2024:PHHC:145030

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

202 CWP-2886-1996
Date of Decision : 07.11.2024

M/S EVERWEAR INDUSTRIES …. PETITIONER

V/S

UNION OF INDIA AND ANOTHER …. RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Vinod Sharma, Advocate
for the petitioner.

Mr. Piyush Khanna, Advocate
for respondent No.1.

Mr. Rajesh Hooda, Advocate
for respondent No.2.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 17.05.1990 (Annexure P-9), 11.07.1990 (Annexure P-10) and 14.12.1995 (Annexure P-12) whereby Provident Fund Authorities have denied benefit of Infancy Protection available to a new unit.

2. The petitioner purchased land, building and goodwill of M/s Everwear Manufacturing Company. The selling entity was a proprietorship concern and the petitioner is a partnership firm. Proprietor of the selling entity was not partner of the petitioner. The seller was

engaged in the business of manufacturing of school uniforms, batches, momentos, ties and bags. The petitioner started manufacturing of Monofilament Nawar, however, at a later stage, shifted to manufacturing of items which were manufactured by seller unit. The seller shifted its plant and machinery to Gurgaon and started manufacturing therein. He did not avail benefit of infancy exemption, however, petitioner applied for infancy exemption which was initially granted, however, the Provident Fund Authorities formed an opinion that the petitioner is not entitled to benefit of infancy exemption because it has purchased land along with building and hired few old employees. The authorities also considered that the petitioner has purchased electricity connection along with other assets, thus, it is not entitled to benefit of infancy exemption.

3. Mr. Sharma submits that respondent has wrongly denied benefit of infancy exemption on the ground that the petitioner has purchased goodwill apart from other assets and hired a few old employees. 10 employees of seller were retained by the petitioner. They filed their affidavits disclosing that they have settled their rights and liabilities under the Employees Provident Fund & Miscellaneous Provisions Act, 1952. The petitioner further engaged 29 employees. The petitioner falls within the definition of new unit, thus, was entitled to benefit of infancy exemption.

4. Per contra, Mr. Hooda submits that the petitioner had purchased all the assets of the previous manufacturer including goodwill and electricity connection, thus it could not be treated as a new unit. The petitioner had further engaged 10 old employees and at a later point

started manufacturing of those articles which were manufactured by previous owner. The manufacturing process was not stopped even for a single day.

5. The petitioner before the authorities categorically stated that it has not purchased plant and machinery from M/s Everwear Manufacturing Company whereas respondent has concluded that the petitioner has used machinery of previous owner. The respondent has not brought on record any evidence disclosing that the petitioner used old machinery whereas the petitioner submitted invoices before the authorities disclosing that it has purchased a number of machines to manufacture Monofilament Nawar. The respondent has not returned the findings to the effect that Monofilament Nawar which was an entirely different product from the products manufactured by previous owner was never manufactured. The product manufactured, though for a short period, by petitioner was entirely different from product manufactured by previous owner. A different product could not be manufactured in the absence of different set of machines. The authorities were bound to carry out proper enquiry to find out whether the petitioner has purchased old and used machinery or fresh machinery, whether a new product was manufactured or not.

6. The petitioner obtained registration certificate from different authorities including sales tax and Department of Industries. Both the authorities issue certificate after making physical verification. The petitioner must have submitted details of plant and machinery before Department of Industry. The respondent did not make any enquiry to

find out fact and figures though petitioner had submitted invoices disclosing purchase of machinery. The petitioner could not be fastened with liability of provident fund and denied benefit of infancy exemption on the ground that it had purchased goodwill or retained a few old employees.

7. The unit cannot be treated as a continuing unit on the ground that it has purchased goodwill or building with electricity connection. The consideration was to ascertain whether a new product is manufactured with new machinery or not. The stand of the petitioner before all the authorities was that it had commenced production of Monofilament Nawar which was possible only with new machinery. The respondent has denied benefit of exemption without ascertaining actual and factual position. The benefit could not be denied on the basis of assumptions and surmises especially when the petitioner had submitted invoices along with certificates issued by different government authorities. It is apt to notice here that previous owner of the unit commenced its production at Gurgaon and did not avail benefit of infancy exemption.

8. In the wake of above discussion and findings, the writ petition is allowed and impugned orders dated 17.05.1990, 11.07.1990 and 14.12.1995 are hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

07.11.2024
anju

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No