Supreme Court of India
State Of Haryana & Ors vs Bharti Teletech Ltd on 20 January, 1947
Author: D Misra
Bench: H.L. Dattu, Dipak Misra, S.A. Bobde

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6791 OF 2004

State of Haryana & Ors. … Appellant

Versus

Bharti Teletech Ltd. …Respondent

J U D G M E N T

Dipak Misra, J.

Calling in question the legal acceptability and propriety of the judgment and order dated 08.05.2003 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 16336 of 2002 whereby the Division Bench has quashed the order dated 26.9.2002 passed by the Sales Tax Tribunal, Haryana which had affirmed the orders passed by the appellate authority, namely, Joint Excise and Taxation and that of the Deputy Excise and Taxation Commissioner (Gurgaon), the original authority who had, upon initiation of a proceeding under Rule 28 (11) (b) of the Haryana General Sales Tax Rules, 1975 (for short "the Rules"), come to hold that the respondent-assessee herein had violated the provisions of Rule 28A (11) (a) (i) as it had failed to maintain, without convincing reasons, the requisite production and was, therefore, liable to make full payment of tax exemption benefit availed by it during the concessional period, i.e., 13.12.1991 to 12.12.1998 of sale of Electronic Push Button Telephones (EPBT), the present appeal, by special leave, has been preferred by the State of Haryana and its functionaries.

2. The facts that are imperative to be stated are that the respondent assessee, namely, M/s. Bharti Teletech Limited, was allowed sales tax exemption under Rule 28A of the Rules for the period

13.12.1991 to 12.12.1998 for an amount of Rs.498.80 lakhs. This benefit was granted subject to the conditions laid down in the said sub-rule 11 of Rule 28A of the Rules. The conditions postulated in sub-rule 11 (a) are that the industrial unit after availing of the benefit shall continue its production at least for the next five years not below the level of average production for the preceding five years. There is also stipulation in the sub-rule 11 that if the unit violates any of the conditions laid down in clause

(a) of sub-rule 11, it shall be liable to make, in addition to the full amount of tax benefit availed of by it during the period of exemption, payment of interest chargeable under the Act as if no tax exemption was ever available to it. It is apt to note that there is a proviso that provides that the rigors of the said clause would not come into play if the loss of production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to reasons beyond the control of the unit.

3. As the facts would uncurtain, on 3.05.1997, the assessee submitted an application seeking amendment in the eligibility certificate so as to include certain other items but it was rejected vide order dated 22.7.1997 by the High Level Screening Committee. On an appeal being filed, the Commissioner of Industries accepted the same and remitted the matter to the High Level Screening Committee to revise the eligibility certificate allowing the benefit of sales tax exemption by inclusion of additional items. However, the period of exemption remained unaltered. Be it noted, the assessee was granted the full benefit of exemption for the entire period.

4. After the expiry of the period of exemption, the Deputy Excise and Taxation Commissioner (Gurgaon), the 2nd appellant herein, while monitoring the production level of the respondent unit, noticed that it was not maintaining the level of production of the preceding five years and, accordingly, initiated a proceeding against it on the foundation that it had violated the conditions enumerated under Rule 28A (11) (a) (i) and was thereby liable to make full payment of tax exemption benefit already availed by it along with interest. As required under the Rules, it issued a notice to show cause to explain non-maintenance of average production after the expiry of the benefit period inasmuch as it had drastically come down to Rs.9.06 crores from 17.52 crores. In the course of adjudication, in reply to the show cause, the assessee explained that it had established another unit as an expansion unit which had come into commercial production w.e.f. 27.3.1998 and for the purpose of determining the level of production after 12.12.1998, the production figures of the expansion unit were also required to be taken into account. A contention was raised before the 2nd appellant that the notice to show cause was premature as it was given prior to the expiry of twelve months from 12.12.1998, that is, the date on which the period of benefit expired.

5. The adjudicating authority rejected the said contention and proceeded to delve into the facts that had emerged before it. It came to hold that the Gross Turn Over (GTO) during January 1999 and December 1999 was Rs.9.06 crores as against the average GTO of Rs.17.52 crores during the five years immediately preceding 12.12.1998. The said authority also considered the GTO for the assessment year 1999-2000 (1.4.1999 to 31.3.2000) which reflected the amount as Rs.4,48,05,695.00 for the year immediately preceding, i.e., assessment year 1998-1999.

6. It may be noted that a contention was advanced that the unit during the five years preceding 12.12.1998 had produced 40,83,246 pieces giving yearly average of 8,16,649 pieces against which the average production in the post benefit period is 1898961 pieces which would show that the production actually increased after the expiry of the benefit period. The competent authority, upon perusal of the production chart for the period 13.12.1993 to 12.12.1998, analysed the same and arrived at the average production. The tabular chart prepared by the adjudicating authority is as follows:-

Average Production				
Items	Before on period	Expiry benefit	After Expiry of benefit period	Increase (+) Decrease (-)
ETBT	330431		163270	(-) 167161
Pagers	4405		Nil	(-) 4405
Spare Parts	481813		1735691	(+) 1253878

7. The reasoning adopted by the 2nd appellant basically was that the claim of the assessee that production had not come down in the post benefit period was wholly unacceptable because it could not be given the same weightage as its individual parts inasmuch as a complete telephone set could not, for the exemption purpose, be equated with its number of parts which constituted its assembly. Being of this view, the 2nd appellant came to hold that it was obligatory on the part of the assessee industrial unit, having availed the benefit of tax exemption for the specified period, to continue its business and to respect the conditions enumerated in the prescription in the rule. The said authority ruled that the assessee, having failed to meet the production level, was liable to be visited with the consequences and, accordingly, directed for making full payment along with interest.

8. Grieved by the aforesaid order, the assessee preferred an appeal before the appellate authority who came to hold that the explanation for loss in production was due to outdated machinery and, hence, the reasons for fall in production could not be held to be beyond the control of the assessee, for it was well within his control to replace the outdated machinery of the old unit instead of putting up a new unit. On the aforesaid bedrock, the appellate authority declined to interfere in appeal.

9. Failure in appeal led the assessee to file an appeal before the Sales Tax Tribunal which, on reappreciation of the factual matrix in entirety, came to hold that the average manufacturing of EPBT in the subsequent three years was approximately of 9.32 lacs as against an average of 3.79 in the preceding five years. That apart, the appellant had not taken the plea that the lower production was because of factors beyond their control. The tribunal further observed that it was not a mere coincidence that the second unit (expansion) became operational soon after the expiry of benefit in the first unit from which it was evident that the assessee had a well thought out plan to deliberately reduce the manufacturing of EPBT drastically in the first unit and increase the production of the said item in the second unit. The tribunal also took note of the fact from the information provided

by the assessee it was obvious that the turnover in the expanded unit had increased from Rs.65.49 lacs in 1998- 1999 to Rs.31.36 crores in 1999 but on the other hand, the turnover in the first unit had gone down from Rs.13.27 crore during 1998-99 to Rs.4.48 crore during 1999-2000 and hence, it was clearly indicative that the expanded capacity had been created to coincide with the expiry of the benefit period in the first unit. Finally, the tribunal held:-

> "Though increase or decrease in the turnover by itself may not be of much consequence in the scheme but the turnover does have direct relationship with the production and since the production of higher value item i.e. EPBT was reduced, the total gross turnover in terms of value was also bound to decline and the spare capacity in the first unit was utilized by increasing the production of spare parts i.e. low value items. It is, therefore, obvious from the facts of the case that the production of EPBT was deliberately reduced in the first unit and increased in the second unit as the appellant company was hoped of getting the benefit of exemption again on the expanded capacity."

10. In view of the aforesaid analysis, the tribunal affirmed the conclusion recorded by the forums below. The aforesaid order of the tribunal came to be assailed before the High Court in a writ petition. The Division Bench of the High Court referred to the rule position and quantity manufactured in lacs and turnover of goods and placed reliance on R.K. Mittal Woolen Mills v. State of Haryana and others[1] and came to hold that the tribunal ought to have set aside the orders of the Deputy Excise and Taxation Commissioner and Joint Excise and Taxation Commissioner instead of upholding their action on totally erroneous consideration. It opined that the approach of the tribunal was erroneous inasmuch as without pointing out to the violation of the rules, it had passed the order solely on the basis of conjecture. The High Court further observed that even if the factum of reduction of production as stated by the tribunal was accepted as correct, still the exemption on tax could not have been withdrawn as it was not a ground mentioned in sub-rule II (a) (i) of Rule 28A for withdrawal of exemption.

11. Questioning the defensibility of the order passed by the High Court, Mr. Manjit Singh, learned counsel appearing for the appellants, has contended that the High Court in a laconic manner has arrived at the conclusion that the authorities as well as the tribunal has fallen into error by opining that there has been a violation of the rule in question though on a bare reading of the said orders there can be no shadow of doubt that the increased production in respect of the second unit could not have been taken into account for the first unit since the second unit was an individual unit having no concern with the first unit. It is his further submission that the High Court failed to appreciate that the respondent had tried to take recourse to an innovative subterfuge by establishing a new unit producing the same items as the earlier ones and added the production of the second unit to the first unit to claim the benefit which is impermissible. Learned counsel would further submit that when the conditions enumerated under the rule had factually been violated, there was no justification on the part of the High Court to opine on the basis of the decision rendered in the R.K. Mittal Woolen Mills' case that the exemption could not have been withdrawn because there had been no violation of clauses (I) and (II) of sub-rule 11(a) of Rule 28A of the Rules.

12. Mr. Gopal Jain, learned counsel appearing for the respondent contended, in support of the impugned order, that the appreciation of facts by the High Court and the reasons ascribed by it for annulling the orders of the forums below are absolutely unimpeachable since the assessee was under an obligation to apply for exemption even in respect of expansion and in that background, there was no justification for the forums below not to take into consideration the production of the expanded unit. It is also urged by him that even assuming that there are two units, the same would be covered under the definition of Rule 28A (f) which defines "eligible industrial unit" and on a proper construction of the provision, the combined conclusion of the production of the units cannot really be found fault with. It is also put forth by him that the provisions relating to exemption and the exemption notifications are required to be liberally construed for industrial growth and the High Court, keeping in mind the said principle, has dislodged the orders passed by the forums below and, therefore, the order impugned should not be taken exception to.

13. To appreciate the rivalised contention raised at the bar, it is appropriate to refer to Rule 28A (11) which reads as follows:-

"11(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit,

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(i) shall continue its production at least for the next five years not below the level of average production for the preceding five year; and

(ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) 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 tax-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;

PROVIDED that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the units:

PROVIDED FURTHER that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard." [Emphasis added]

14. On a bare reading of the said Rule, it is evincible that the conditions which are imposed have been enumerated in clause I (ii) of the said sub-rule 11 (a) of Rule 28A to the effect that in the event of non-maintenance of the quality of production after the expiry of the exemption, the assessee has to pay the tax benefit availed with interest. In the case at hand, the revenue has pressed clause I (ii) into service. The Division Bench has relied on the decision in R.K. Mittal Woolen Mills (supra)

wherein the High Court was dealing with the withdrawal of eligibility of certificate as provided in sub-rules 8 and 9 of Rule 28A. After referring to sub-rule 8 of Rule 28A that deals with the withdrawal of eligibility certificate under certain circumstances. Analysing the said Rule, it was stated thus :-

> "A perusal of the aforesaid sub-rule would show that the grounds on which the eligibility certificate and be withdrawn are mentioned therein but the ground of non-production of the change of land use permission from the Town and Country Planning Department is not one of the grounds mentioned therein. Sub- rule (8) of Rule 28A being a part of a taxing statute has, in the nature of things, to be construed very strictly and, therefore, the eligibility certificate can be withdrawn only on the grounds mentioned therein and on no other grounds. The authorities cannot add any other ground to the said sub-rule. We are, therefore, satisfied that the eligibility certificate granted to the petitioner could not be withdrawn only on the ground of non-production of the change of land use permission by the Town and Country Planning Department"

15. The said decision, as we perceive, was rendered in a totally different context. In the present case, we are not concerned with the withdrawal of eligibility certificate. We are concerned with the consequences that have been enumerated in clause (b) of sub- rule 11 of Rule 28A which clearly stipulates that in case of violation of clause 11 (a) (i) of Rule 11, the assessee shall be liable for making, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, with interest chargeable under the Act. Thus, reliance placed by the High Court on the said decision is misconceived and inappropriate.

16. The hub of the matter is whether production of two different units can be combined together to meet the requirement of the postulate enshrined under the Rule. The production of the beneficiary unit had failed to fulfil the stipulation incorporated in sub-rule 11 (a)(i) of Rule 28A of the Rules. It is also the undisputed position that the production of the expanded unit has been computed and clubbed with the first unit to reflect the meeting of the criterion. The competent authority has come to a definite conclusion that the expanded capacity had been created to show that the rate of production is maintained but it is fundamentally a subterfuge. The authority has also taken into consideration the different items produced and how there has been loss of production of EPBT in the first unit. The High Court has failed to appreciate the relevant facts and, without noticing that the respondent-assessee had clubbed the production of the units, lancinated the orders passed by the forums below.

17. Mr. Jain, learned counsel for the respondent has drawn our attention to clause (f) of sub-rule (2) of Rule 28A which defines 'eligible industrial unit'. The definition reads as follows:-

> "(f) 'eligible industrial unit' means:-
>
> (i) a new industrial unit or expansion or diversification of the existing unit, which-

(I) has obtained certificate of registration under the Act;

(II) is not a public sector undertaking where the Central Government held 51 per cent or more shares;

(III) is not availing incentive of interest free loan from the Industries Department for investment after the 1st day of April, 1988;

(IV) is not included in Schedule III appended to these rules except the tiny units set up in a rural area on or after 1-4-1992, in which capital investment in plant and machinery including market price of plant and machinery taken on base or otherwise, does not exceed rupees five lakhs, shall not form part of Schedule III;

(V) is not availing or has availed of exemption under Section 13 of the Act;

(ii) a sick industrial unit recommended by the High Powered Committee for the grant of fiscal relief either in the form of exemption from the payment of sales tax or purchase tax or both or deferment of tax."

18. He has laid immense emphasis on the term 'expansion' of the existing unit. The term 'expansion' has been defined in clause

(d) of sub-rule (2) of Rule 28A which reads thus:-

(d) "expansion/diversification of industrial unit" means a capacity set up or installed during the operative period which creates additional productions/manufacturing facilities for manufacture of the same product/products as of the existing unit (expansion) or different products (diversification) at the same or new location -

(i) in which the additional fixed -capital investment made during the operative period exceeds 25% of the fixed capital investment of the existing unit, and

(ii) which results into increase in annual production by 25% of the installed capacity of the Existing Unit in case of expansion.

On a careful reading of the aforesaid provisions, it is quite clear as day that they deal with the eligibility to get the benefit of exemption/deferment from the payment of tax. On a studied scrutiny of clause (f) (i) (I), it is manifest that it is incumbent on the unit to obtain certificate of registration under the Act. The submission of Mr. Jain is that the second unit has obtained the registration certificate under the Act and, hence, the production of the said unit, being eligible, is permitted to be included. Needless to say, obtainment of registration certificate is a condition precedent to become eligible but that does not mean that the production of the said unit will be taken into account for sustaining the benefit of the first unit. They are independent of each other as far as sub-rule 11 of the Rule 28A is concerned. We are disposed to think so as the grant of exemption has a sacrosanct

purpose. The concept of exemption has been introduced for development of industrial activity and it is granted for a certain purpose to a unit for certain types of good. Exemption can be granted under the Rules or under a notification with certain conditions and also ensure payment of taxes post the exemption period. The concept of exemption is required to be tested on a different anvil, for it grants freedom from liability. In the case at hand, as we understand, it is 'unit' specific. The term 'unit' has not been defined. The grant of exemption unit wise can be best understood by way of example. An entrepreneur can get an exemption of a unit and thereafter establish number of units and try to club together the production of all of them to get the benefit for all. It would be well nigh unacceptable, for what is required is that each unit must meet the condition to avail the benefit.

19. We will be failing in our duty if we do not address to a submission, albeit the last straw, of Mr. Jain that any provision relating to grant of exemption, be it under a rule or notification, should be considered liberally. In this regard, we may profitably refer to the decision in Hansraj Gordhanadas v. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and others[2] wherein it has been held as follows:-

"...It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different..."

20. In Commissioner of Sales Tax v. Industrial Coal Enterprises[3], after referring to CIT v. Straw Board Mfg. Co. Ltd[4] and Bajaj Tempo Ltd. v. CIT[5], the Court ruled that an exemption notification, as is well known, should be construed liberally once it is found that the entrepreneur fulfills 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.

21. In this context, reference to Tamil Nadu Electricity Board and Another v. Status Spinning Mills Limited and another[6] would be fruitful. It has been held therein :-

"It may be true that the exemption notification should receive a strict construction as has been held by this Court in Novopan India Ltd. v. CCE and Customs[7], but it is also true that once it is found that the industry is entitled to the benefit of exemption notification, it would received a broad construction. (See Tata Iron & Steel Co. Ltd. v. State of Jharkhand[8] and A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala[9]). A notification granting exemption can be withdrawn in public interest. What would be the public interest would, however, depend upon the facts of each case."

22. From the aforesaid authorities, it is clear as crystal that a statutory rule or an exemption notification which confers benefit to the assessee on certain conditions should be liberally construed but the beneficiary should fall within the ambit of the rule or notification and further if there are conditions and violation thereof are provided, then the concept of liberal construction would not

arise. Exemption being an exception has to be respected regard being had to its nature and purpose. There can be cases where liberal interpretation or understanding would be permissible, but in the present case, the rule position being clear, the same does not arise.

23. At this juncture, it is apposite to refer to the pronouncement in State of Haryana and others v. A.S. Fuels Private Limited and another[10]. In the said case, the State of Haryana had approached this Court as the High Court had construed the effect of sub-rule 10 (v) of Rule 28A of the Rules which authorises the department to withdraw the tax exemption certificate but had granted liberty to the State to scrutinize if it was a case for withdrawal of the eligibility certificate under sub-rule (8) of Rule 28A of the Rules and, thereafter, to proceed in accordance with the law. This Court, scanning the anatomy of Rule 28A, opined that 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 ever been granted to it. Thereafter, the Court adverted to sub-rule 11 (a) and, in that context, it observed thus:-

> "...there are several conditions which are relevant; firstly, there is a requirement of continuing the production for 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 sub-rule (11)(b)."

24. In the case at hand, as we have already held, clubbing is not permissible. It amounts to a violation of the conditions stipulated under Rule 11(a)(i) of Rule 28A and, therefore, the consequences have to follow and as a result, the assessee has to pay the full amount of tax benefit and interest. The approach of the High Court is absolutely erroneous and it really cannot withstand close scrutiny.

25. In view of our aforesaid analysis and prismatic reasoning, the appeal is allowed and the judgment and order passed by the High Court is set aside and those of the tribunal and other authorities are restored. There shall be no order as to costs.

.....J.

[H.L. Dattu] .....J.

[Dipak Misra] .....J.

[S.A. Bobde] New Delhi;

January 20, 2014.

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[1] (2001) 123 STC 248

[2] AIR 1970 SC 755

[3] (1999) 2 SCC 607
[4] (1989) Supp (2) SCC 523
[5] (1992) 3 SCC 78
[6] (2008) 7 SCC 353
[7] 1994 Supp (3) SCC 606
[8] (2005) 4 SCC 272
[9] (2007) 2 SCC 725
[10] (2008) 9 SCC 230
