(2012) 01 P&H CK 0309

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 17685 of 1994

Pepsi Foods Limited		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: Jan. 12, 2012

Acts Referred:

- Central Sales Tax Act, 1956 - Section 14
- Constitution of India, 1950 - Article 226
- Punjab General Sales Tax Act, 1948 - Section 2(d), 2(g)

Citation: (2012) 54 VST 26

Hon'ble Judges: M.M. Kumar, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: L. Nageshwara Rao, with Rohit Khanna and Dheeraj Jain, for the Appellant; Piyush Kant Jain, Additional Advocate General, Punjab, for the Respondent

Final Decision: Allowed

Judgement

Ajay Kumar Mittal, J.

The petitioner is a dealer registered under the provisions of the Punjab General Sales Tax Act, 1948 (in short, "the Act"). It has approached this court through the present writ petition under article 226 of the Constitution of India, seeking quashing of orders dated November 22, 1993, February 1, 1994 and March 22, 1994, annexures P10, P11 and P12, respectively, rejecting the applications for exemption from payment of sales tax. Brief facts as narrated in the petition necessary for adjudication of controversy involved herein are that the petitioner is engaged in the manufacture and sale of snack foods and beverages. The petitioner got itself registered under the Punjab General Sales Tax Act, 1948 (in short, "the PGST Act") with effect from June 5, 1989 and under the Central Sales Tax Act, 1956 (for brevity, "the CST Act") on June 6, 1989 in respect of two units at Village Channo. On January 4, 1990, the petitioner obtained registration under the PGST Act and CST Act in

respect of third unit at Village Zahura. The petitioner commenced production at Village Channo in respect of processed potatoes/foodgrain on January 21, 1990 and of soft drink concentrate on May 16, 1990. The production at processed fruit and vegetable plant at Village Zahura commenced on December 16, 1990. The Punjab Government formulated industrial policy for the eighth five year plan, which became operative from April 1, 1989 till the end of the plan whereunder it notified the rules called "Punjab Industrial Incentives Code under the Industrial Policy Statement 1989" (hereinafter referred to as, "1989 Policy"). The policy offered fresh incentives for development of industry in Punjab and was designed to attract fresh investment in new thrust areas including agro-based sectors. The policy offered various incentives including deferment/exemption from payment of sales tax for new units as well as for units undergoing expansion/modernization/diversification. Pursuant to the aforesaid policy, notification dated July 25, 1990, was issued by the Excise and Taxation Department of the State of Punjab formulating the Punjab Sales Tax (Deferment & Exemption) Rules, 1991 (in short, "the 1991 Rules") on March 20, 1991. The petitioner set up three independent industrial units at different places and obtained eligibility certificates from the Department of industries vide annexures P2, P5 and P6, in respect of each of the three units. The quantum of sales tax incentives to which the petitioner was entitled was also quantified by the Department of Industries at the maximum amount of Rs. 6 crores for each of the three units in terms of the 1989 Policy. It applied for exemption certificate in respect of first unit. The Assistant Excise and Taxation Commissioner, Sangrur, granted the exemption certificate vide order dated June 3, 1993, annexure P4. When application was filed by the petitioner for issuance of exemption certificate in respect of other two units, the Assistant Excise and Taxation Commissioner vide order dated November 22, 1993, annexure P10 rejected the same on the ground that separate exemption certificate could not be granted in view of rules 2 (xxvii) and 3(1)(i) of the 1991 Rules. The petitioner filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala, who dismissed the same vide order dated February 1, 1994, annexure P11. Aggrieved by the order, the petitioner filed an appeal before the Sales Tax Tribunal, Chandigarh, which was also dismissed vide order dated March 22, 1994, annexure P12. Hence this petition.

2. In the written statement filed on behalf of respondent Nos. 1 to 4, the claim made by the petitioner has been controverted. It has been averred that the petitioner being a registered dealer has been granted exemption from payment of sales tax amounting to rupees six crores vide exemption certificate dated June 3, 1993. The applications for availment of sales tax incentive in respect of other two branches of the petitioner have been rightly rejected as they are not a "unit" within the meaning of clause (xxvii) of rule 2 of the 1991 Rules. However, the "unit" as a whole including the two branches at Channo and Zahura are entitled to sales tax incentive and not each branch independently. Replication was filed by the petitioner reiterating its averments in the writ petition.

3. Mr. Rao, learned senior counsel for the petitioner, submitted that the District Industries Centre, Malerkotla had issued the eligibility certificates for the period from January 21, 1990 to January 20, 1999, May 16, 1990 to May 15, 1999 and December 16, 1990 to December 15, 1999 and in such a situation, the Department of Excise and Taxation was not justified in rejecting the issuance of exemption certificates under the 1991 Rules. Learned senior counsel referred to the 1989 Policy issued by the State of Punjab on March 30, 1989 to grant package of incentives to attract fresh investment in the new thrust areas like high technology and agro based sectors.

4. It was pointed out that the petitioner is covered under category A and was entitled to 125 per cent of the fixed capital investment subject to maximum of rupees six crores to be availed of in maximum nine years period from the date of starting production. It was further argued that the rules nowhere restricted the maximum of Rs. 6 crores to one dealer but each unit was entitled to separate limit of Rs. 6 crores individually.

5. The learned senior counsel relied upon the following observations recorded in the judgment of the apex court in Tata Iron and Steel Co. Ltd. Vs. State of Jharkhand and Others, (pages 301 and 302 in 140 STC) :

36. Despite the fact that sections 22, 23 as also section 13(1)(b) of the 1981 Act refer to a dealer and section 14 thereof refers to registration of dealers mandating filing of return in respect of its activities, the same would not mean that the State cannot grant the same or different benefits to different units producing different products of the same assessee. The State has the power not only to grant exemptions, but also direct such grant relating to a class or description of goods. If the State has the power to issue a notification, it has the power to amend, vary or rescind the same and exercise such power from time to time as and when occasion arises therefor.

37. The notifications in question, however, are not exemption notifications. They provide for set off or adjustment of tax. A dealer in terms of the 1981 Act must be taxed but it may be granted exemption therefrom in respect of certain items or adjustment or set off thereof in relation to its particular products manufactured in a new or existing industry. A notification may be issued u/s 22 or 23 in respect of one or more products or in respect of one or more units. However, whether a dealer would be entitled to the benefit of set off unitwise or not will depend upon the language employed keeping in view the object the notifications seek to achieve. It will not be proper for a court of law to prescribe limitations or restrictions when there is none or vice versa.

6. Elaborating further, learned senior counsel for the petitioner submitted that the certificate of eligibility which was granted by the District Industries Centre, the Excise and Taxation Department exceeded its jurisdiction in declining issuance of exemption certificate in view of the judgment of the apex court in Vadilal Chemicals

Ltd. Vs. The State of Andhra Pradesh and Others, and of the Allahabad High Court in Kumar Fuels v. State of Uttar Pradesh [1986] 63 STC 467 (All).

7. In the end, it was submitted that the 1989 Policy was promulgated for granting incentives to the entrepreneurs who established their business ventures so as to attract investment in the State of Punjab. The policy was, thus, required to be interpreted liberally though there was only one interpretation as canvassed by the petitioner. Even if two interpretations are possible, then the one which favoured the petitioner was required to be adopted. Contending that literal meaning should be assigned to exemption notification so as to achieve the purpose and object with which it has been issued, support was gathered from observations noticed in paras 21 and 24 in SCC (paras 24 and 28 in 24 VST 536) in Assistant Commr. (CT) LTU v. Amara Raja Batteries ltd. [2009] 24 VST 536 (SC) ; [2009] 8 SCC 209, which read thus :

24. An exemption notification should be given a literary meaning. Recourse to other principles or canons of interpretation of statute should be resorted to only in the event, the same gives rise to anomaly or absurdity. The exemption notification must be construed having regard to the purpose and object it seeks to achieve. The Government sought for increase in industrial development in the State. Such benevolent act on the part of the State, unless there exists any statutory interdict, should be given full effect (See Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others,

25. to 27....

28. The exemption notification furthermore as is well known should be construed liberally once it is found that the entrepreneur fulfils all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an entrepreneur is entitled to the benefit thereof, the same should not be denied. (See Commissioner of Sales Tax Vs. Industrial Coal Enterprises,

8. Furthermore, support was gathered from para 7 of the decision of this court in Maurya Timbers Vs. State of Haryana and Others, which is to the following effect (pages 248 and 249 in 104 STC) :

7. The learned counsel for the petitioner has argued that the eligibility certificate had been issued to the petitioner on January 25, 1990 but had been made effective from the date of commencement of production. Similarly, exemption certificate had been issued on May 26, 1990 but it was also made operational from the date of commencement of production. Both the certificates had been issued by two competent authorities and there was no occasion for the revisional authority to exercise powers u/s 40 of the Act so as to modify or withdraw the certificates. The revisional authority, while revising the assessment order, chose a dubious method, not permissible in law, to cancel the exemption certificate issued by the Deputy Excise and Taxation Commissioner. It has to be noticed that the revisional authority, who passed the revising order u/s 40 of the Act, was also a Deputy Excise and

Taxation Commissioner and therefore, was not higher in rank than the authority empowered to issue the exemption certificate. While revising the assessment order, the revisional authority withdrew the benefit of exemption which he could not do while exercising powers u/s 40of the Act. The rules governing the grant of eligibility certificate make it very clear that such a certificate would be granted by a competent screening committee, called as the lower level screening committee, and such a certificate can be withdrawn by that committee alone. Since the petitioner had already been declared as eligible for the purposes of benefit of exemption by the lower level screening committee, with effect from June 20, 1989, there was no occasion to reach a conclusion that no eligibility or exemption could be granted prior to the date of registration. In the eligibility certificate issued on January 25, 1990, the registration numbers of the existing unit have been mentioned. The relevant column for the registration certificate number of the new diversified unit has not been filled in the eligibility certificate. The certificate was issued for a period of seven years starting from June 20, 1989. Therefore, the lower level screening committee did not consider it necessary that the new diversified unit should have immediately obtained the registration certificate under the Act. Even if it was an error, that could be rectified by the lower level screening committee only. In the exemption certificate the Deputy Excise and Taxation Commissioner has given the registration number JAG-HGST-6654 valid from January 25, 1990. It is thus clear that the authority issuing the exemption certificate took notice of the registration certificate obtained by the diversified unit and found it appropriate to grant exemption from the date of commencement of production as had been done by the lower level screening committee while granting the eligibility certificate. The existing industrial unit of the petitioner did hold necessary registration certificate and the lower level screening committee, taking notice of it, issued eligibility certificate.

9. Controverting the submissions made by learned senior counsel for the petitioner, Mr. Jain, learned counsel for the State, submitted that the "unit" has been defined under rule 2(xxvii) to mean an industrial unit which was registered as a dealer under the Act. A "dealer" has been defined u/s 2(d) of the Act and "registered" means registered under the Act in terms of section 2(g) of the Act. The petitioner being a dealer which was registered could not avail of separate exemption in respect of three units. According to the State counsel, maximum incentive that was available was rupees six crores and by the method so adopted by the petitioner, the said limit had been enhanced to rupees 18 crores which was not the policy of the Government. It was further submitted that the policy though was liberalized in 1998 and definition of "unit" under rule 2(xxvii) expanded but it was effective from 1992 and therefore, the same was not applicable to the petitioner. Support was sought to be gathered from the judgment of the honourable Supreme Court in State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd., urging that doctrine of promissory estoppel is an equitable remedy and can be moulded depending upon the facts of each case and not straitjacketed into pigeonholes.

10. After giving thoughtful consideration to the respective submissions, we are impressed by the submissions made by learned senior counsel for the petitioner.

11. The controversy involved herein has two facets. Firstly, whether the Excise and Taxation Department was justified in denying exemption certificate when the Department of Industries had issued the eligibility certificate to the petitioner. Secondly, whether, in the facts and circumstances, the petitioner who had established three separate units though under one entrepreneurship would be entitled to independent exemption limit of Rs. 6 crores for each of the three units.

12. Adverting to first issue and referring to relevant Rules and clauses of 1989 Policy and 1991 Rules, we quote below the same :

Sales Tax Incentives under 1989 Policy

6. Sales/Purchase Tax Exemption and Sales Tax Deferment

6.1 Eligibility.--(1) Subject to provisions of rule 4.3, incentives under this rule shall be admissible to a unit which is registered as a dealer under the Punjab General Sales Tax/Central Sales Tax Act.

(2) to (4) . . .

6.2 Quantum of entitlement.--(1) Sales/purchase tax exemption or sales tax deferment shall be available to units in different growth areas subject to maximum benefits to be regulated as per table I which reads as under :

(2) and (3) . . .

Reference was also made to clause (4) which reads thus :

(4) The expansion and/or modernization part shall be considered as an independent identity for the purpose of sales tax concession and industrial unit shall obtain a separate sales tax registration certificate for the additional capacity and incremental production resulting from such expansion/modernization.

(5) and (6) . . .

15. Interpretation

In any matter or a doubt arising out of any of these rules, the interpretation by and decision of Secretary Industries shall be final.

Deferment and Exemption under 1991 Rules

(1) Short title, commencement and application.--(1) These Rules may be called the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991.

(2) . . .

(3) they shall apply to the units which came into production for the first time, on or after the first day of April 1989 or wherein modernization, expansion or diversification, in terms of the Industrial Policy is carried out.

2. Definitions.--In these Rules, unless the context otherwise requires--

(i) to (ix). . .

(x) ''eligible unit'' means a unit in respect of which eligibility certificate has been granted by the district officer of the Department of Industries under the Industrial Policy ;

(xi) ''eligibility certificate'' means a certificate granted by the competent authority of the Department of Industries ;

(xii) ''exemption certificate'' means a certificate granted in form ST (D and E) II by the prescribed authority in respect of an eligible unit for availing exemption from the payment of sales tax excluding purchase tax on goods specified in Schedule C appended to the Act, and on ''declared goods'', declared as such in section 14 of the Central Sales Tax Act, 1956, but including purchase value of goods purchased from within the State and used for any of the purposes specified in section 4B of the Act.

(xiii) to (xvii) . . .

(xviii) ''large and medium scale unit'' means an industrial unit specified as such by the Central Government and either licensed under the Industrial (Development and Regulation) Act, 1951, if so required, or duly registered with the Director General of Technical Development, Textile Commissioner of the Central Government, Department of Electronics or any other prescribed competent authority ;

(xix) to (xxvi) . . .

(xxvii) ''unit'' means an industrial unit which is registered as a dealer under the Act.

3. Conditions for eligibility.--(1) Deferment of, or exemption from the payment of tax under the Act shall be admissible to a unit--

(i) in respect of which an eligibility certificate has been granted by the competent authority of the Department of Industries and which has not been included in the negative list ;

(ii), (iii) and (2) . . .

4. . . . .

5. Mode of availing benefit of deferment of or exemption from the liability to pay tax.--(1) A unit in respect of which eligibility certificate has been issued shall within a period of thirty days from the date of its issue make an application for the grant of benefit of deferment of or exemption form, the liability to pay tax in form ST (D and E) I to the prescribed authority. The prescribed authority shall issue certificate in

form ST (D and E) I within a period of thirty days of receipt of the application which should be complete in all respects. In case, the certificate is not issued within thirty days, the prescribed authority shall record the reasons for the delay.

(2) The application made under sub-rule (1) shall be accompanied with the eligibility certificate and other relevant documents specified in the application form ST (D and E) I.

(3) On receipt of the application under sub-rule (1), the prescribed authority shall make such enquiries as may be considered necessary by it.

(4) to (7) . . .

8. Cancellation of deferment or exemption certificate.--(1) The deferment or exemption certificate granted in respect of a unit shall be liable to be cancelled on any of the following grounds, namely :

(i) that the certificate has been obtained by fraud, deceit, misrepresentation, misstatement or concealment of material facts ;

(ii) to (vi) . . .

(vii) that the competent authority of the Department of Industries competent to grant eligibility certificate has recommended that the deferment or exemption certificate be cancelled.

(2) . . .

13. On a conjoint reading of the aforesaid rules, it transpires that it mandates the dealer to fulfil the following conditions before it can claim exemption from sales tax under 1991 Rules :

(a) Application is in the prescribed form, i.e., form ST (D&E) 1 (rule 5(1)).

(b) Application has been filed within 30 days of the grant of eligibility certificate by the Department of Industries under the Rules (rule 5(1)).

(c) The application is accompanied with eligibility certificate issued by the Department of Industries under the Rules and other documents as specified in the application (rule 5(2)).

14. The rules do not empower the sales tax authority to sit over the judgment of the State Government in the matter of grant of eligibility certificate. The Sales Tax Department cannot probe into the eligibility of the dealer in respect of any additional unit once it has been accepted by the Industries Department. The action of the Sales Tax Department in fact results into two authorities examining the eligibility of the dealer which the rules never envisaged or contemplated.

15. The Excise and Taxation Department has the limited power while issuing exemption certificate. The authorities of the Excise and Taxation Department while

granting exemption certificate has only the power to see whether the eligibility certificate obtained by the dealer from the Industries Department is not as a result of any fraud, etc. In other words, the said authority is not clothed with the jurisdiction to re-examine the eligibility certificate issued by the Department of Industries and go behind it and refuse to issue exemption certificate except to cancel exemption certificate in a case where fraud, etc., has been perpetuated by the dealer.

16. The apex court in Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others, dealing with an identical issue held that where eligibility certificate had been granted by the Department of Industries, the same could not be cancelled by the sales tax authorities. Relevant observations are as under (pages 86 and 87 in 142 STC) :

Furthermore under the incentive scheme in question, there was only one method of verifying the eligibility for the various incentives granted including sales tax exemption. The procedure was for the matter to be scrutinized and recommended by the State Level Committee and District Level Committee and the certification by the Department of industries and commerce by issuing an eligibility certificate. There was no other method prescribed under the scheme for determining an industrial unit''s eligibility for the benefits granted. The Department of Industries and Commerce having exercised its mind, and having granted the final eligibility certificate (which was valid at all material times), the Commercial Taxes Department could not go beyond the same. More so when the Commissioner, Sales Tax, had accepted the eligibility certificate issued to the appellant and had separately notified the appellant''s eligibility for exemption under the 1993 G. O. In these circumstances the DCCT certainly could not assume that the exemption was wrongly granted nor did he have the jurisdiction u/s 20 of the State Act to go behind the eligibility certificate and embark upon a fresh enquiry with regard to the appellant''s eligibility for the grant of the benefits. The counter-affidavit filed by the respondents-sales tax authorities is telling. It is said that the Sales Tax Department had decided to cancel the eligibility certificates for sales tax incentives. As we have said the eligibility certificates were issued by the Department of Industries and Commerce and could not be cancelled by the sales tax authorities (See in this connection : Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi,

17. The Allahabad High Court delving into similar issue in Kumar Fuels''s case [1986] 63 STC 467 (All) recorded as under (pages 473, 474 and 476 in 63 STC) :

The next question to be considered is as to who is entitled to grant exemption u/s 4A of the Act and whether the Sales Tax Officer has any competency to sit in judgment over the grant of eligibility certificate.

The exemption u/s 4Ais to be granted by the State Government or by any officer so authorized. Section 4A was amended substantially with effect from October 12,

1983, by U. P. Ordinance No. 46 of 1983. The State Government was authorized to exempt sales tax of any goods made by the manufacturer and it was also authorized to declare that the tax shall be levied at a reduced rate. The concession or exemption was to be granted if the State Government was of the opinion that it was necessary for increasing the production of any goods or for promoting the development of industry in the State generally or in any district or part of districts which are industrially backward. This position existed in February 1985, when the eligibility certificate was granted in the present case. Therefore, at the relevant period of time, i.e., February, 1985, the State Government alone was empowered to grant exemption. Whether the applicant was an industrial unit or not, whether the applicant was eligible for exemption or not had to be considered by the State Government or by an officer empowered by the State Government. There was no power with any officer of the Sales Tax Department of the Government in this behalf. Neither the Sales Tax Commissioner nor the Assistant Commissioner nor the Sales Tax Officer had been conferred any power either to grant any exemption or sit in judgment over the grant of exemption.

. . . .

We are, therefore, of the view that the Sales Tax Officer, has no jurisdiction to call in question the grant of eligibility certificate. Various notifications preceding the notification dated December 26, 1985, are notifications which are prior to the introduction of section 4A(2)(d). They would not be relevant for the purposes of this case. The provision requiring a manufacturer furnishing to the assessing authority an eligibility certificate granted by such officer was enforced only from September 13, 1985. Therefore, the concluding words of the aforesaid sub-section, viz., ''in accordance with such procedure as may be specified'' would only be such procedure as has been specified after coming into force of section 4A(2)(d). Prior to the coming into force of this section the stand of the respondents is that even if a matter was in consideration for grant of exemption declaration that it is a new unit, no assessment was made. The position even after the amendment has been clarified by means of the notification dated December 26, 1985. This notification has been issued u/s 4A of the Act which is exclusively in the domain of the State Government. It is relevant to mention here that in none of the notices issued by the sales tax authorities it has been mentioned that the person who granted the eligibility certificate was not empowered to grant it or in granting it he has not followed the procedure prescribed. In fact these notices mention such irregularities which are to be considered and are in the exclusive domain of the State Government while granting such certificate is beyond his jurisdiction.

18. Thus, we conclude that the sales tax authorities had no jurisdiction to call in question grant of eligibility certificates issued by the District Industries Centre.

19. Examining the second issue, it would be necessary to scan the purpose with which the 1989 Policy and 1991 Rules have been formulated. These are incentives

which had been conferred on an entrepreneur so as to give him incentive to establish his unit/industry in a backward area. The petitioner had acted on the basis of this assurance. Even Director of Industries vide communication dated June 4, 1993 (annexure P3) addressed to the Excise and Taxation Commissioner had clarified that three units of the petitioner were independent manufacturing different items in independent manufacturing plants and were maintaining separate books of account. These units were, thus, to be considered as separate identity for the purpose of the incentives. Moreover, rule 2(xxvii) nowhere envisages, that the unit should be independently or separately registered as a dealer. The definition of the term "unit" in a restrictive manner as has been sought to be canvassed by learned State counsel does not spell out from the reading of rule 2(xxvii) defining "unit" and justify the tenor of the policy and the rules framed. Under the circumstances, the State could not restrict the benefit of 1991 Rules to only one unit of the petitioner. Further, the meaning to the term "unit" which we have noted above has the approval of legislative intent also as the State Government vide Notification No. GSR 78/P.A.46/48/Ss.27, 10-A and 30-A/Amd.(14)/98 dated November 9, 1998, published on November 13, 1998, effective from October 1, 1992 had liberalized the policy by expanding the term "unit" wherein benefit of tax exemption had been granted to each unit independently. Adverting to the judgment in State of Haryana and Others Vs. Mahabir Vegetable Oils Pvt. Ltd., on which reliance has been placed by the respondents, it does not help the State being on individual fact situation involved therein. The writ petition, thus, deserves to succeed on both the counts. Accordingly, this petition is allowed. The impugned orders, annexures P10, P11 and P12, are quashed and respondent No. 4 is directed to issue eligibility certificate to the petitioner in respect of two other units as well, i.e., at Village Channo and Village Zahura.