

(2013) 03 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 21362 of 2011 (O and M)

Om Parkash Aggarwal and

Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: March 26, 2013

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (2013) 171 PLR 66

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Sandeep Goyal, for the Appellant; Nitin Kaushal, A.A.G. Haryana for State, for the Respondent

Judgement

Ritu Bahri, J.

The present petition under Articles 226 /227 of the Constitution of India is for quashing the notice (P-8) seeking recovery of an amount of Rs. 6 lacs each from the petitioners under the Haryana General Sales Tax Act, 1973 (for brevity "HGST Act") and Central Sales Tax Act, 1956 (for short "CST Act") and order dated 18.02.2005 (P-9). M/s Ekta Plastics, Ratera, District Bhiwani-respondent No. 3 set up a new industrial unit at village Ratera in the year 1995. The unit was granted benefits of sales tax exemption under Rule 28-A of the Haryana General Sales Tax Rules, 1975 (for short "the Rules") for a period of 9 years for an amount of Rs. 203.87 lacs from 05.05.1995 to 04.05.2004.

2. The petitioners stood surety to respondent No. 3 by signing of Form ST-50 as per Rule 61 of the Rules to an extent of Rs. 6 lacs. Copies of the said surety bonds are dated 10.05.1996 (Annexure P-3 & P-4).
3. The Company availed exemption for some years and thereafter closed its business. The exemption certificate was renewed up to 30.06.1997. Thereafter, the

respondent No. 3 did not apply for renewal of the exemption certificate w.e.f. 01.07.1999 onwards. The proceedings under Rule 28-A(8)(a) were initiated and Eligibility Certificate was withdrawn, vide order dated 15.09.2003 by Higher Level Screening Committee. Thereafter, the proceedings for recovery were initiated against the petitioners as they stood surety to respondent No. 3. The petitioners were served with a notice dated NIL (P-8) seeking to deposit a sum of Rs. 6 lacs under the HGST Act and the CST Act.

4. Feeling aggrieved, petitioner No. 1-preferred an appeal before the Joint Excise and Taxation Commissioner (Appeals), Rohtak Headquarters at Hisar. However, the appeal was dismissed on 18.02.2005 (P-9) on the ground that the appeal was not maintainable, as the dealers, who were affected by the said demand, had not filed appeals and petitioner being only the surety, cannot file such appeals.

5. A civil suit was also filed by the petitioners against the respondent-Company, which was dismissed by the trial Court, vide its judgment dated 21.03.2011 (P-11) on the ground that as per Section 62 of the HGST Act, the jurisdiction of the civil court is barred. An appeal filed against the judgment was also dismissed, vide judgment dated 27.05.2011 (P-13).

6. Learned counsel for the petitioners has argued that after granting of exemption, the assessment for the year 1996-97 was framed on 27.07.2003. Learned counsel has referred to the surety bonds (P-3 and P-4) given by the petitioners. The first surety bond was given in May, 95. The petitioners have stood surety in one year only. Thereafter, the exemption certificate issued to the Company for the year 1995-96 expired on 30.06.1995. Thus the petitioners had stood surety w.e.f. 16.05.1995 till 30.06.1995 when the exemption had expired. The exemption certificate was subsequently got renewed by respondent No. 3 by furnishing fresh application in respect of which, the petitioners are not the surety. Learned counsel has referred to the judgment of this Court in a case of Vinod Kumar Partner M/s Agro India, Kurukshetra v. State of Haryana through Assembly Authority, (2004) 24 P.H.T. 373 (P&H), to contend that the department should first proceed against the Directors of the Company and their properties to recovery the tax and if they fail then proceed against the surety.

7. On notice, a reply has been filed by the respondents wherein it has been mentioned that recovery from the petitioners was being sought on the ground that surety bonds (Annexures R-3 and R-4) furnished by the petitioners, were not required to be furnished every year when the exemption certificate was to be granted for subsequent years unless the surety withdraws the surety bonds, they were valid. It is not necessary to proceed first against the principal debtor for recovery of the amount due and thereafter proceed against the surety. Reference has been made to Hon"ble Supreme Court judgment in a case of Industrial Investment Bank of India Ltd. Vs. Biswanath Jhunjhunwala, and the judgment of this Court passed in CWP No. 3492 of 1992 (O&M) titled as Narender Khurana v. State of

Haryana, decided on 10.02.2011.

8. The case set up by the petitioners is that they stood surety to the respondents by signing Form ST-50 executed in May, 1995. The unit had been granted eligibility certificate to avail benefit of exemption from payment of sales tax for a period of 9 years from 05.05.1995 to 04.05.2004. The provision for availing exemption is prescribed under Rule 28(A) of the Rules. The Respondent No. 3 was granted sales tax exemption after following the procedure as made out in Rule 28(a)(5) and (6) of the Rules. The eligible industrial unit is to make an application for grant of exemption certificate every year. This application is required to be accompanied by a surety bond in the Form ST-50. Rule 28A(6)(ii) reads as under:-

(ii) tax exemption, to either execute a surety bond in form S.T. 50 equivalent to 15% of the amount of notional sales tax liability sought to be exempted or a bank guarantee for that amount in a year, which shall be valid for the period extending to five years after the expiry of tax exemption.

9. This exemption certificate is valid from the date of issue till 30th June of the next year as per Rule 28A(6)(b). However as per Rule 28(A)(7)(a), the exemption certificate shall be renewed from year to year. The Industrial unit shall make an application in this regard in Form ST-71. This application shall be accompanied with the exemption/entitlement certificate and additional security as specified in sub-classes (i) and (ii) of sub Rule (6) of Rule 28A. Rule 28A(7)(a) reads as under:-

(a) The exemption certificate or the entitlement certificate as the case may be, shall be renewed from year to year for which the industrial unit shall make an application to the Deputy Excise and Taxation Commissioner incharge of the district by the 31st May in Form ST-71. The application shall be accompanied with exemption/entitlement certificate, [additional security as specified in sub-clauses (i) and (ii) of clause (a) of sub Rule 6 equal to fifteen percent off] the declared notional sales tax liability of the current year and the difference between the actual and the declared notional sales tax liability of the previous year in the cases of sales tax exemption and [...] equivalent to the extent of estimated tax liability of the current year and difference between actual and estimated tax liability in previous year in case of tax deferment, as also other documents mentioned in the application.

The Deputy Excise and Taxation Commissioner after making such enquiries as are necessary, and after satisfying himself that the applicant is a bonafide industrial unit and has not misused the exemption/entitlement certificate, shall renew the exemption/entitlement certificate within 30 days of the making of the application for renewal failing which the certificate shall remain valid until the renewal is refused or the certificate otherwise expires. The exemption/entitlement certificate or renewal shall unless cancelled or withdrawn be valid from 1st of July of the year in which the application is made if it is in time or otherwise from the date of application to 30th June, next or when the eligibility certificate expires or the cumulative notional sales

tax liability first exceeds the quantum of tax-exemption/deferment fixed for the unit, whichever is earlier

(b) If the Deputy Excise and Taxation Commissioner incharge of the district finds that the application for renewal of exemption/entitlement certificate is not in order of the particulars contained in the application are not correct and complete or the applicant is not a bonafide industrial unit or has misused exemption/entitlement certificate or has not complied with any of the directions given to it by him within the specified time, he may reject the application after giving the applicant an opportunity of being heard.

(c) An appeal against the order passed by the Deputy Excise and Taxation Commissioner under clause (b) of this sub-rule shall lie to the Excise and Taxation Commissioner, Haryana, if preferred within thirty days of the communication of the order appealed against.

10. A reading of the above said Rule lays down the procedure for grant of Exemption certificate every year. In the facts of the present case, the petitioner stood surety to respondent No. 3 by signing form ST-50 as per Rule 28A(6)(ii). For the subsequent year i.e. 1996-97, the company was required to follow the procedure as made out in Rule 28A(7)(a) for grant of exemption certificate. The additional security is to be given along with declaration of Notional Sales Tax Liability of the current year and the difference between the actual notional tax liability of the previous year. All these details shall accompany the application for renewal. Thereafter, the Deputy Excise and Taxation Commissioner after satisfying himself shall renew the exemption/entitlement certificate. The application can be rejected after giving the applicant an opportunity of hearing.

11. In the present case, the exemption certificate was renewed up to 30.06.1997. It is not the case of the respondent-department that the petitioners had stood surety again in any subsequent year. The respondents in the written statement have not stated that the petitioners stood surety for the respondent No. 3-Company in the year 1996-97. The precise case of the petitioners is that the petitioners stood surety by Annexure P-3 and P-4 to respondent No. 3 for a particular period i.e. upto 30.06.1995. In the case of sales tax exemption, since the petitioners did not give the additional security for the subsequent years, therefore, they are not liable to make the payment of sales tax for any subsequent period. This surety was not valid after the period for which it was furnished. The liability is not of the period for which the surety bonds were furnished but relates to the subsequent period. The Respondent No. 3 got the exemption certificate renewed till 30.06.1999 and thereafter on 15.09.2003, the eligibility certificate was withdrawn by Higher Level Screening Committee.

12. The assessment order for the year 1995-96 and 2000-01 was passed vide order dated 24.07.2003 (P-9). The recovery notices Annexure P-8 and P-9 is liable to be set

aside on the short ground that the petitioners had not stood surety for the period, the unit has been made liable to pay the amount of Tax. The petitioners cannot be burdened with recovery of sales tax arrears as in the successive year as they were not sureties for the same. Therefore, the impugned orders Annexures P-8 and P-9 are set aside.

Petition is accordingly allowed.