(2010) 09 KL CK 0086

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 135 to 137 of 2010

A. Gokila Bai, Sekhar Industries APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Citation : (2010) 09 KL CK 0086

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; No Appearance, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Heard counsel for the petitioner and Government Pleader for respondent. The question raised is whether the Tribunal rightly confirmed disallowance of exemption granted to the assessee as a new SSI unit under SRO 1729/1993. The assessee''s case is that period of exemption under certificate of exemption issued to it is from 3.4.1995 to 2.4.2002. However, on account of penalty case which led to levy of penalty of Rs. 10,475/- exemption is denied for the period commencing from 18.2.2000. Consequently by applying SRO 295/1998, the assessing officer has denied sales tax exemption which stands confirmed by the two appellate authorities, including the Tribunal.

2. The contention of counsel for the petitioner is that penalty later got cancelled by the order of the Appellate Assistant Commissioner in STA 192/2001 dated 14.3.2003. Government Pleader is not able to confirm whether there was further appeal against this order and if so what happened. In any case, the order in penalty- Appeal is issued subsequent to the assessment and assessee also did not produce it before the Tribunal. Further, it is also not clear whether other additions attributable for other defects justify denial of exemption under SRO 295/98. In view of the subsequent order cancelling the penalty, we feel the matter requires reconsideration by the assessing officer after verifying the scope of SRO 295/98 and as to whether the appellate order in penalty proceedings has become final. In the circumstances, We allow the revisions by setting aside the

orders of the Tribunal and that of the lower authorities pertaining to denial of sales tax exemption and restore it to the assessing officer to verify the appellate order in penalty proceedings, and adjudicate the matter by reexamining the scope of SRO 295/98 and after giving an opportunity to the assessee. The question of limitation against assessment for the year 1999-2000 will also be considered by the assessing officer in the course of fresh adjudication as directed above.