209 (2) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:138023-DB

CWP-11991-2008 (O&M)
Date of Decision: 22.10.2024

Jay Bharat Maruti Ltd. …Petitioner

Vs.

State of Haryana and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sandeep Goyal, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The challenge in the present writ petition is to the order passed by the High Powered Committee, whereby it has rejected the 3rd claim of exemption of sales tax on further expansion and investment on the ground that out of the total claim of Rs.4130.64 Lakh, an amount of Rs.3108.44 Lakh, represents the value of B-dyes which have been taken on lease by the petitioner from the Maruti Udyog Limited and ICICI Limited.

2. The High Powered Committee has also rejected the claim of the petitioner on the ground that as the said amount of capital investment has not been paid for any day falling within 90 days from the date of commencement of commercial production as per explanation appended to Rule 28C sub-rule (3) Clause (g) of the Haryana General Sales Tax Rules, 1975.

3. The expansion as defined under Rule 28C sub-rule (3)(f) of the Haryana General Sales Tax Rules, 1975, reads as under:-

"expansion" means an industrial capacity set up or installed during the operative period which creates additional production facilities for manufacture of the same product(s) as of the unit before expansion in which the additional fixed capital investment in plant and machinery made [within two years immediately preceding the date of commercial production of diversified capacity], exceeds 25% of the fixed capital investment (gross block) of the unit before expansion at the same or new location;

Note:I. Tax benefits in the case of expansion shall be available in respect of turnover of the expended unit after reducing therefore the highest turnover achieved in any previous year of the existing unit. This will be taken as the turnover of the expansion for the purpose of this rule:

Provided that the ratio of turnover of the expansion to turnover of the existing unit shall not exceed ratio of fixed capital investment of the expansion to fixed capital investment (gross block) of the existing unit.

Note: II. For the purpose of computing the tax benefits under this rule, unit shall append with its tax return, a calculation sheet clearly showing break-up of turnover and tax benefits thereon claimed in respect of expansion."

4. Thus, the High Powered Committee held that as the gross block of the fixed capital investment of the unit is of Rs.9427.98 before expansion and the amount for expansion is only Rs.1022.19 lakh, the same falls short of 25% of the gross block investment of the company and, therefore, the claim for tax exemption for 3rd expansion stands rejected.

5. We have carefully considered the submissions and also took into account the provisions of Rules, 1975.

6. It is apposite to quote Rule 28C sub-rule (3) Clause (g) of the Rules, 1975, as under:-

> *"(g) 'fixed capital investment' for purposes of the benefit under this rule, means investment in:-*
>
> *(i) land under use;*
>
> *(ii) new construction;*
>
> *(iii) plant, machinery (including generating set), tools and equipment which have not been used before in India;"*
>
> *(iv) capitalized installation expenditure for plant and machinery:*
>
> *(v) capitalized interest during the period of construction of the unit not exceeding 5% of the total fixed capital investment in respect of items listed at serial Nos.(iii) and (iv) above; and*
>
> *(vi) technical know how fees or drawing fees paid as lump sum to foreign or Indian collaborations or suppliers as approved by Government of India; or paid to laboratories of the State Governments or the Central Government. This fee shall not exceed 5% of the total fixed capital investment;*
>
> *Explanation. – Fixed capital investment will cover all the assets of the unit as erected at site on the date of commercial production and paid for as on any day falling within ninety days after the date of commencement of commercial production.*
>
> *Note. I. Investment under items at (i) and (ii) above shall, for the purposes of calculating fixed capital investment, be limited to investment in terms of (iii) to (vi) above.*

Note. II. In case the unit is set up on leased land, the investment in new construction shall be included in fixed capital investment only if the land is on irrevocable lease for a minimum period of sixteen years from the date of commercial production.

Note.III. Transfer of plant and machinery from the same or different unit anywhere else shall not be considered towards fixed capital investment of plant and machinery."

7. As per explanation to Rule 28C sub-rule (3) Clause (g) of the Rules, 1975, 'fixed capital investment will cover all the assets of the unit as erected at site on the date of commercial production and paid for as on the day falling within 90 days from the date of commercial production. The explanation, thus, means that the payment should have been made for the concerned investment within the said 90 days period. However, it does not distinguish between the payments which the company itself made or through loan from financial institutions.

8. Admittedly, the amount has been paid of Frs.3108.44 Lakh through Maruti Udyog Limited and ICICI Limited while Rs.1022.19 Lakh is from the company's own investment. Thus, the same falls within 90 days and the explanation would go in favour of the concerned petitioner. Similarly, if we look at the provisions of defining 'expansion', it is apparent that the same would be calculated on the total investment claimed i.e. Rs.4130.64 and not for Rs.1022.19 Lakh. The amount invested by the financial institutions and the lease agreement executed by them for the investments made (which is like hypothecation) has to be considered accordingly and is found to be more than 25% of the gross block investments of the company and, therefore, the claim of tax exemption for 3rd expansion ought not have been rejected and

understood for the purpose of advancement of interests and development of the industrial atmosphere.

9. We, therefore, set aside the order passed by the High Powered Committee and direct the same to re-examine the case in the light of observations made by us hereinabove and decide the same within a period of one month from today.

10. The petition is disposed of accordingly.

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

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

22.10.2024
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No