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pensionary benefits to its pensioners. The State of Haryana has not, however, chosen to adopt any such scheme. Therefore, the pensioners in Punjab would get those benefits whereas the pensioners in Haryana cannot claim that they must also be given those benefits merely because the pensioners in Punjab are getting those. The claim of the petitioners is wholly misconceived and they cannot claim the liberalized pensionary benefits which the Punjab Government has given to its pensioners. If the claim of the petitioners were to be granted, it would mean that the State of Haryana will have to be directed to adopt a liberalized pension scheme at par with that of the State of Punjab and we are clearly of the view that no such direction can be issued. In this view of the matter, we find no merit in the appeal and dismiss the same.

**BINOD KUMAR ROY, C.J.**

(5) I agree.

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**R.N.R.**

*Before N.K. Sodhi & M.M. Kumar, JJ*

*M/S BOSS GEARS LTD.,—Petitioner*

versus

*SALES TAX TRIBUNAL, HARYANA & ANOTHER,—Respondents*

*C.W.P. NO. 16039 OF 2002*

*25th February, 2003*

*Haryana General Sales Tax Act, 1973(Act No. 26 of 1988)—S.13-B—Haryana General Sales Tax Rules, 1975—Chapter IV-B, Rl.28-B—Rl.28-B provides incentive of exemption/deferment of payment of tax to the eligible industrial units—A limited company applying for issue of eligibility certificate for availing benefit of deferment of sales tax—Rejection of—Cl.(f) of sub Rl.(3) of Rl.28-B requires that at the time of grant of eligibility certificate a company should not be defaulter of voluntary tax—Company failing to file its returns and defaulting in payment of tax—Merely because the company applied for benefit of deferment of tax it cannot justify the non-payment of tax and non-filing of returns—Action of respondents in rejecting application for*

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*grant of eligibility certificate legal—Petition liable to be dismissed.*

*Held*, that the petitioner applied within the prescribed period for the grant of the Eligibility Certificate but the same could be granted only if it was an 'eligible industrial unit' within the meaning of clause (f) of sub rule (3) of Rule 28-B of the Rules. An eligible industrial unit should not have been a defaulter of payment of voluntary tax under the Act. The petitioner had not paid tax for the quarter ending 30th June, 1999. It cannot justify the non-payment of tax and the non-filing of the return for the quarter ending 30th June, 1999 or for any other quarter merely because it had applied for the benefit of deferment of tax. This being the position, the petitioner was in default of payment of tax for the quarter ending 30th June, 1999. It had also not filed its return. The default had to be seen both at the time of the grant of Eligibility Certificate and also at the time of renewal of Entitlement/Exemption Certificate. The Eligibility Certificate has yet to be issued to the petitioner and it was in default of payment of voluntary tax even prior to the issue thereof. The petitioner cannot, therefore, be held to be an eligible industrial unit within the meaning of Rule 28-B of the Rules. In this view of the matter, no fault can be found with the action of the respondents.

(Para 4)

Rajesh Bindal, Advocate, *for the petitioner*

Amol Rattan Singh, AAG, Haryana *for respondent No. 2*

### JUDGMENT

*N.K. SODHI, J:*

(1) Section 13-B was introduced in the Haryana General Sales Tax Act, 1973 (hereinafter called the Act) by act No. 26 of 1988 published in the Haryana Government Gazette on 8th September, 1988 and it provides that the State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax for such period and subject to such conditions as may be prescribed. In exercise of the powers conferred by this provision, the State Government framed Rule 28-A which was introduced in the Haryana General Sales Tax Rules, 1975 (for short the Rules) on 17th

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May, 1989. This Rule became operative with effect from the 1st day of April, 1988 and was to continue till 31st day of March, 1997. It was amended on 3rd June, 1997 with effect from 1st April, 1997 and the amendment provided that it shall continue till the date on which new policy for incentive to industry is announced by the Government of Haryana in the Industries Department. The new policy for incentive to the industry in the State was announced by the Government of Haryana on 1st August, 1997. Rule 28-A, therefore, ceased to operate with effect from 1st August, 1997.

(2) With a view to give effect to the new industrial policy as announced on 1st August, 1997, the State Government framed Rule 28-B by adding Chapter IV-B in the Rules. This Rule was inserted in the Rules on 18th May, 1999 and it became operative from the 1st day of August, 1997 and was to end on the date on which the policy for incentive to industry is terminated/revised by the Government of Haryana in the Industries Department. We are concerned with this Rule in the present case. This Rule provides for incentive of exemption/deferment of payment of tax to the eligible industrial units. "Eligible industrial unit" has been defined in clause (f) of sub-rule (3) of Rule 28-B of the Rules and it reads as under :-

"(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 State or Central Government holds 51% or more shares ;
  - (III) is not included in Negative list of Industries notified by the Industries Department, Government of Haryana from time to time ;
  - (IV) is not availing or has not availed incentive of exemption under section 13 of the Act ;
  - (V) should not be a defaulter of voluntary tax/additional demand which has become final, under the Haryana General Sales Tax Act, 1973/Central Sales Tax Act,

1956, both at the time of grant of eligibility certificate and renewal of entitlement/exemption certificate.

(VI) has obtained permission for the change of land use from the authorities concerned for conversion of agricultural use into non-agricultural use.

(ii) a sick industrial unit recommended by the Steering Committee for the grant of fiscal relief either in the form of exemption from the payment of sales tax or deferment of tax.”

The relevant parts of sub-rule (5) and sub-rule (6) of Rule 28-B with which we are concerned are also reproduced hereunder for facility of reference :—

“(5)(a) Subject to other provisions of this rule, the benefit of tax exemption shall be given as per table I, deferment as per table II and III in respect of new unit as well as diversified/expanded unit respectively to an eligible industrial unit holding exemption or entitlement certificate, as the case may be, to the extent, for the period, from year to year, in various zones from the date of commercial production or from the date of issue of entitlement/exemption certificate, as may be opted, and change in option to be allowed once before the issue of entitlement/exemption certificate provided that tax has been collected and paid regularly to the Government during the pendency of application, as under :—

TABLE I

(6)(a) Every Eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in form S.T. 70A in triplicate alongwith attested copies of the documents mentioned therein to the General Manager, District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule, whichever is later. No application shall be entertained if not preferred within time. An application with

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incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made, if the applicant fails to complete it on an opportunity afforded to him in this behalf :

Provided that the delay up to 30 days in case of Small Scale Industries and 90 days in case of medium/large scale industries, may be condoned for specific reasons to be recorded by the respective committee.

(b) applications from small scale units will be considered by the Lower Level Screening Committee and those from Medium/Large Scale units by the Higher Level Screening Committee :

(c) to (j) -----.”

(3) Petitioner before us is a limited company which has set up a new industrial unit for the manufacture of automobile parts at Sikanderpur (Bada) in District Gurgaon in the State of Haryana. In terms of Rule 28-B(6)(a) of the Rules the petitioner applied on 13th August, 1999 for the issue of Eligibility Certificate for availing the benefit of deferment of sales tax with effect from the date when it went into commercial production. This option was exercised in terms of Rule 28-B(5)(a) of the Rules. The application was processed by the General Manager, District Industries Centre, Gurgaon and the same was considered by the Higher Level Screening Committee in its meeting held on 20th May, 2000. This Committee observed that the petitioner had filed its sales tax returns upto 31st March, 1999 and had paid tax up to that date but it had not filed its quarterly returns for the subsequent quarters ending 30th June, 1999, 30th September, 1999 and 31st December, 1999. It was further observed that tax for these quarters had also not been paid. The unit was found to be in default of payment of voluntary tax for three quarters and, therefore, it held the unit to be ineligible for claiming the benefit of tax deferment. Consequently, the application filed for the grant of Eligibility Certificate was rejected. A communication to this effect was received by the petitioner as per letter dated 11th July, 2000 from the Director of Industries Haryana. Feeling aggrieved by the order passed by the Higher Level Screening Committee the petitioner filed an appeal

before the Sales Tax Tribunal, Haryana which was dismissed on 1st February, 2001. The Tribunal also observed that since the petitioner had voluntarily filed its sales tax returns up to 31st March, 1999 and had paid tax for those quarters, it must be presumed that it opted for deferment of sales tax from the date of issue of Entitlement Certificate and not from the date when it went into commercial production. The Tribunal also held that the petitioner had defaulted in the payment of tax for some of the quarters and, therefore, it had become ineligible to avail the said concession. It is against these orders that the present petition has been filed under Article 226 of the Constitution.

(4) We have heard counsel for the parties and are of the view that the writ petition deserves to be dismissed. 'Eligible Industrial unit' has been defined in clause (f) of sub-rule (3) of Rule 28-B of the Rules. Clause (V) thereof makes it clear that an eligible industrial unit should not be a defaulter of payment of voluntary tax under the Act or the Central Sales Tax Act both at the time of grant of the Eligibility Certificate and renewal of Entitlement/Exemption Certificate. In the case before us, the petitioner had filed its returns up to the quarter ending 31st March, 1999 and had paid tax till that date. It is common case of the parties that neither any return nor any tax was paid by the petitioner for the subsequent quarters ending 30th June, 1999, 30th September, 1999, and 31st December, 1999. The argument of Shri Rajesh Bindal, Advocate is that the petitioner having applied within 90 days of the coming into force of Rule 28-B of the Rules, its application for the grant of Eligibility Certificate could not be rejected by the Higher Level Screening Committee. He referred to Sub-rule (6)(a) of Rule 28-B of the Rules in support of his contention. We are unable to accept this submission. No doubt, the petitioner applied within the prescribed period for the grant of the Eligibility Certificate but the same could be granted only if it (petitioner) was an 'eligible industrial unit' within the meaning of clause (f) of sub-rule (3) of Rule 28-B of the Rules. As already observed, an eligible industrial unit should not have been a defaulter of payment of voluntary tax under the Act. Admittedly, the petitioner had not paid tax for the quarter ending 30th June, 1999. This period is prior to the date on which Rule 28-B was notified. The argument that the petitioner was claiming sales tax deferment and, therefore, was not liable to pay the tax is also devoid of merit because when Rule 28-B was introduced on 18th May, 1999 with effect from 1st August, 1997, the petitioner should

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have filed the return for the quarter ending 30th June, 1999 and should have also deposited the tax for the said quarter which it failed to do so. It could not have anticipated prior to 18th May, 1999 that such a Rule would be introduced. The petitioner cannot justify the non-payment of tax and the non-filing of the return for the quarter ending 30th June, 1999 or for any other quarter merely because it had applied for the benefit of deferment of tax. This being the position, the petitioner was in default of payment of tax for the quarter ending 30th June, 1999. It had also not filed its return. The default had to be seen both at the time of the grant of Eligibility Certificate and also at the time of renewal of Entitlement/Exemption Certificate. The Eligibility Certificate has yet to be issued to the petitioner and it was in default of payment of voluntary tax even prior to the issue thereof. The petitioner cannot, therefore, be held to be an eligible industrial unit within the meaning of Rule 28-B of the Rules. In this view of the matter, no fault can be found with the action of the respondents.

(5) Before concluding, we may refer to a Division Bench Judgment of this Court in *Perfect Pen Pvt. Ltd. Vs. State of Haryana and others (1)* which was cited by the learned counsel for the petitioner in support of his submissions. We have carefully gone through this judgment and find that the same is on different facts and the issue involved before us was not the one before the Division Bench in that case. That judgment does not in any manner advance the case of the petitioner.

(6) In the result, the writ petition fails and the same stands dismissed with no orders as to costs.

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**R.N.R.**

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(1) (2001) 122 STC 533