IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 7277 of 2001 (O&M)
Date of decision : 24.8.2018

M/s Ess Kay Fibres Private Limited .. Petitioner

versus

State of Haryana and others .. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Sudip Ahluwalia

Present: Mr. Divya Suri, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

The petitioner approached this Court raising the grievance that his prayer for issuance of eligibility certificate for claiming exemption from payment of tax, was wrongly declined. The petitioner had set up an industrial unit, which came into commercial production on 7.7.1992. It applied for grant of eligibility certificate, which was issued on 17.6.1992 for the period from 7.7.1992 to 6.2.1999. The petitioner company availed the exemption. The petitioner carried out expansion in the unit which came into commercial production on 1.1.1996. On the expanded capacity as well, the petitioner was issued eligibility and exemption certificates, which were valid from 1.1.1996 to 31.12.2000. Second expansion was carried out which came into commercial production on 1.12.1997. The petitioner applied for eligibility certificate, however, the same was declined and the appeal was also dismissed. Order passed in appeal by the Higher Level Screening Committee notices that none had appeared before the lower level Screening Committee. Application filed by the petitioner was considered and rejected for non-furnishing of NOC and change of land use permission. Even before the Appellate Authority, the request for grant of eligibility certificate was declined, as the petitioner had failed to produce the change of land use certificate as required under Rule 28-B(3)(f)(vi) of the Haryana General Sales Tax Act, 1975.

As a consequence of rejection of claim of the petitioner for issuance of eligibility certificate, the petitioner was not able to claim benefit of exemption from payment of tax. Meaning thereby, the petitioner must have collected the tax and paid to the State. Burden of tax has been passed on the next buyer. The same cannot possibly be refunded to the petitioner, as it will be against the principles of unjust enrichment. Further because of change in the tax regime with the introduction of Goods and Services Tax in July, 2017, in our view, no effective relief can be granted to the petitioner at this stage. Hence, the petition stands dismissed.

(Rajesh Bindal)
Judge

24.8.2018
vs

(Sudip Ahluwalia)
Judge

Whether speaking/ reasoned Yes/No

Whether Reportable Yes/No