IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-176-2018
Date of decision:-17.03.2023

M/s Padumani Industries Sonepat ....Appellant

vs.

State of Haryana and ors. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajiv Agnihotri, Advocate, for the appellant

Ms. Mamta Singla Talwar, DAG, Haryana

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Ritu Bahri, J.

The present appeal has been filed under Section 36 of the Haryana Value Added Tax Act, 2003 (for short 'Act 2003') seeking setting aside of order dated 10.03.2003 (A-2), order dated 07.05.2010 (A-5) and order dated 09.11.2017 (A-7).

The appellant is a proprietorship concern and is registered with HGST Act, 1973 as well as under CST Act, 1956 during the relevant period. The appellant concern was having its residence and permanent addresss as 24/45, Punjab Bagh (West) New Delhi, as disclosed with the department of Sales Tax.

The appellant was issued Exemption Certificate for sales tax exemption on sale of Polypropylene Filament Yarn from 14.8.1991 to 13.08.1998 for an amount of Rs. 68, 24,200/- Lacs by the Lower Level

Screening Committee, Sonepat. Thereafter the Deputy Excise & Taxation Commissioner, Sonepat, issued Exemption Certificate to the appellant. However, the firm could avail benefit of only for Rs. 24,858 under the Haryana General Sales Tax Act, 1973 and Rs. 5,97,972 under the Central Sales Tax Act, 1956 i.e. total of Rs.6,22,830/- during the relevant period, out of the above-said benefit allowed to the tune of Rs. 68, 24,000/-.

The appellant was engaged in the manufacture and sale of Polypropylene Multifilament Yarn and invested in Plant & Machinery in 1991 to the tune of US$ 80,000. The raw material namely P.P. Granules, Master Batches, Spinning Oils were used in the manufacture of Polypropylene Multifilament Yarn by a manufacturing process of Extrusion, Take up Winder and Draw Twister for the manufacturers of Polypropylene Multifilament Yarn. The machinery used by these buyers' manufacturers was looms and the cost of one loom was Rs. 2 lac in 1991. At the time of start of business of the appellant, there were three other manufacturers of Polypropylene Multifilament Yarn only in northern India.

The Deputy Excise and Taxation Commissioner, Sonepat passed an order dated 20.10.2002 for cancellation of Exemption/Entitlement Certificate for discontinuance of business by the unit during the currency of Exemption Period. It was observed in the order that the business was closed after availing the benefit of exemption. The appellant then preferred an appeal before the Joint Excise and Taxation Commissioner (A), Rohtak against order dated 20.10.2002 and the same was accepted, vide order dated 29.11.2002. However, the department was given liberty to proceed in accordance with law.

However, the Excise and Taxation Commissioner, Sonepat treated the case as “Remand Case” and then decided the case under another provision i.e Rule 28 (11) (a) (1) of Rule 28A of Haryana GST Rules, 1975, vide order dated 10.03.2003 (A-2). The appellant preferred appeal against this order before Joint Excise and Taxation Commissioner (A), Rohtak, which was also dismissed on 23.08.2006. The appellant then approached the Haryana Tax Tribunal, Chandigarh and vide order dated 29.06.2009 (A-4) the impugned order was set aside and the matter was remanded back to the First Apellate Authority for decision after dealing with all the issues raised before him in accordance with law. On remand, the First Appellate Authority vide order dated 7.5.2010 (Annexure A-5) rejected the appeal. Aggrieved by the order of the first Appellate Authority, the appellant again approached the Ld. Haryana Tax Tribunal at Chandigarh on 24.05.2010 (Annexure A-6),which also rejected the appeal, vide order dated 9.11.2017 (Annexure A-7. Hence the present appeal.

Learned counsel for the appellant submits that the combined reading of provisions of Rule 28A of HGST Rules, 1975 makes it obligatory for the units, during the pendency of Eligibility Certificate or Exemption Certificate to carry on business according to the conditions laid down therein and in case of violation, the benefit will not be available to assessee. Learned counsel submits that the unit was closed due to the circumstances beyond the control of the unit.

Learned counsel for the appellant has further submitted that the appellant unit was issued exemption certificate for RS. 68,24,200/- for the period from 14.8.91 to 13.8.98 for exemption from sales tax on the sale of Polypropylene Filament yarn, which was a substitute of Nylon Filament yarn. At the time when the unit was started there were 3 more units in Northern India, which were manufacturing the item in question, and appellant's was the fourth one. The goods in question were being sold to the manufacturers of Narrow Woven Fabrics, which is used in the manufacture of Strips of School Bags, Air Bags, Soft luggage etc. Today there are 30+ plants which are having their own looms and none of the units are manufacturing Nylon Filament yarn in isolation and all of them are manufacturing Narrow Woven Fabrics i.e. the finished goods for which the appellant was manufacturing the raw material and hence the demand of appellant's product came to zero as it lost the market. The other 3 plants also stopped production of Nylon Filament yarn and started manufacturing Narrow Woven Fabrics since these were not availing the benefit of exemption and today the whole of the trade is in a very bad shape.

Learned counsel for the appellant submits that the Eligibility Certificate was issued to the company on from 14.8.91 to 13.8.98 for 68, 24,200/- and during this period the appellant could avail the benefit of RS. 6, 22,830/-. This itself is sufficient to explain that there was no malafide intention on the part of the unit to stop production in existing set-up but the circumstances were beyond the control of the unit, during the currency of the exemption period itself.

To give force to its contentions, learned counsel for the appellant is relying upon the below mentioned judgments:-

1. *Jasson Pharma Pvt. Ltd, Gohana vs. State of Haryana, (2009) 34 PHT 54 (HTT)*
2. *M/s Simra Chemical Industries, Sampla District Rohtak vs. State of Haryana, STI 2006 Haryana Tribunal 79.*
3. *Mukand Singh and Sons, E-20, Industrial Area, Yamuna Nagar vs. State of Haryana, STI 2006 Haryana Tribunal 83*

4. *Priti Fan, Rohtak vs. State of Haryana, (2009) 34 PHT 96 (HTT)*

On the other hand, learned State counsel has argued that the impugned orders passed by the authorities are not liable to be set aside, as the petitioner had set up unit and was bound by the eligibility conditions as laid down in the Exemption Certificate.

Heard learned counsel for the parties at length.

It is not in dispute that the appellant was granted benefit of exemption from sales to the tune of Rs. 68,24,200/-for nine years, but, he availed the benefit of only Rs. 6,22,830/-, as the industry unit was closed down and he could not run the unit for next five years, as per the policy. This Court has to now examine that whether the above circumstances were beyond the control of the appellant-Company.

At the very outset, reference can be made to order dated 09.11.2017 (A-7) wherein the Tribunal has referred to order dated 28.05.2003 passed by the Assessing Authority, Sonepat regarding computation of amount of tax benefit availed of by the assessee during the exemption period and the interest chargeable thereon reveals that the assessee had been availing of substantial amount of tax benefit in the last assessment years of 1996-97 and 1997-98 of the exemption period, particularly under the CST Act. However, suddenly after expiry of the exemption period, the assessee admittedly stopped production in its unit. It was further observed that if the assessee was able to sell its produce till the end of exemption period, the demand of the said product could not suddenly become zero immediately after the expiry of the exemption period. If the assessee had continued production in the post exemption period at a little lower level due to alleged reduction in demand, the aforesaid plea of the assesee could appear to be genuine. However, the assessee stopped production altogether immediately after expiry of the exemption period.

After going through order dated 09.11.2017, it appears that the authorities had accepted this fact that identical units in the area closed down due to the fact that the consumers of their product started their own units and thus, their market was lost. Further the earlier yarn units also started their own woven fabrics units and are in bad shape. The appellant was allowed exemption to compete in the market but he chose to close the business, after availing the benefit of exemption. Most of the suppliers of the appellant were in Delhi and it cannot be presumed that such activities totally stopped in Delhi. The demand of the product is much more. The reasons given by the appellant were held to be not beyond its control so as to be covered under the proviso to Rule 28A (11) of the HGST Rules, 1975.

In ***Priti fan's case (supra),*** the appellant-unit suffered due to the floods directly as well as indirectly due to over all loss of economic activity in the vast flood affected region in and around Rohtak. The appeal was allowed and it was held that the adverse effects of the floods cannot be underestimated which appeared to have delivered the final crushing blow to the viability of the Unit. It was opined that the Unit, tiny as it was since its inception, deserve the benefit of first proviso to Rule 28A (11B).

In ***Jasson Pharma's case (supra),*** the appellant was granted exemption from payment of tax for nine years by DETC (Appeals) Rotak. The sales of the unit started declining from assessment year 1997-98 onwards and it did not maintain average production level for preceding five years. The unit ultimately stopped production w.e.f 01.07.1998. The appellant was held to have violated the provisions of sub Rule 11 (a) of Rule

28A of Rules, 1975 and thus rendered himself liable to make payment of tax benefit availed by its together with interest. His appeal was dismissed by the Joint Commissioner. However, the appeal was allowed before the Tribunal and it was held that Violation of Rule 11 (a) does not automatically result in payment of tax and interest as there is also a proviso to Rule 28A (11) of Rules, 1975 according to which the clause does not come into play if the loss in production is explained to the satisfaction of DETC concerned as being due to the reason beyond the control of the unit.

Similarly in ***M/s Simra Chemical Industries case (supra),*** the Tribunal was examining the case of the assessee was allowed exemption from payment of sales tax under Rule 28A of HGST Rules, 1975 from 09.04.1994 to 08.04.2003 for an amount of Rs.17.01 lacs but his application for renewal of exemption certification was refused we.f. 01.07.2001 as the industrial unit failed to pay tax and also remained closed for more than six months. The unit was not maintaining average level of production of Rs.15.10 lac per annum during the post exemption period of 05 years. The appeal was allowed and it was held that the reasons which the dealer is advancing before the Tribunal which led to fall in the average level of production during the past exemption period will save him from the ordeal of the withdrawal of exemption certificate if he satisfied the DETC that failure to maintain the average level of production by him during the post exemption period was for these reasons which were insurmountable and if the dealer is able to bring home to the satisfaction of the Deputy Excise & Taxation Commissioner, Rohtak that these are the reasons which threw him out of the market and that maintaining the average level of production became an impossibility for him on account of these reasons. It was a case governed only by Rule 28A (11) (a) (i) and not by rule 28A (8) (a) (i) of the 1975 Rules. So, this appeal is allowed, the orders of the authorities are set aside and the case is remanded to the Deputy Excise & Taxation Commissioner, Rohtak for examining the case of the dealer in the light of the aforesaid grounds and pass fresh order. If the dealer is able to establish these grounds, withdrawal of "exemption certificate" will not take place then.

In the facts of the present case, it is not in dispute that the appellant had availed the benefit of 6,22,830/- during the relevant period, he was granted the benefit of exemption from sales to the tune of Rs. 68, 24,000/- for a period of nine years. This fact in itself shows that there was loss in business, which were beyond the control of the appellant. The case of the appellant cannot be discarded on the ground that the company should increase the business and invest more money in production. It is not a case where the assessee had availed the benefit of exemption beyond Rs.68,24,000/-, which was granted to it.

In view of the above factual position, the writ petition is allowed and order dated 10.03.2003 (A-2), order dated 07.05.2010 (A-5) and order dated 09.11.2017 (A-7) are set aside.

(RITU BAHRI)
JUDGE

17.03.2023
G Arora

(MANISHA BATRA)
JUDGE

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