with interest or penalty. Sub-rule (9) of Rule 28A of the Rules provides for conditions under which exemption certificate can be cancelled. Sub-rule (10) of Rule 28A provides that on cancellation of eligibility or exemption certificate before it is due for expiry, the entire amount of tax shall become payable. Sub-rule (11) of Rule 28A of the Rules lays down certain conditions, which are applicable on an industrial unit for the period subsequent to the period for which the benefit of exemption has been availed of.

7. Learned counsel for the appellant further submitted that the rates of tax on sale of goods in the course of Inter-State was exempted for the units availing exemption vide notification dated 4.9.1995 issued in exercise of powers conferred under Section 8(5) of the Central Sales Tax Act, 1956 (for short, 'the Central Act').

8. Learned counsel for the appellant while referring to a Division Bench of this Court in A. S. Fuels Pvt. Ltd. And another vs State of Haryana and others (2002) 126 STC 48 submitted that this Court had opined that in case the exemption certificate is withdrawn that is only for the year of its validity as it is to be renewed on year to year basis. However, he submitted

that when the matter was taken up before Hon'ble the Supreme Court by the State against the aforesaid judgment, Hon'ble the Supreme Court in State of Haryana and others vs A. S. Fuels Pvt. Ltd. And another (and other appeals) (2008) 16 VST 546 opined that even in that case the entire amount of benefit availed of by the industrial unit can be recovered. Facts in that case were distinguishable as it had come on record that in that case even the eligibility certificate of the party before Hon'ble the Supreme Court had been cancelled. In the case in hand, though the proceedings were initiated for cancellation of eligibility certificate, however, the matter was dropped by the Lower Level Screening Committee.

9. Learned counsel for the appellant further referred to a Division Bench Judgment of this Court in M/s Stella Industries (P) Limited vs State of Haryana and others (2007) 29 PHT 54, where this Court opined that the eligibility certificate cannot be withdrawn after expiry of its currency period. The same was upheld by Hon'ble the Supreme Court as Special Leave to Appeal (Civil) No. 11053 of 2007 State of Haryana and others vs M/s Stella Industries (P) Ltd. filed against the aforesaid judgment was dismissed on 13.12.2007. Reference was also made to judgment of this Court in M/s Sai Beverages (P) Limited, New Delhi vs State of Haryana (2001) 17 PHT 197, in which earlier judgment of this Court in A. S. Fuels (P) Limited's case (supra) was followed. Special Leave to Appeal (Civil) No. 19347 of 2001 State of Haryana vs M/s Sai Beverages (P) Limited filed against the aforesaid judgment was also dismissed on 26.11.2001.

10. Further it was submitted that the Deputy Excise & Taxation Commissioner while cancelling the exemption certificate granted to the appellant ordered that the same is cancelled with effect from 1.7.2000. The

department was not aggrieved against that order as no further proceedings were taken. Even if the order was wrong, it is final between the parties and is binding on them. In support, reliance was placed upon judgments of Hon'ble the Supreme Court in Gorie Gouri Naidu (Minor) and another vs Thandrothu Bodemma and others (1997) 2 Supreme Court Cases 552 and Kalinga Mining Corporation vs Union of India and others (2013) 5 Supreme Court Cases 252.

11. Another contention raised by learned counsel for the appellant was that the assessment years in question in all the appeals are from 1992-93 till 2000-2001. Section 28 of the Act provides that the assessment of a dealer can be framed within 5 years of a particular assessment year. Even Rule 28A(10)(ii) of the Rules provides that the assessment of a dealer availing exemption of tax has to be completed by 31st December of the succeeding year. He further submitted that the Haryana General Sales Tax Act was repealed with the enactment of the Haryana Value Added Tax Act, 2003 (for short, 'the VAT Act') with effect from 1.4.2003. The maximum period provided for assessment under Section 15(3) of the VAT Act is 3 years. Even if Section 61 of the VAT Act is read, the maximum period upto which the process for assessment could be stretched can be 3 years from 1.4.2003 and not beyond that. In the case in hand, the assessment was framed much beyond that, hence, barred by limitation. In support of the arguments, reliance was placed upon Division Bench judgments of this Court in Ballarpur Industries Limited vs State of Punjab and others (2010) 35 PHT 5, VATAP No. 110 of 2013 The State of Punjab and others vs M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, decided on 26.2.2014 and GSTR No. 9 of 2011 M/s Mahavir Techno Ltd.,

Kurukshetra vs State of Haryana, decided on 30.3.2016.

12. As regards the demand raised under the Central Act is concerned, it was submitted that during the period of exemption, the appellant did not charge any tax as per the provisions under the Rules. There is nothing provided for under the Central Act or the notification issued thereunder for demand of tax at any subsequent stage by a dealer, who had claimed the benefit thereof. Hence, no demand can be raised.

13. On the other hand, learned counsel for the State submitted that Rule 28A(9) of the Rules provides for cancellation of exemption/entitlement certificate under certain specific circumstances. It does not provide for any date from which it could be cancelled. Cancellation means from day one. It was not a case of non-renewal. The consequence of cancellation of exemption / entitlement certificate has been provided for under Rule 28A(10)(v) of the Rules. In the case of the appellant, it had stopped production in the year 2000, during even currency of its eligibility period, whereas in terms of Sub-rule 11 of Rule 28A of the Rules, a unit is required to remain in production even for next five years, after availing the exemption. The Rules cannot be interpreted in the manner sought to be suggested by the appellant. The exemption certificate issued to the appellant was cancelled and as a consequence the demand of tax was raised. There is no illegality in the action of the respondents.

14. Learned counsel for the State further submitted that the orders vide which the demand has been raised against the appellant are merely consequential to the order passed by the Deputy Excise & Taxation Commissioner withdrawing the exemption certificate. Those have been upheld in appeal. She further submitted that the facts of the case in hand and

before Hon'ble the Supreme Court in A. S. Fuels Pvt. Ltd.'s case (supra) were identical and, in fact, support the case of the department. She further submitted that even on the ground of limitation, the orders of assessment cannot be set aside as the language used in Section 28(5) of the Act is that the Assessing Authority shall proceed to assess and not finally pass the order of assessment. There is no limitation prescribed for passing the order. As per the scheme of the Act, the benefits are granted to promote industrialization and also ensure that the industries remain in production for a subsequent period of five years and pay revenue to the State. There is no question of law in the appeals and the same be dismissed.

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

16. The undisputed facts on record are that the appellant industrial unit came into commercial production on 20.3.1993. It was issued eligibility certificate valid from 20.3.1993 to 19.3.2002 for a total sum of ₹ 72,11,700/-. Subsequently exemption certificate was issued on 28.10.1993. Benefit of ₹ 27,95,959/- was availed of by the appellant out of the total benefit admissible upto June, 2000. The unit stopped production thereafter. The benefits, which were availed of by the appellant during the period of its eligibility have been withdrawn and the amount is sought to be recovered in exercise of powers conferred under the Rules.

17. The relevant provisions of the Act, the Rules and the VAT Act , are extracted below:-

Sections 28 (4) and 28(5) of the Act

Assessment of registered dealer

(1) to (3) xx

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(4) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the assessing authority shall, within five years after the expiry of such period, proceed to assess, to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

Rules 28A(2)(j)(k), (6) to 11 of the Rules

“Rule 28A(2)(j) "eligibility certificate" means a certificate granted in Form ST-72 by the appropriate screening committee to an eligible industrial unit for the purpose of grant of exemption/ deferment;

Rule 28A(2)(k) "exemption certificate" means a certificate granted in Form ST-73 by the Deputy Excise and Taxation Commissioner of the district to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as the case may be;

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(6) (a) An eligible industrial unit which has been issued with an eligibility certificate (hereinafter referred to as the applicant unit), shall, within sixty days of its receipt make an application for the grant of exemption or entitlement certificate, as the case may be, in Form ST-71 to the Deputy Excise and Taxation Commissioner of the District in which his unit is located. The application shall be accompanied with an attested copy of the eligibility certificate and other documents mentioned in the application.

No application shall be entertained if not received

within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having been not made if the applicant fails to complete it on an opportunity afforded to him in this behalf. On receipt of application, the Deputy Excise and Taxation Commissioner shall ask the applicant unit seeking benefit of,-

- (i) tax deferment to either execute a mortgage deed in Form ST-74 creating a pari-passu first charge along with financial institutions/banks on the assets of the unit, or to furnish a bank guarantee for 15 per cent of the total benefit to be availed of in a year and a surety bond in Form ST-50 for the balance amount of 85 per cent. The mortgage deed/agreement or bank guarantee shall be valid till the recovery of the entire deferred amount of tax. The bank guarantee, if expiring early or if furnished on annual basis shall be renewed two months before the date of expiry failing which the unsecured deferred tax shall become due for payment immediately;
 - (ii) tax exemption, to either execute a surety bond in Form ST-50 equivalent to 15 per cent of the amount of notional sales tax liability sought to be exempted or a bank guarantee for that amount in a year, which shall be valid for the period extending to five years after the expiry of total period of tax exemption).
- (b) The Deputy Excise and Taxation Commissioner shall after satisfying himself that the applicant unit is holding a genuine and valid eligibility certificate, has furnished adequate security and that his application is in order will issue him the exemption/entitlement certificate as the case may be, within thirty days of the receipt of the application. One copy of the certificate shall be sent to the

Director of Industries or The General Manager, District Industries Centre as the case may be and one copy shall be retained in the record. The certificate issued shall be valid unless cancelled or withdrawn from the date of commercial production or from the date of issue of entitlement/exemption certificate, as the case may be, to the 30th June next or when notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier.

Note: The agreement or the mortgage deed or the bank guarantee, as the case may be, is an important document and shall be entered in a register to be maintained in Form ST-75 by the Deputy Excise and Taxation Commissioner concerned in his personal custody. At the time of transfer of the charge of his office, the Deputy Excise and Taxation Commissioner shall hand over the register as well as the documents to his successor personally against proper receipt and shall send a certified copy of the same to the Excise and Taxation Commissioner by name who will acknowledge its receipt to both the officers.

(7)(a) The exemption certificate or the entitlement certificate, as the case may be, shall be renewed from year to year for which the industrial unit shall make an application to the Deputy Excise and Taxation Commissioner incharge of the district by the 31st May in Form ST-71. The application shall be accompanied with exemption/entitlement certificate, additional security as specified in sub-clauses (i) and (ii) of clause (a) of sub-rule (6) equal to fifteen per cent of the declared national sales tax liability of the current year and the difference between the actual and the declared notional sales tax liability of the previous year in the case of sales tax exemption and equivalent, to the extent of estimated tax liability of the current year and difference between actual and estimated tax liability of previous year in case of tax

deferment, as also other documents mentioned in the application.

The Deputy Excise and Taxation Commissioner after making such enquiries as are necessary, and after satisfying himself that the applicant is a bonafide industrial unit and has not misused the exemption/entitlement certificate, shall renew the exemption/entitlement certificate within 30 days of the making of the application for renewal failing which the certificate shall remain valid until the renewal is refused or the certificate otherwise expires. The exemption/entitlement certificate on renewal shall unless cancelled or withdrawn be valid from 1st of July of the year in which the application is made if it is in time or otherwise from the date of application to 30th June, next or when the eligibility certificate expires or the cumulative notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier.

(b) If the Deputy Excise and Taxation Commissioner incharge of the district finds that the application for renewal of exemption/entitlement certificate is not in order or the particulars contained in the application are not correct and complete or the applicant is not a bona fide industrial unit or has misused exemption/entitlement certificate or has not complied with any of the directions given to it by him within the specified time, he may reject the application after giving the applicant an opportunity of being heard.

(c) An appeal against the order passed by the Deputy Excise and Taxation Commissioner under clause (b) of this sub-rule shall lie to the Excise and Taxation Commissioner, Haryana, if preferred within thirty days of the communication of the order appealed against.

(8)(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 lock-out 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 :

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.

(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 entitlement certificate had ever been granted to it.

(9) The exemption/entitlement certificate granted to an eligible industrial unit shall be liable to be cancelled by the Deputy Excise and Taxation Commissioner concerned in the following circumstances, after affording an opportunity of being heard to the unit -

- (i) discontinuance of its business by the unit at any time for a period exceeding six months or closing down of its business during the period of exemption/deferment;
- (ii) disposal by the unit of any of its fixed assets mortgaged with the government in the Excise and

Taxation Department;

- (iii) Failure to furnish adequate security by the unit as required under the rules;
 - (iv) failure of the unit to make payment of the deferred amount on the date of payment,
 - (v) contravention of any of the provisions of the Act and/or the rules or conditions of the eligibility certificate or the exemption/entitlement certificate by the unit;
 - (vi) when the appropriate committee, which sanctions the eligibility certificate recommends that the exemption/ entitlement certificate of the unit be cancelled for reasons to be recorded in writing.
- (10)(i) The eligible industrial unit shall continue to be liable to file the returns in the manner prescribed under the Act, and the rules and its failure to do so shall expose it to penalty as provided in the Act.
- (ii) The assessment of an eligible industrial unit holding exemption/entitlement certificate shall be framed in accordance with the provisions of the Act and Rules framed thereunder as early as possible and shall be completed by the 31st December, in respect of the assessment year immediately preceding thereto and the additional demand so determined, if, any, shall be paid as per the provisions of the Act and the Rules.
 - (iii) The State Government may appoint special assessing authority for framing assessment of units mentioned in the preceding clause.
 - (iv) Notwithstanding the provisions relating to payment of tax due, according to returns, the eligible industrial unit which has availed of the benefit of sales tax deferment shall make payment of the deferred amount after the expiry of a period of five years to the extent of the amount deferred, every

quarter or month, as the case may be, within the period specified in the rules.

- (v) On cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax exempted/ deferred shall become payable immediately, in lumpsum, and the provisions relating to recovery of tax, interest and imposition of penalty shall be applicable in such cases.

(11)(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit, -

- (i) shall continue its production at least for the next five years not below the level of average production for the preceding five years, and
- (ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it :

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit :

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard.”

18. A perusal of the scheme of Rule 28A(5) of the Rules provides

for procedure for issuance of eligibility certificate, whereas Sub-Rule (6) thereof provides for issuance of exemption certificate. It further provides that the exemption certificate issued shall be valid unless cancelled or withdrawn from the date of commercial production or from the date of issue of exemption certificate as the case may be to the 30th June next year or when notional sales tax liability first exceeds the permissible limit, whichever is earlier.

19. Sub-rule (7) of Rule 28A of the Rules provides for procedure for renewal of exemption certificate. As per the scheme year to year renewal of exemption certificate is required to keep a track of the annual benefit availed of by the unit as even if the eligibility certificate is still valid, the moment maximum permissible limit of benefit is exhausted, the unit is not entitled to any benefit thereafter, even if the period is still remaining.

20. Sub-rule (8) of Rule 28A of the Rules provides that 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 under certain specified conditions. On withdrawal of eligibility certificate, the exemption/ entitlement certificate shall be deemed to have been withdrawn and the entire amount of tax, interest or penalty shall become payable.

21. Sub-rule (9) of Rule 28A of the Rules provides for cancellation of exemption/ entitlement certificate under certain specified conditions and one of them being discontinuance of its business by the unit for a period exceeding six months or closing down its business during the period of exemption/ deferment.

22. Sub-rule (10) of Rule 28A of the Rules provides that every

eligible industrial unit shall be liable to file returns in the manner prescribed under the Act and on failure shall be liable to penal action. Assessment of such unit is to be framed in accordance with the provisions of the Act and the Rules framed thereunder and is to be completed by 31st December in respect of the assessment year immediately proceeding thereto. It further provides that on cancellation of eligibility or exemption/ entitlement certificate before it is due for expiry, the entire amount of tax exempted/ deferred shall become payable in lumpsum. The provisions relating to levy of interest and penalty shall also be applicable.

23. Sub-rule (11) of Rule 28A of the Rules provides that the benefits availed under Rule 28A of the Rules shall be subject to the conditions that the beneficiary unit after availing the benefit remains in production for next five years not below the level of average production for the preceding five years and shall not make any sales outside the State by way of consignment of goods for next five years. In case of violation of the conditions, full amount of tax availed of during the period of exemption shall be recoverable along with interest.

24. Withdrawal of eligibility certificate or cancellation of exemption/ deferment certificate may be during its currency as envisaged in Rule 28A(8) and 28A(9) of the Rules but Rule 28A(11) of the Rules operates after the expiry of both the certificates. It contains conditions which are applicable after the entire benefit has already been availed of.

25. In the case in hand, the facts as noticed above are that the period of eligibility of the appellant was from 20.3.1993 to 19.3.2002. The unit had stopped production in July, 2000. Out of the total amount of ₹ 72,11,700/-, the benefit to the extent of ₹ 27,95,959/- was availed upto

30.6.2000. There was violation of Rule 28A(9)(i) of the Rules as the unit discontinued its business for a period exceeding six months during the period of exemption. Hence, the exemption certificate was liable to be 'cancelled'. In A. S. Fuels Pvt. Ltd.'s case (supra), a Division Bench of this Court opined that the exemption certificate is renewed on year to year basis. It can be cancelled during its currency and as a result the demand of tax only for that year could be raised and not for the earlier period. When the matter went before Hon'ble the Supreme Court, it was opined that this Court had failed to take notice of the provisions of Rule 28A(11)(a) in terms of which a unit even after claiming the benefit will have to remain in production for next five years and on failure, to pay the entire amount of tax, the benefit of which was availed of in addition to interest. It was further noticed therein that the eligibility certificate granted to the unit had also been withdrawn. In the case in hand as well as on the admitted facts, Rule 28A(11)(a) of the Rules will also come into play on account of closure of production by the appellant, after it had availed of the benefits upto 30.6.2000.

26. As far as the contention raised by learned counsel for the appellant regarding the assessment being time barred is concerned, the assessment years involved in these cases are from the years 1992-93 to 2000-2001. As per Sections 28(4) and (5) of the Act, the assessing authority could proceed to frame assessment for any period within five years from the last date of filing of returns. The contention of the learned counsel for the appellant is that the orders of assessment having been passed even after a period of three years of the enactment of VAT Act with effect from 1.4.2003 are time barred. The contention of learned counsel for the

appellant may be meritorious if the order dated 11.2.2010 passed by the assessing authority was an order of assessment. However, a perusal of the order shows that in fact, it is not an assessment order, rather an order passed for demand of tax and interest on account of violation of conditions laid down in Rule 28A(11)(a)(i) of the Rules, which specifically provides that in case after availing the benefits, the unit does not remain in production for next five years, the entire amount of tax benefits availed of, shall be payable along with interest. The relevant part of the order is extracted below:-

Assessment year	Tax originally Assessed / taken vide Assessing Authority's orders dated 30.07.2003	Interest under section 25 (5) of the Haryana General Sales Tax Act, 1973		Total Tax & Interest
		Period	Amount	
1997-98	155006.00	October 1997 to February, 2010	345663.00	500669.00
	155006.00		345663.00	500669.00

27. This rule operates in a totally different field and has its own application. The contention that the withdrawal of exemption certificate is possible only during its currency and consequently the tax payable, will not be applicable in this case as this has operation after the benefit had been availed of and the currency of eligibility as well as exemption certificate is already over. The order further suggest that for the assessment year in question, the tax had already been calculated by the assessing authority vide order dated 30.7.2003 and it was that amount only which was sought to be recovered along with interest thereon. The order is not in the form of assessment order as framed in terms of provisions of the Act specifying the gross turnover and thereafter granting rebates and applying rate of tax for the purpose of final assessment.

28. For the reasons mentioned above, we do not find any merit in the present appeals. No substantial question of law arises. The appeals are accordingly dismissed.

(Rajesh Bindal)
Judge

23.8.2016
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned
Whether Reportable

Yes/No
Yes/No