a lenient view of the matter and has allowed one more chance to the respondent to fully and effectually comply with the Court order. In our opinion this order cannot by any stretch of imagination be construed as a judgment for the purposes of clause X of the Letters Patent and we are fully convinced that the appeal is misconceived. Instead of placing full material before the learned Single Judge and instead of satisfying the learned Single Judge that the appellant (respondent in the contempt petition) has fully and effectively complied with the Court order, the appellant has rushed to a Division Bench by filing this misconceived appeal, which, as we have held above, is not maintainable.

(20) For the reasons aforesaid, the appeal is held to be not maintainable and is, therefore, dismissed with costs which we assess at Rs. 1,000. (one thousand).

R.N.R.

Before Hon'ble Ashok Bhan & H. S. Brar, JJ.

M/S HARYANA VANASPATI AND GENERAL MILLS.—*Petitioner.*

versus

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 7408 *of* 1990.

July 15, 1994.

Constitution of India, 1950—*Arts.* 14 & 19—*Haryana General Sales Tax Act,* 1973—*S.* 13-B—*Haryana General Sales Tax Rules,* 1975—*Rl.* 28-*A* (9) (1) & 28-*A* (10) (*v*)—*Concession—Exemption from payment of tax for period of seven years—Closure of business during period of exemption—Cancellation of exemption certificate under rule* 28-*A* (9) (1)—*Rl.* 28-*A* (10) (*v*) *requiring exempted dealer to pay in lump sum entire amount of tax exempted on closure—Both the said rules are* intra vires *Arts.* 14 *and* 19 *of the Constitution—Condition for refund of amount of tax exempted is not un reasonable restriction not arbitrary—Retrospective operation of the rules is not illegal.*

Ashok Bhan, J.

Held, that we find no force in the contention of the petitioner that rules 28-A (8) (i) and 28-A (10(v) of the Rules are *ultra vires*

the Articles 14 and 19 of the Constitution of India. Exemption from payment of sales tax for a period spread over seven years is a concession granted to certain eligible units. It has been provided that if the unit discontinued its business for a period exceeding six months or closing down of its business during the period of exemption/deferment then the exemption entitlement certificate granted to it is liable to be cancelled. This has been done to ensure the continuation and smooth functioning of the company during the course of exemption from payment of tax otherwise such a relaxation is liable to be misused where a unit may play fraud and close its business after availing the exemption from payment of tax for sometime. It was a concession with certain conditions which in our view are reasonable.

(Para 5)

Held, that while granting exemption from payment of tax a condition is imposed that the unit must function during the period of exemption granted to the unit otherwise is liable to refund the amount of tax for which exemption was granted. The restriction imposed is neither arbitrary nor retrospective.

(Para 6)

Further held, that petitioner-company has suffered a loss of nearly Rs. two crores and keeping in view this aspect and that nearly 60 per cent of the tax has already been recovered, we direct the First Appellate Authority i.e. Joint Excise and Taxation Commissioner (Appeals), Rohtak to hear the appeal on merits and dispose of the same after affording due opportunity of hearing to the petitioner. The condition of deposit of the remaining tax as precondition for hearing the appeal is dispensed with.

(Para 7)

A. K. Mittal, Advocate, *for the petitioner.*

J. V. Yadav, D.A.G. Haryana, *for the State (Respondent).*

ORDER

(1) Petitioner-Company was granted exemption certificate under section 13-B of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the HGST Act), read with rule 28-A of the Haryana General Sales Tax Rules 1975 (hereinafter referred to as the HSST Rules) from payment of sales tax under the Act and the rules with effect from 25th October, 1989 to 24th October, 1996 for a period of seven years, petitioner's business as per averments set out in the writ petition had closed down in September 1992 as the petitioner-company had suffered loss totalling Rs. 1,89,69,511. Assessing Authority-respondent No. 4 in view of the closure of the business of the petitioner-company in the year 1992 cancelled the exemption certificate and imposed tax amounting to Rs. 7,94,848 and

interest amounting to Rs. 2,36,987 i.e. total of Rs. 10,31,835. Assessing Authority cancelled the exemption certificate and levied the tax in view of rule 28-A (9) (i) and 28-A (10) (V) of the Rules, which reads as under :—

> "28-A (9) The exemption/entitlement certificate granted to an eligible industrial units shall be liable to be cancelled by the Deputy Excise and Taxation Commissioner concerned in the following circumstances, after affording an opportunity of being heard to the unit :
>
> (i) discontinuance of its business by the unit at any time for a period exceeding six months or closing down of its business during the period of exemption/deferment. 28-A (10) (v); On cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax exempted/deffered shall become payable immediately in lump-sum, and the provisions relating to recovery of tax. interest and imposition of penalty shall be applicable in such case."

(2) A perusal of these rules would show that the exemption/, entitlement certificate granted to eligible industrial unit is liable to be cancelled after affording an opportunity of being heard to the unit in case of the discontinuance of its business at any time for a period exceeding six months or closing down of its business during the period of exemption/deferment.

(3) Against the order of the appellate authority petitioner filed an appeal along with an application to dispense with the condition of payment of tax before the appeal is heard on merits. Appellate Authority-respondent No. 3 directed the petitioner company to pay the amount of tax imposed in instalments of Rs. 2,00,000 per month payable by 10th of every month beginning from February, 1994. This order was passed on 14th January, 1994. Since the petitioner failed to deposit the amount of instalments due on 10th February, 1994,—*vide* order dated 28th February, 1994 the appellate authority dismissed the appeal as not maintainable.

(4) No appeal was filed against the order dated 14th January, 1994 as the appeal had been dismissed on merit on 28th February, 1994. Petitioner-company filed an appeal against the order dated

28th February, 1994 before the Tribunal. The Tribunal keeping in view the financial difficulties being faced by the petitioner-company ordered that the amount be recovered in monthly instalments of Rs. 1,00,000 first starting within a period of one month from the date of issuance of order and the remaining monthly instalments thereafter. Joint Excise and Taxation Commissioner (First Appellate Court) was directed to hear the appeal on merits after notice to the parties petitioner has filed the present writ petition challenging the orders of the authorities below on merits as well as for issuance of a writ of mandamus declaring rules 28-A (9) (i) and 28-A (10) (v) of the Rules as *ultra vires*, unconstitutional and illegal in-so-far as its application is made retrospective in respect of past transactions. Other averments made in the writ petition are that Appellate Authority had attached certain property of the petitioner company to the tune of Rs. 15 lacs and by way of auction it obtained a sum of Rs. 5,11,000 and adjusted the same towards the arrears of tax, due. During the course of arguments a photo copy of a draft was produced showing a deposit of Rs. 1,00,000 with the appellate authority towards the arrears of tax.

(5) We find no force in the contention of the petitioner that rule 28-A (9) (i) and 28-A (10) (v) of the Rules are *ultra vires* the Articles 14 and 19 of the Constitution of India. Exemption from payment of sales tax for a period spread over seven years is a concession granted to certain eligible units. It has been provided that if the unit discontinued its business for a period exceeding six months or closing down of its business during the period of exemption/deferment then the exemption entitlement certificate granted to it is liable to be cancelled. This has been done to ensure the continuation and smooth functioning of the company during the course of exemption from payment of tax otherwise such a relaxation is liable to be misused where a unit may play fraud and close its business after availing the exemption from payment of tax for sometime. It was a concession with certain conditions which in our view are reasonable.

(6) The next contention of the counsel for the petitioner is that the provisions of the rules under challenge are retrospective in its operation and it is a bad law; that the operation of these rules is retrospective and it relates to past transactions and, therefore, liable to be struck down. For this he has placed reliance upon two judgments reported as *Rai Ramkrishan* v. *State of Bihar*, and *Jawaharmal* v. *State of Rajasthan* (2). Both these judgments have

(1) A.I.R. 1963 S.C. 1667.
(2) A.I.R. 1966 S.C. 764.

no relevance to the point in issue. In these judgments, the point considered was totally different and not relateable to the point in issue. It has been held by various Courts including the Supreme Court of India that legislature can pass a law and make its provisions retrospective. Such retrospectivity can be challenged by a party where the retrospective operation completely alters the character of the tax imposed or as to make it outside the limits of the entry which gives the Legislature competence to enact the law or that the alternation made is so unreasonable making it arbitrary. In the present case while granting exemption from payment of tax a condition is imposed that the unit must function during the period of exemption granted to the unit otherwise its liability to refund the amount of tax for which exemption was granted. The restriction imposed is neither arbitrary nor retrospective.

(7) Counsel for the petitioner then contended that his appeal be ordered to be heard on merits as the respondent-authorities have already recovered nearly 60 per cent of the tax due i.e. Rs. 5,11,000 by auction and a sale of the property and Rs. 1.00,000 deposited through a bank draft. We find force in this submission. Petitioner-company has suffered a loss of nearly Rs. Two crores and keeping in view this aspect and that nearly 60 per cent of the tax has already been recovered, we direct the First Appellate Authority i.e. Joint Excise and Taxation Commissioner (Appeals). Rohtak to hear the appeal on merits and dispose of the same after affording due opportunity of hearing to the petitioner. The condition of deposit of the remaining tax as a precondition for hearing the appeal is dispensed with. parties are directed to appear before the Appellate Authority on August 3, 1994.

R.N.R.

Before Hon'ble R. P. Sethi, J. L. Gupta & N. K. Kapoor, JJ.

CHAMBEL SINGH,—*Petitioner.*

versus

THE STATE OF HARYANA AND ANOTHER.—*Respondents.*

Civil Writ Petition No. 5592 *of* 1989.

September 23, 1994.

Constitution of India, 1950—*Art.* 226—Ad hoc *service—Whether to be counted towards seniority in the cadre.*

Held, that from a reading of para 44, Clauses (A) & (B) in the *Director Recruit Class-II Engineering Officer's Association and*