
Before G.S. Singhvi & Ajay Kumar Mittal, JJ.

R.T. PACKAGING PVT. LTD.,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

C.W.P. NO. 8915 OF 2004

29th November, 2004

Constitution of India, 1950—Art. 226—Haryana Value Added Tax Act, 2003—S. 61(2)(d)—Haryana Value Added Tax Rules, 2003—Haryana General Sales Tax Act, 1973—Petitioner setting up an industrial unit—Competent authority issuing eligibility & exemption certificates—Enactment of VAT Act—Request for conversion of sales tax exemption to deferment of tax—Rejection of—Whether after repeal of the 1973 Act by the VAT Act petitioner can be asked to furnish bank guarantee for the entire amount for availing sales tax deferment in lieu of sales tax exemption—Held, no—Petitioner already furnished bank guarantee to the extent of 15% and surety for the remaining 85% of the amount—VAT Rules nowhere provide that the dealer is required to furnish 100% bank guarantee for conversion of exemption of sales tax into deferment of tax—Action of the respondents in demanding 100% bank guarantee could not be treated as legal & justified—Petition allowed while directing the Assessing Authority to issue deferment certificate to the petitioner.

Held, that a conjoint reading of the provisions of Section 61(2)(d) of the VAT Act which envisages grant of deferment, and Rules 69 and 70 of the VAT Rules, which lay down procedure for grant of deferment, shows that Section 13-B and 25-A of the 1973 Act under which tax exemption could be claimed by the Industrial units are to remain in force notwithstanding the repeal of the 1973 Act subject, however, to certain exceptions, restrictions and conditions. An industrial unit which had been granted the benefit of sales tax exemption under the 1973 Act has been given an option for changing the exemption to that of deferment in the payment of tax for the remaining period and the balance amount. The unit availing benefit of deferment of tax under VAT Act in lieu of exemption under 1973 Act is required to furnish security for the payment of full amount of deferred tax whereas no security was required to be furnished under the 1975

Rules to the satisfaction of the Assessing Authority. It has been further provided that the security shall be fully maintained for the entire period of deferment and in case the security or the additional security as refunded is to be furnished and is not furnished, it shall not be entitled to the benefit of deferment of the payment of unsecured amount of tax and the same shall be recoverable immediately along with interest. It has further been provided in sub-rule (6) of Rule 69 of VAT Rules that deferment of tax shall be treated as interest free loan to the industrial unit on annual basis as laid down by the Industries Department of the State Government.

(Para 9)

Further held, that the petitioner had furnished bank guarantee to the extent of 15% and balance 85% in the form of surety bonds to the extent of Rs. 393.40 lakhs i.e. the amount of exemption of sales tax allowed under the 1973 Act. This is in consonance with the provisions of the VAT Act and the Rules. The demand of the respondents for 100% bank guarantee for conversion of exemption of sales tax into deferment of tax could not be treated as legal and justified because sub-rule (6) of Rule 69 read with order dated 16th December, 1992 issued by the Department of Industries, nowhere provides that the dealer is required to furnish 100% bank guarantee. Therefore, insistence of the concerned authority for furnishing of 100% bank guarantee as a condition precedent for grant of deferment cannot be approved.

(Para 10)

Ms. Jaishree Thakur, Advocate for the petitioner.

Jaswant Singh, Senior Deputy Advocate General, Haryana
for the respondent.

JUDGMENT

AJAY KUMAR MITTAL, J.

(1) This is a petition under Articles 226/227 of the Constitution of India for declaring the provisions of Section 61(2)(d) of the Haryana Value Added Tax Act, 2003 (for short. "the VAT Act") as *ultra vires*

to the Constitution of India and in the alternative, for issuance of a direction to respondent No. 3 to grant deferment certificate to the petitioner under the VAT Act read with Haryana Value Added Tax Rules, 2003 (for short, "the VAT Rules").

(2) For deciding the issues arising in the petition, we may briefly notice the facts. The petitioner invested a sum of Rs. 344.29 lacs in the industrial unit set up at Industrial Estate, Phase-II, Dharuhera, District Rewari for manufacturing of printed polyester/papers and laminates and started commercial production on 21st September, 1999. With a view to avail exemption under the Haryana General Sales Tax Act, 1973 (for short, "the 1973 Act"), read with the Haryana General Sales Tax Rules, 1975 (for short, "the 1975 Rules), the petitioner applied for grant of eligibility and exemption certificates. The competent authority issued eligibility certificate for Rs. 393.40 lacs in Form ST-72-A. Thereafter, exemption certificate was issued on 22nd July, 2002. During the period from 22nd September, 1999 to 31st March, 2003, the petitioner effected local and central sales to the tune of Rs. 11,19,77,082/- and availed exemptions to the tune of Rs. 76,77,933.

(3) After the enactment of the VAT Act and framing of the VAT Rules, the petitioner submitted an application in Form VAT-A5 for conversion of sales tax exemption to deferment of tax and also made a request for grant of time to furnish the security necessary for grant of the deferment.

(4) The grievance of the petitioner is that even though, it fulfilled the conditions prescribed under the VAT Act and the VAT Rules, the concerned authority, instead of granting time and accepting the security, asked it to submit bank guarantee for conversion of sales tax exemption to full deferment of sales tax. The petitioner has averred that it had already furnished bank guarantee equivalent to 15% and balance 85% in the form of surety to the extent of Rs. 393.40 lacs and, thus, there is no justification, legal or otherwise, for the demand of bank guarantee equivalent to entire amount for which deferment is to be granted.

(5) In the written statements filed on behalf of respondent No. 1 and respondents No. 2 and 3, it has not been disputed that after setting up the industrial unit, the petitioner was granted eligibility

and exemption certificates and that it had availed sales tax exemption for the period from 22nd September, 1999 to 31st March, 2003. It has also not been disputed that after coming into force of the VAT Act and framing of the VAT Rules, an application was made for grant of deferment certificate. However, the petitioner's entitlement to get the deferment certificate has been contested on the premise that it did not submit the necessary application up to 15th October, 2003 despite notice. In the written statement filed on behalf of respondents No. 2 and 3, it has been further averred that deferment certificate cannot be granted to the petitioner because it has failed to furnish the required bank guarantee and surety bond.

(6) We have heard learned counsel for the parties and have gone through the record.

(7) The core question that arises for adjudication in this petition is, whether after the repeal of the 1973 Act by the VAT Act, the petitioner who had already furnished bank guarantee to the extent of 15% and surety for the remaining 85% of the amount, can be asked to furnish bank guarantee for the entire amount for availing sales tax deferment in lieu of sales tax exemption which had already been allowed to it under the 1973 Act.

(8) Section 61(2)(d) of the VAT Act, which envisages grant of deferment, and Rules 69 and 70 of the VAT Rules, which lay down procedure for grant of deferment, read as under :—

“61(2)(d) Notwithstanding anything contained in sub-section (1) the provisions of section 13-B and section 25-A of the said Act and the rules (hereinafter referred to as the existing rules), framed thereunder relating to tax concessions to industrial units shall remain in force subject to the following exceptions, restrictions and conditions, namely :—

- (i) an industrial unit availing the benefit of exemption from payment of tax may, in the prescribed manner, change over to deferment of payment of tax for the remaining period and the remaining extent of benefit or for such period and such extent of benefit as may

be prescribed but where an industrial unit does not choose to do so, exemption to it from payment of tax shall cease to take effect on and from the appointed day and further,—

- (I) it shall be liable to maintain production at a level so that its annual turnover does not fall short of the average annual turnover during the period of exemption; and
- (II) it shall not export out of State any goods produced by it,“

Rules 69 and 70 of the Rules

69. (1) An industrial unit, availing the benefit of exemption from payment of tax or the benefit of capital subsidy under the existing rules, may, within fifteen days from the date of coming into force of these rules, make an application in Form VAT-A5 alongwith documents mentioned therein to the officer-in-charge of the district indicating its option to change over to deferment of tax for the remaining period and the remaining extent of benefit. No application shall be entertained if not preferred within time. An application with incomplete or incorrect particulars including the document required to be attached therewith shall be deemed as having not been made if the applicant fails to correct it or/and complete it, as the case may be, on an opportunity afforded to him in this behalf.
- (2) On receipt of application under sub-rule (1), the officer-in-charge of the district after satisfying himself that the application is within time, correct and complete in all respect and the applicant is a genuine industrial unit, shall, within fifteen days, issue an entitlement certificate in Form VAT-G14 in lieu of exemption certificate where the applicant unit was availing the benefit of exemption from payment of tax and a revised entitlement certificate in Form-G15 where the applicant-unit was availing the

benefit of capital subsidy which shall take effect from the appointed day and shall entitle the unit to deferment of payment of tax for five years. The Unit may, in lieu of availing deferment of tax, elect, by indicating in the application made under sub-rule (1), to make payment of one-half of the tax otherwise due before the time prescribed for filling of quarterly returns and where the tax is so paid the unit shall have no further liability to pay tax for the said period and such payment for the purpose of computation of tax benefit availed by the unit and input tax passed on to the purchaser, if otherwise admissible to him, shall be deemed to be the full payment. This facility shall also be available to a unit who has been availing the benefit of deferment of payment of tax before the appointed day provided such unit sends an intimation to the officer-in-charge of the district within 15 days of coming into force of these rules in writing in this behalf. The entitlement or the revised entitlement certificate, as the case may be, shall be subject to the conditions and restrictions specified therein or under the existing rules under which the eligibility/entitlement certificate to such applicant was issued.

- (3) Where a unit holding an entitlement or a revised entitlement certificate, as the case may be, elects to avail deferment of payment of tax, it shall, if no security for the payment of deferred tax is required to be furnished under the existing rules, furnish security for the full amount of tax to be deferred to the satisfaction of the appropriate assessing authority. The security shall be furnished in advance for the tax to be deferred in a year or the remaining period if less than one year within a month of the beginning of the year or before the end of the remaining period if less than a month and where such security falls short of the amount of tax deferred at any time additional security of the adequate amount shall be furnished within a month. The security shall be fully maintained for the whole of the period till the payment of the deferred tax is

fully made. If a unit fails to furnish the security or the additional security, as the case may be, in time, it shall not be entitled to the benefit of deferment of payment of the unsecured amount of tax and such tax shall become recoverable immediately with interest as if the unit was not entitled to the deferment of this tax.

- (4) While issuing an entitlement or revised entitlement certificate under sub-rule (2), the officer-in-charge of the district shall after verification from his record indicate therein the remaining period and the remaining extent of benefit and shall keep a record of such certificates and the benefit availed on the strength of same in register in Form VAT-G16.
 - (5) Where an industrial unit, availing the benefit of exemption from payment of tax or the benefit of capital subsidy under the existing rules fails to make an application in Form VAT-A5 in the manner and within the time prescribed under sub-rule (1) the exemption certificate or the entitlement certificate, as the case may be shall cease to be operative and such industrial unit, from the appointed day, shall not be entitled to avail the exemption from payment of tax or benefit of capital subsidy, as the case may be.
 - (6) The deferred amount of tax shall be converted into interest free loan in respect of each industrial unit on annual basis in the manner laid down by the Industry Department of the State Government.
 - (7) Any amount becoming due for payment on account of failure to comply with the conditions (I) and (II) of sub-Clause (i) of Clause (d) of sub-section (2) of Section 61, shall be paid without interest by twelve equal monthly instalments.
70. (1) The security required to be furnished under the Act, may be in the following forms, namely:—
- (a) cash deposit in the Government Treasury under head "0040-Tax on Sales, Trade etc.";

- (b) post office saving bank account, the account being pledged to the Commissioner or any officer authorised by him in writing in this behalf ;
 - (c) bank guarantee from a Scheduled Bank agreeing to pay to the State Government on demand of the amount of security;
 - (d) personal bond with solvent surety/sureties for the amount of security to the satisfaction of the authority before whom it is required to be furnished under these rules, which shall be in Form VAT-B2 on a non-judicial paper of the appropriate value ; and
 - (e) such saving certificates or bonds or fixed deposit receipts as are issued by the Government of India, the State Government, or Reserve Bank of India or Scheduled Bank, from time to time, to be pledged to the Commissioner or any other officer authorised by him in this behalf.
- (2) The security furnished under sub-sections (1), (2), (4), and (6) of section 12 shall be maintained in full so long as the registration certificates continues to be in force.
- (3) In the event of default in the payment of any tax, interest, penalty or any other amount due, the security furnished by the dealer shall be liable to adjustment towards such amount, after intimation to him and the short fall in the amount of security shall unless ordered otherwise be made up by him within a period of fifteen days from the date of intimation in any of the ways specified in sub-rule (1).
- (4) The security furnished under sub-section (6) of section 31 shall be forfeited, if the payment of the amount due on account of advance tax, penalty or interest imposed is not made within the time allowed for the payment thereof.”
- (9) A conjoint reading of the above-quoted provisions shows that Section 13-B and 25-A of the 1973 Act under which tax

exemption could be claimed by the industrial units are to remain in force notwithstanding the repeal of the 1973 Act subject, however, to certain exceptions, restrictions and conditions. An industrial unit which had been granted the benefit of sales tax exemption under the 1973 Act, has been given an option for changing the exemption to that of deferment in the payment of tax for the remaining period and the balance amount. An industrial unit desirous of availing the benefit of deferment is required to make an application in Form VAT-A5 within 15 days to the office-in-charge of the District indicating its option to change over to deferment of tax for the remaining period and remaining extent of benefit. An option has been given to an industrial unit either to make payment of the deferred tax after five years or to pay 50% of the deferred tax in advance along with the return so as to discharge of its liability of the full deferred tax. The tax deferred is required to be converted into interest-free loan. In case an industrial unit avails of conversion of exemption of tax to deferment of tax, it is required to maintain production at a level which shall not fall short of the average annual turn over during the period of exemption and further it shall not export any goods produced by it outside the State. The officer in charge of the district on receipt of an application in Form VAT-A5 shall satisfy himself that the application complete in all respects is correct and within time and is filed by a genuine industrial unit within 15 days of issue of an entitlement certificate in Form VAT-G 14 in lieu of exemption certificate. The unit availing benefit of deferment of tax under VAT Act in lieu of exemption under 1973 Act, is required to furnish security for the payment of full amount of deferred tax whereas no security was required to be furnished under the 1975 Rules to the satisfaction of the assessing authority. It has been further provided that the security shall be fully maintained for the entire period of deferment and in case the security or the additional security as refunded is to be furnished and is not furnished, it shall not be entitled to the benefit of deferment of the payment of unsecured amount of tax and the same shall be recoverable immediately alongwith interest. It has further been provided in sub-rule (6) of Rule 69 of VAT Rules that deferment of tax shall be treated as interest free loan to the industrial unit on annual basis as laid down by the Industries Department of the State Government, Rule 70 provides for form of security which may

be furnished by an industrial unit. Clause (d) provides that personal bond with solvent surety/sureties for the amount of security to the satisfaction of the aforesaid authority shall be in Form VAT-B2. Further, the Department of Industries has issued order dated 16th December, 1992 whereby a Scheme has been formulated for conversion of deferred sales tax into interest free loan, a copy of which has been attached as Annexure R-1 with the written statement filed by respondent Nos 2 and 3. Clause 4 of the said Scheme reads as under :—

“SECURITIES

Eligible industrial unit will furnish any one of the following securities :—

- (i) 1st charge/pari-passu charge on the assets on which the deferred tax/loan is being secured.
- (ii) 1st charge on the collateral assets having value equivalent in the loan amount.
- (iii) 2nd charge in the case the unit is financed by the Central/ State Financial Institutions, National/Scheduled Bank provided sufficient margin is available on the assets.
- (iv) 15% of the loan amount in the form of bank guarantee and 85% in the form of personal sureties.”

(10) In the back-drop of the above, we shall now consider whether the action of the respondents not to entertain the petitioner's application for grant of deferment is legally sustainable. Admittedly, the petitioner had furnished bank guarantee to the extent of 15% and balance 85% in the form of surety bonds to the extent of Rs. 393.40 lakhs i.e. the amount of exemption of sales tax allowed under the 1973 Act. As observed earlier, this is in consonance with the provisions of the VAT Act and the Rules. The demand of the respondents for 100% bank guarantee for conversion of exemption of sales tax into deferment of tax could not be treated as legal and justified because sub-rule(6) of Rule 69 read with Annexure R-1 nowhere provides that the dealer is required to furnish 100% bank guarantee. Therefore, insistence of the concerned authority for furnishing of 100% bank guarantee as a condition precedent for grant of deferment cannot be approved.

(11) In the result, the writ petition is allowed. The Assessing Authority is directed to issue deferment certificate in terms of application dated 2nd June, 2003 made by the petitioner. The needful be done within one month from the date of receipt/submission of certified copy of this order. There shall, however, be no order as to costs.

(12) Before parting with the case, we make it clear that the learned counsel for the petitioner did not advance any argument on the question of vires of Section 61(2)(d) of the VAT Act and, therefore, we have refrained from adjudicating upon that question.

R.N.R.