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

2024:PHHC:024085-DB
CWP-17671-2002 (O&M)
Date of Decision: 21.02.2024

M/s Ganpati Pipes Pvt. Ltd. …Petitioner

Vs.

The Deputy Excise & Taxation Commissioner …Respondent

CWP-20948-2008
2024:PHHC:024545-DB

M/S VIJAY LUXMI POLY FABRIC …Petitioner

Versus

STATE OF HARYANA AND ORS. …Respondents

CWP-3943-2005
2024:PHHC:024546-DB

M/S JAYNA ZIPPERS P.LTD. …Petitioner

Versus

STATE OF PB.ETC. …Respondents

CWP-19303-2005
2024:PHHC:024547-DB

M/S. JOSHIKA LAMINATES P. LTD. …Petitioner

Versus

THE STATE OF HARYANA AND ORS. …Respondents

CWP-10650-2010
2024:PHHC:024548-DB

M/S BAJAJ POLYPACK INDUSTRIES ...Petitioner

Versus

STATE OF HARYANA AND OTHERS …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE VIKAS SURI

Present Mr. Sandeep Goyal, Advocate for the petitioner(s) in CWP-17671-2002, CWP-3943-2005 and CWP-10650-2010.

Mr. Surjeet Bhadu, Advocate for the petitioner in CWP-19303-2005.

Ms. Tanisha Peshawaria, DAG, Haryana.

***

SANJEEV PRAKASH SHARMA, J.(Oral)

1. Learned counsel for the petitioner(s) submit that challenge to Rule 28A(8)(b) as well as Rule 28A (10)(v) of the Haryana General Sales Tax Act, 1975, has become academic, in view the judgment passed by the Hon'ble Supreme Court in the case of State of Haryana and others vs. M/s A.S. Fuels Pvt. Ltd. and another 2008 (9) SCC 230, wherein, the entitlement certificate as mentioned in Clause (b) has been treated akin to exemption certificate and validity thereof has been upheld.

2. This Court perused the decision of the Hon'ble Apex Court in State of Haryana and others (supra), wherein, it has been held as under:-

> "*9. The eligibility certificate is issued by the appropriate screening committee while the exemption certificate and the entitlement certificate are issued by the DETC in Forms 73 and 72 respectively. As the High Court has rightly observed, that there is scope for automatic cancellation in view of the fact that after January, 1997 there was no production. Sub rule (8) deals with the withdrawal of the eligibility certificate. Under sub-rule 8(b) when the eligibility certificate is withdrawn, the exemption/entitlement certificate is also deemed to have been withdrawn from the first day of its validity and the unit shall be*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 been ever granted to it. The only other question which is required to be examined is the benefit of Rule 11(a). A bare reading of the same shows that the benefit of tax exemption/deferment under the Rule shall be subject to the condition that the beneficiary/industrial unit after having availed all the benefit shall continue its production for at least next five years not below the average production for the preceding five years. Clause (b) of the sub rule is of considerable significance; it shows that 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 the 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. The proviso is also of significance. It provides that the provisions of clause (b) shall not come into play if the loss in production is explained to the satisfaction of the DETC concerned as being due to reasons beyond the control of the unit. Thus there are several conditions which are relevant; firstly there is a requirement of continuing the production of at least next five years; secondly consequences flowing in case of violation of the conditions laid down in clause (a). In other words, in case of non-continuance of production for next five years, the result is that it shall be deemed as if there was no tax exemption/entitlement available to it. The proviso permits to the dealers to explain satisfactorily to the DETC that the loss in *production was because of the reasons beyond the control of the unit. The materials have to be placed in this regard by the party. The High Court seems to have completely lost sight of Rule 11(b). In any event, we find that the High Court had permitted the authorities to go before the Screening Committee to get the eligibility certificate cancelled. Undisputedly that has been done, and the appeal against cancellation has been dismissed."*

3. In view of the above, no further adjudication is required to be made in the present petition. The writ petitions are accordingly dismissed in view of the law laid down by the Hon'ble Apex Court as referred supra.

4. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(VIKAS SURI)
JUDGE

21.02.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No