IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 288 of 2016 (O&M)
Date of decision: 18.8.2017

M/s Happy Forgings Limited

.. Petitioner

v.

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Alok Mittal, Advocate for the petitioners.

Mr. P. S. Bajwa, Additional Advocate General, Punjab.

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Rajesh Bindal J.

The petitioner has approached this court with a prayer for directing the respondents to grant exemption from payment of central sales tax under the Central Sales Tax Act, 1956 and further directing the authorities to refund the amount of tax already paid.

The pleaded case of the petitioner is that the petitioner is in the business of manufacturing crank shafts and heavy forging press line for use by manufactures of components for four wheeler segment. It proposed expansion of its existing unit. In terms of the Industrial Policy 2003, the petitioner was entitled to certain benefits on the expanded capacity. The application filed by the petitioner for grant of special package of incentives as a mega project was approved by the Director of Industries and Commerce, Punjab vide memo dated 13.7.2006. It included reduction of central sales tax from 4% to 1% for 5 years from the date of start of commercial production of the expanded unit. Agreement was executed between the petitioner and the State on 7.11.2006. Concessional rate of central sales tax was one of the incentives to which the petitioner was entitled to. The case set up by the petitioner is that though some other concessions were granted to the petitioner, however, the benefit of concessional rate of central sales tax was not granted, as a result of which the petitioner per force paid 4% central sales tax to the State. As the payable rate was 1%, it deserves refund of 3%. The submission is that the petitioner was not at fault, as delay was on the part of the State in granting the benefit for which the petitioner should not be made to suffer. If the concession has not been granted for the earlier period, it can now be granted for a period of five years.

On the other hand, learned counsel for the State submitted that the State was not at fault at any stage. The petitioner failed to furnish requisite information at the relevant time, as a result of which he could not avail the benefit, however, the fact as it exists today, is that the petitioner had already charged central sales tax @ 4% from its buyers and deposited the same with the State. Once the tax had been charged from the buyers, refund thereof to the petitioner at this stage would result in unjust enrichment of the petitioner at the cost of the State. The concessions to the new or expanded units are granted with a view that their products are cheaper on account of certain concessions granted and not that the tax collected is permitted to be retained. Presently, the benefit is not available for the reason that the entire tax regime has changed, as it has shifted to one uniform Goods and Service Tax, which takes care of taxes on intra-State, inter-State sales and also excise duty.

After hearing learned counsel for the parties, we do not find any merit in the present petition. No doubt, the petitioner was granted Letter of Intent and agreement was also signed with the State for grant of certain benefits, but for non-compliance of certain formalities, the benefit of concessional rate of central sales tax could not be availed of by the petitioner. From letter dated 11.12.2010 (Annexure P-10), it is evident that first phase of expansion unit of the petitioner came into production on 29.3.2008, whereas the second phase came into production in August, 2010. A lot of correspondence has been annexed with the petition showing certain issues raised by the authorities on account of which the benefit could not be availed of by the petitioner. It is undisputed that the petitioner has charged central sales tax @ 4% from its customers and paid the same to the State. Once the amount has been charged by the petitioner from its customers as tax and paid to the State, it cannot be permitted to retain the same, as otherwise the same would amount to unjust enrichment. If the petitioner was aggrieved of any in-action on the part of the State at the relevant time when the expanded unit came into production, on account of which he could not avail of the concession, the grievance could be raised but the petitioner continued making representations and charged and paid tax @ 4%.

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

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

18.8.2017
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No