

*Before M. M. Kumar and Jaswant Singh, JJ.*

**M/S HINDUSTAN POLYPACKS,—Petitioner**

*versus*

**STATE OF HARYANA AND ANOTHER,—Respondents**

**C.W.P. No. 14411 of 1998**

14th December, 2009

*Constitution of India, 1950—Art.226—Haryana General Sales Tax Act, 1973—S.13-B—Haryana General Sales Tax (Second Amendment) Rules, 1989—RI.28A(2)—Claim for sales tax exemption—LLSC rejecting holding petitioner falling in negative list of industries as per Schedule III—HLSC also rejecting appeal of petitioner—Sub rule 4 (a) of Rule 28A of Rules postulates that petitioner could claim benefit of tax exemption either from date of commercial production or from date of issuance of exemption/entitlement certificate as per his option—Such option is not irrevocable—Provisions of sub rule 4(a) of Rule 28A not mandatory especially when provision is compared with sub rule 3—Provisions of sub rule 3 provide that an option can be exercised by an eligible industrial unit either to avail benefit of tax exemption or deferment and option once exercised is to be treated as final—Petitioner's unit eligible in all respects on date when an application for grant of eligibility certificate was filed so as to avail benefit of sales tax exemption, therefore, exemption could be granted either from date of issuance of entitlement/exemption certificate or from date of commercial production—Merely because petitioner opting from date of commercial production when it was on negative list would not necessarily mean that it cannot be granted from date of issuance of entitlement/exemption certificate as rule is not mandatory—'LLSC' obliged to consider application of petitioner for grant of exemption from sales tax with effect from date of issuance of entitlement/exemption certificate when bar of placing petitioner's industry on negative list removed—Petition allowed, orders passed by 'LLSC' and 'HLSC' held to be unsustainable in eyes of law and set aside.*

*Held*, that sub rule 4(a) of Rule 28A of the Rules clearly postulates that the petitioner could claim benefit of tax exemption either from the date of commercial production or from the date of issuance of exemption/entitlement certificate as per his option. The aforesaid option is not irrevocable. It can always be claimed by the petitioner either from the date of issuance of entitlement/exemption certificate or from the date of commercial production. The provisions of sub rule 4(a) of Rule 28A of the Rules are not mandatory especially when the provision is compared with sub-rule 3 of Rule 28A. A perusal of sub-rule 3 would show that an option can be exercised by an eligible industrial unit either to avail the benefit of tax exemption or deferment. It further provides that option once exercised is to be treated as final. The framer of the rule has not used the mandatory language in the succeeding sub-rule 4(a) by providing that option once exercised was to be treated as final.

(Para 19)

*Further held*, that the petitioner's unit is eligible in all respects on the date when an application for grant of eligibility certificate was filed so as to avail the benefit of sales tax exemption. Accordingly, the exemption could be granted either from the date of issuance of entitlement/exemption certificate or from the date of commercial production. Merely because the petitioner has opted from the date of commercial production, when it was on the negative list would not necessarily mean that it cannot be granted from the date of issuance of entitlement/exemption certificate as the rule is not mandatory. Therefore, 'LLSC' was obliged to consider the application of the petitioner for grant of exemption from sales tax with effect from the date of issuance of entitlement/exemption certificate when the bar of placing the petitioner's industry on the negative list has been removed. Accordingly, it is held that the order passed by the 'LLSC' dated 28th October, 1994 and the order passed by the 'HLSC' dated 5th August, 1995 are unsustainable in the eyes of law and are liable to be set aside.

(Para 20)

Sandeep Goyal, Advocate, *for the petitioner*.

R. D. Sharma, DAG, Haryana, *for the respondents*.

**M. M. KUMAR, J.**

(1) This petition filed under Article 226 of the Constitution challenges order dated 28th October, 1994 (P-10) passed by the Lower Level Screening Committee (for brevity, 'LLSC') rejecting the claim of the petitioner for sales tax exemption on the ground that the petitioner's unit went into production prior to 11th February, 1994 and in view of notification issued by the Excise and Taxation Department, Haryana, dated 11th February, 1994 (P-9), it does not qualify for the said benefit. It has also been noticed by the LLSC that the petitioner's unit was prior to 11th February, 1994 in the negative list of industries as appended to Schedule III of the Haryana General Sales Tax Rules, 1975 (for brevity, 'the Rules'). Challenge has also been made to the order dated 5th August, 1998 (P-12) passed by the Higher Level Screening Committee (for brevity, 'HLSC') rejecting the appeal of the petitioner filed against the order dated 28th October, 1994.

(2) Brief facts of the case are that in the year 1988 the State of Haryana formulated an industrial policy and certain industries, which were set up after 1st April, 1988 were exempted from payment of sales tax on the goods manufactured by them. Since there was no express provision of exemption in the Haryana General Sales Tax Act, 1973 (for brevity, 'the HGST Act'), therefore, with a view to augment industrial development in the respondent State, Section 13-B was inserted in the HGST Act *vide* Haryana Act No. 26 of 1988, *inter alia*, empowering the State of Haryana to exempt any class of industry from payment of sales tax on the goods manufactured by them. On 17th May, 1989, the State of Haryana notified Haryana General Sales Tax (Second Amendment) Rules, 1989, amending the Rules. After Chapter IV of the existing Rules, Chapter IV-A was inserted with the heading of "Class of Industries, period and other conditions for exempting/deferring from payment of tax". In the said chapter, Rule 28A has also been incorporated in the Rules. Rule 28A(2) of the Rules defines meaning of various expressions including 'operative period', 'new industrial unit', 'eligible industrial unit', 'screening committee', 'medium and large scale industry', 'eligibility certificate', 'exemption certificate', 'notional sales tax liability' and 'negative list', which are relevant for the purposes of the issues raised in the instant petition. Rule 28A(4) deals with the benefit of tax exemption or deferment and provides that the same shall be given to an eligible industrial unit, holding exemption or entitlement certificate, as the

case may be, to the extent and for the period from year to year basis in various zones. The details of the quantum and period of tax exemption/tax deferment for new industrial units falling under Zone 'A', 'B' and 'C' as also relating to such units which intended to expand/diversification, has also been given in Rule 28A(4). Rule 28A(5) lays down a detailed procedure for availing benefit under this Rule whereas Rule 28A(7) talks about the procedure to be adopted for renewal of an exemption certificate from year to year basis. In Schedule-III under Rule 28A(2)(7) clause (o) the details of industries/class of industries have been given, which are on the negative list.

(3) The effect of clause (o) of sub-rule (2) of Rule 28A of the Rules is that now the Industries Department notifies periodically the list of class of industries which would not be entitled to the grant of incentives in the nature of sales tax exemption/deferment, capital investment subsidy and electricity duty etc. On the basis of such negative list, various agencies of the State of Haryana process the applications of the industrial units who intend to avail incentives. On 11th January, 1991, the Industries Department notified the class of industries which were not eligible for the grant of capital investment subsidy under the Industrial Policy of 1988 (P-1). It is pertinent to notice here that after promulgation of Rule 28A of the Rules, the Industries Department issued two Negative Lists on 3rd January, 1991 and 19th June, 1991, containing the class of industries which were ineligible for grant of sales tax exemption/deferment.

(4) In the year 1992, an other industrial policy was formulated by the State of Haryana, namely, 'New Industrial Policy of 1992'. A negative list of class of industries under the New Industrial Policy of 1992 was notified on 9th March, 1992, which has superseded the earlier negative lists (P-2). On 25th May, 1993, the State of Haryana in Industries Department has issued another notification notifying that the industries mentioned therein are placed in the negative list and they would not be entitled to any incentives including sales tax exemption/deferment. It has further been specifically mentioned that the said notification would be effective from the date of issue and the list contained therein would have no application to the industrial units set up under the Rural Industries Scheme (P-3). It has been claimed by the petitioner that the notification dated 25th May, 1993 has superseded the negative list which was notified on 9th March, 1992. At this stage it

is pertinent to mention that the petitioner is a partnership firm engaged in the business of manufacturing of 'HDPE/PP Woven Sacks and Polythene Bags and Sheets'. It has been asserted that the manufacturing unit of the petitioner was excluded from the negative list with effect from 25th May, 1993. In other words, the industries like that of the petitioner's, which were manufacturing polythene bags and sheets were made eligible by the State of Hayana with effect from 25th May, 1993 for grant of incentives including sales tax exemption/deferment under the New Industrial Policy of 1992.

(5) In pursuance to notification dated 25th May, 1993 issued by Industries Department the Excise and Taxation Department- respondent No. 1 initiated the process for amendment of Schedule-III of the Rules and a notification dated 13th October, 1993 was issued publishing the draft rules for amendment in Schedule-III and objections or suggestions were invited (P-4). Noticeably, the draft rules did not include the class of industries engaged in the manufacture of Polythene Bags and Sheets like that of the petitioner's unit to remain in the negative list. In the notification dated 13th October, 1993 intention was also shown to make the amendment in Schedule-III restropectively with effect from 25th May, 1993 (i.e. the day of enforcement of the notification dated 25th May, 1993 issued by Industries Department).

(6) The petitioner has claimed that inspired by the availability of incentives announced under the New Industrial Policy of 1992, the petitioner also thought of setting up an industrial unit at Karnal and after making a detailed project report submitted its applications to the concerned authorities. The petitioner was granted exemption from electricity duty from the date of commencement of production i.e. 20th December, 1993 (P-5), capital subsidy was granted on the generating set purchased by it (P-6), an industrial plot in industrial estate at Karnal was also allotted (P-7) and a loan of about Rs. 10 lacs for running the industry was also granted by the Haryana Financial Corporation on 24th September, 1993 (P-8). It has been claimed that all the abovementioned benefits were granted to the petitioner on the basis of the recommendations made by the General Manager, District Industries Centre, Karnal-respondent No. 4, who had recommended the case of the petitioner in accordance with the notifications dated 25th May, 1993 and 13th October, 1993 (P-3 and P-4). Thereafter the petitioner set up its industrial unit at Karnal and applied to respondent No. 4 for registration

as a small scale industrial Unit. It was provisionally registered as a small scale industry *vide* Registration No. 050503786, dated 24th August, 1993. Subsequently it was also granted regular registration No. 050526786, dated 27th December, 1993 by respondent No. 4. The commercial production in the industrial unit of the petitioner commenced on 20th December, 1993.

(7) On 11th February, 1994, the petitioner applied in the prescribed Form ST-70 to respondent No. 4 for grant of an eligibility certificate enabling it to avail the benefit of sales tax exemption under Rule 28A of the Rules which was within the prescribed period of 90 days from the date of commercial production. On 11th February, 1994 itself, the Excise and Taxation Department, Haryana, issued a notification amending Schedule-III prospectively with effect from 11th February, 1994 (P-9). As a result the class of industries manufacturing polythene bags and sheets stood excluded from the negative list contained in Schedule-III with effect from 11th February, 1994.

(8) On 28th October, 1994, respondent No. 4 informed the petitioner that its application for grant of sales tax exemption was considered by the 'LLSC' and rejected because the industrial unit of the petitioner fell in the negative list of industries as per Schedule-III of the Rules (P-10). On 24th November, 1994, the petitioner filed an appeal under Rule 28A(5)(f) of the Rules against order dated 28th October, 1994 before the 'HLSC' (P-11). After four years, the 'HLSC' rejected the appeal *vide* order dated 5th August, 1998 (P-12). The decision of the 'HLSC' was communicated to the counsel of the petitioner on 14th October, 1998 (P-13).

(9) In the written statement filed by respondent No. 1 the stand taken is that the incentive of sales tax exemption is merely a concession and it does not confer any legally enforceable right upon the petitioner. The notifications issued by the Excise and Taxation Department are final for the purpose of sales tax payment and recovery. It has been submitted that notification dated 17th May, 1989 issued by the Excise and Taxation Department is final and applicable to the present case. Notification dated 11th February, 1994 would have no application to the case of the petitioner because it is applicable to those industries which came into existence on

or after 11th February, 1994. It has been asserted that the commercial production was started by the petitioner's industry on 20th December, 1993 and at that time it was in the negative list, thus, not eligible for exemption of sales tax. It has been further stated that as per notification dated 17th May, 1989, for seeking sales tax exemption under Rule 28A of the Rules the operative period is from 1st April, 1988 to 31st March, 1997. However, the industries included in the negative list as per Schedule-III of the Rules are not entitled for the benefit of exemption. The petitioner firm is engaged in the manufacturing of Polythene bags and sheets, which is in the negative list and as such the petitioner is not entitled for the benefit of exemption of sales tax. Accordingly, the application and appeal of the petitioner has been rightly rejected by the 'LLSC' and 'HLSC' respectively. A separate written statement on similar lines has also been filed by respondent Nos. 2, 3 and 4.

(10) Mr. Sandeep Goyal, learned counsel for the petitioner has vehemently argued that the petitioner had established his industrial unit of Polythene bags and sheets in pursuance of new industrial policy announced in 1992 and the various concessions announced therein. According to the learned counsel it was granted exemption from electricity duty from the date of commencement of commercial production with effect from 20th December, 1993 and subsidy was also given on the generating set purchased by it. He has drawn our attention to various averments made in para 10 of the petition and argued that even industrial plot in Industrial Estate, Karnal was allotted *vide* Annexure P.7 and loan of about Rs. 10 lacs for running the industrial unit was given by the Haryana Financial Corporation (P.8) and those benefits were released to the petitioner on the basis of the recommendation made by the General Manager, District Industries Center. Therefore, once the petitioner has applied in the prescribed form ST 70 for grant of eligibility certificate and to avail the benefit of sales tax exemption on 11th February, 1994 then there was no reason for the respondents to deny the benefit especially when on 11th February, 1994 the industry concerning manufacturing of Polythene bags and sheets have been removed from the negative list. Learned counsel has submitted that the principle of promissory estoppel would be attracted to the facts of the present case and

in that regard he has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **State of Bihar versus Suprabhat Steel Ltd. and others (1)** and **State of Punjab versus M/s Nestle India Ltd. (2)** and argued that in similar circumstances the principle of promissory estoppel were applied by the Hon'ble Supreme Court as would be evident from the reading of paras 24 of 43.

(11) Mr. Sandeep Goyal, learned counsel for the petitioner has further submitted that the manufacturers of polythene bags and sheets like the petitioner were removed from the negative list on 25th May, 1993 by the Industrial Department. He has emphasised that the Excise and Taxation Department likewise has published the draft rules *vide* notification dated 13th October, 1993 (P-4) inviting objections as to why the manufacturing industries of polythene bags and sheets, be not excluded from the negative list with effect from 25th May, 1993. However, it was illegally taken off the negative list prospectively *vide* notification dated 11th February, 1994 (P-9). It should have been done with effect from 25th May, 1993. According to the learned counsel the petitioner made an application on 11th February, 1994 itself seeking exemption under Rule 28A(5) within the specified period of 90 days from the date of commercial production. According to the learned counsel the operational period under clause (2)(A) of Rule 28A is 1st April, 1988 to 31st March, 1997 and a new unit within the meaning of clause 2(c) of Rule 28A of the Rules could always apply for exemption within 90 days of the commercial production. He has argued that the petitioner's unit went into commercial production on 20th December, 1993. Therefore, the application filed by the petitioner on 11th February, 1994 was within 90 days within the meaning of Rule 28A(5) of the Rules from the date of commercial production and it was made during the operative period. Therefore, the orders passed by the LLSC dated 28th October, 1994 (P-10) and order dated 5th August, 1998 passed by the HLSC (P-12) are liable to be set aside.

(12) Another submission made by the learned counsel for the petitioner is that the petitioner has not charged any tax from its customers, which would show the *bona fide* of the petitioner that all the time it was expecting that the claim made by it is meritorious and, therefore, no question of undue enrichment would arise.

---

(1) 1999 (152) S.T.C. 258

(2) 2004 (136) S.T.C. 35 = 2004 (6) S.C.C. 465



(13) Mr. R. D. Sharma, learned State counsel on the other hand has argued that although the petitioner has made an application within the specified period but it has exercised option to grant exemption with effect from 20th December, 1993 when the manufacturers of polythene bags and sheets were still in the negative list. Accordingly, any manufacturer of polythene bags and sheets would not be eligible on 20th December, 1993. He has further pointed out that there is option given by Rule 28A(4)(a) to apply either from the date of production or from the date of issuance of certificate. However, the petitioner's unit has chosen to apply from the date of production when it fell within the negative list and, therefore, it could not be granted exemption. In so far as the retrospective effect of draft rules is concerned, Mr. Sharma has submitted that the draft rules were merely a proposal and objections were invited. According to the learned counsel the draft rules were eventually notified on 11th February, 1994 (P-9) and the provision with regard to retrospective effect was not accepted by the Government. Therefore, it cannot be claimed that the draft rule, which provided for retrospective operation of the item like polythene bags and sheets excluding from the negative list, would operate from a retrospective date.

(14) After hearing the learned counsel for the parties and perusing the record we find that the entitlement of the petitioner to seek tax exemption from the payment of tax would be dependent on sub rules 3, 4 and 5 of Rule 28A of the Rules. It is imperative to read sub rule 3 and sub rule 4(a) of Rule 28A of the Rules which are as under :

- (3) **“Option** -- An eligible industrial unit may opt either to avail benefit of tax exemption or deferment. Option once exercised shall be final except that it can be changed once from exemption to deferment for the remaining period and balanced quantum of benefit.
- (4) (a) Subject to other provisions of this rule, the benefit of tax exemption or deferment shall be given 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 as under :

### Quantum and period of tax exemption/tax deferment

#### (i) New Industrial Units.

Name of Zone and the area comprised therein	Small scale	Medium scale Large scale unit	Time
1	2	3	4
xx xx xx xx xx xx			
Zone "C" comprising Faridabad and Ballabgarh complex administration areas	100% of fixed capital investment	90% of fixed capital investment	5 years
xx xx xx xx xx			

Provided that in the case of exemption the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover of goods manufactured by the unit.]

Provided further that in case of expansion or diversification only expanded or diversified capacity of an existing unit shall be entitled to 24 {exemption or deferment} under this rule and notwithstanding anything to the contrary contained in these rules, an expanded or diversified capacity shall be considered as independent entity for the purpose of sales tax registration and every such industrial unit shall obtain a separate registration certificate."

(15) A perusal of the above extracts of the rule would show that the benefit of tax exemption or deferment is available to an eligible industrial unit who has been issued exemption or entitlement certificate for the period

from year to year in various zones from the date of commercial production or from the date of issuance of entitlement/exemption certificate as may be opted. The eligible industrial unit is entitled to opt either to avail benefit of tax exemption or deferment as per the option exercised. It has come on record that the operative period for exemption or deferment is 1st April, 1988 to 31st March, 1997.

(16) There is then procedure for availing of benefit provided by sub-rule 5(a) of Rule 28-A of the Rules which reads as under :

“5(a) Every Eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in form ST 70 in triplicate alongwith attested copies of documents mentioned therein to the General Manager District Industries Center 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 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.”

(17) According to the aforesaid rule every eligible industrial unit is required to make an application in form ST 70 alongwith attested copies of documents to the General Manager, District Industries Center within 90 days from the date of its coming into commercial production. No such application is to be entertained if it is not preferred within the stipulated time. Likewise an incomplete or application with incomplete particulars would be deemed to have not been made if the applicant fails to complete the same after an opportunity given.

(18) The petitioner had established its unit in pursuance to Industrial Policy of 1992 for the manufacturing of Polythene bags and sheets. The aforesaid industry was on the negative list on 9th March, 1992 but was taken off the negative list on 25th May, 1993 by Industrial Department. Eventually it was removed from the negative list with effect from 11th February, 1994 (P-9) by the Excise and Taxation Department by amending the Rule 28-A. Earlier to the amendment draft rules *vide* notification dated

13th October, 1993 (P-4) inviting objections were published as to why the manufacturing of Polythene bags and sheets be not excluded from the negative list with effect from 25th May, 1993. However, it was removed from the negative list with effect from 11th February, 1994 by taking a conscious decision. The petitioner has applied within 90 days from the date of its commercial production which has commenced from 20th December, 1993. It is also not disputed that the unit of the petitioner is a new unit within the meaning of clause 2(c) of Rule 28-A of the Rules. The claim of the petitioner has been declined by the 'LLSC' on 28th October, 1994 (P-1) solely on the ground that the petitioner's unit had gone into production prior to 11th February, 1994 and therefore it does not qualify for the aforesaid benefits. The aforesaid order has been upheld by the 'HLSC' vide order dated 5th August, 1998 (P-12). A reference has been made to the notification dated 11th February, 1994 (P-9) which has amended schedule III containing various items which are in the negative list and the plastic material which was shown in the negative list earlier (at item No. 18 of the notification dated 9th March, 1992, Annexure (P-2) has been deleted. It is true that production in the unit of the petitioner has commenced on 20th December, 1993 but an application was made by the petitioner on 11th February, 1994 when the Polythene bags and sheets etc. had already been removed from the negative list by a notification of even date.

(19) As has already been noticed in the preceding para sub-rule 4(a) of the Rule 28-A of the Rules clearly postulates that the petitioner could claim benefit of tax exemption either from the date of commercial production or from the date of issuance of exemption/entitlement certificate as per his option. The aforesaid option is not irrevocable. It can always be claimed by the petitioner either from the date of issuance of entitlement/ exemption certificate or from the date of commercial production. The provisions of sub-rule 4(a) of Rule 28-A of the Rules are not mandatory especially when the provision is compared with sub rule 3 of Rule 28-A. A perusal of sub-rule 3 would show that an option can be exercised by an eligible industrial unit either to avail the benefit of tax exemption or deferment. It further provides that option once exercised is to be treated as final. The framer of the rule has not used the mandatory language in the succeeding sub-rule 4(a) by providing that option once exercised was to be treated as final. It is further pertinent to notice that the expression 'shall' has been used in sub-

rule 3 whereas sub-rule 4(a) uses the expression 'may' which also show intention of the framer of the rules that the option of the rules exercised under sub-rule 4(a) is not irrevocable. It is trite to observe that Rule 28-A of the rules is a beneficial provision granting concession to a particular type of industries in the State. The legislative intendment is clear from the phraseology of sub- rules 3 and 4(a) of Rule 28-A of the Rules. Wherever the framers of the rules intended the rule to be mandatory it has used the expression 'shall' and otherwise word 'may' has been used in sub-rule (3) of Rule 28-A of the Rules.

(20) The petitioners were attracted to set up their industry and infact have been granted various benefits like exemption from electricity duty from the date of commencement of production (P.5), subsidy on the generating set purchased by it (P.6), allotment of industrial plot in Industrial Estate, Karnal (P.7) and loan of about Rs. 10 lacs for running industry by HFC (P.8). Therefore, we are of the view that to deny the benefit on the ground that the petitioner's unit on the date of commercial production on 20th December, 1993 was on the negative list would not be just and fair especially when an option has been given to claim such benefits either from the date of commercial production or from the subsequent date when the eligibility certificate or exemption certificate is issued. It remains undisputed that the petitioner's unit is eligible in all respects on the date when an application for grant of eligibility certificate was filed so as to avail the benefit of sales tax exemption. Accordingly, the exemption could be granted either from the date of issuance of entitlement/exemption certificate or from the date of commercial production. Merely because the petitioner has opted from the date of commercial production, when it was on the negative list would not necessarily mean that it cannot be granted from the date of issuance of entitlement/exemption certificate as the rule is not mandatory. Therefore, we are of the view that 'I.L.S.C' was obliged to consider the application of the petitioner for grant of exemption from sales tax with effect from the date of issuance of entitlement/exemption certificate when the bar of placing the petitioner's industry on the negative list has been removed. Accordingly it is held that the order passed by the 'I.L.S.C' dated 28th October, 1994 (P.10) and the order passed by the 'H.L.S.C' 5th August, 1995 (P.12) are unsustainable in the eyes of law and are liable to be set aside.

(21) As a consequence of the aforesaid discussion the order passed by the 'I.L.S.C' dated 28th October, 1994 (P.10) and the order passed by the 'H.L.S.C' 5th August, 1995 (P.12) are hereby quashed. The matter is sent back to the 'I.L.S.C' to reconsider the claim of the petitioner by treating its application for grant of benefit of sales tax ememption under sub-rule 4(a) of Rule 28-A by not treating the claim from the date of commercial production. The 'I.L.S.C' shall be at liberty to consider the claim of the petitioner from the date of application. The needful shall be done within a period of four months from the date of receipt of copy of this order.

---

*R.N.R.*

*Before K. Kannan, J.*

**PUNJAB EX-SERVICEMEN CORPORATION,—Petitioner**

*versus*

**PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PUNJAB  
AND ANOTHER,—Respondents**

**C.W.P. No. 5624 of 2000**

7th October, 2009

*Constitution of India, 1950—Art. 226—Industrial Disputes Act, 1947—S. 25-F—Management keeping workmen on contract and extending period from time to time—Unfair labour practice—Tribunal rejecting demand of workmen for regularization merely on completion of 240 days during period of 12 calendar months—Tribunal directing consideration of case of each workman for regularization who had continuously been in service for a period of four years in accordance with scheme or instructions made or adopted by PESCO—Findings of Industrial Tribunal in favour of workmen pointing out to nature of contractual engagements and unfair labour practice in which management was indulging in and objection of management regarding maintainability holding untenable are perfectly justified—Petition dismissed with costs.*