(2005) 01 KL CK 0024

In the High Court Of Kerala

Case No : W.A. No. 2072 of 2004

Anaswara Offset (P) Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2005) 1 ILR (Ker) 413 : (2005) 2 KLT 651

Hon'ble Judges : M.N. Krishnan, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai and S.T. Hussain, for the Appellant; Raju Joseph, Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Appellant is a small scale industrial unit engaged in the production of brochures, folders, leaflets, dockets etc. They have approached this Court under Art. 226 of the Constitution of India seeking a declaration that the conditions prescribed in the notifications issued as per S.R.O.No.1092/99 as amended by notification S.R.O. No.295/2000 to the extent it denies sales tax exemption to the appellant''s unit in terms of the notification issued in S.R.O.No.1729 of 1993 is unconstitutional, unsustainable and illegal. Writ of mandamus was also sought for directing the first and second respondents to grant sales tax exemption to the appellant''s unit in accordance with the notification S.R.O.No. 1729 of 1993.

2. Appellant had purchased 29.38 cents of land for construction of factory for starting an offset press, vide registered sale deeds executed in the year 1997. Copies of the three sale deeds have been produced along with the Writ Petition covering pages 39 to 91 which made the case bundle bulkey and unwieldy. Production of the copies of sale deeds was unnecessary. Details regarding the execution of the sale deeds would have been sufficient. Care should be taken to produce only relevant documents in the Writ Petition so that it would be easy to

bring home the point and reduce the workload of the Registry and the Court. Appellant after purchasing the above-mentioned property had applied for financial assistance from the Kerala State Industrial Development Corporation Limited, as per application dated 27.10.1999. Financial Corporation sanctioned financial assistance as per order dated 7.4.2000. Appellant company started construction of the building for the factory and placed orders for purchase of machinery. Appellant had acquired necessary machinery and started the offset press in a rented building. Commercial production was started on 30.9.2000. Construction of the building was completed on 15.5.2001, occupancy certificate was issued and electric connection was received on 25.10.2001. Permission to instal machinery was received from the Corporation on 11.9.2001 and the unit was shifted to the new building.

3. Printing industry was exempted from sales tax as per notification issued in S.R.O.No. 1090/99. Later as per notification S.R.O.No.802/2001 the exemption was withdrawn by the Government and printing industrial products was made liable to sales tax. Application was therefore made on 23.9.2002 for sales tax exemption. Appellant had also submitted application for financial assistance with the Vijay a Bank, Ernakulam for Rs. 160 lakhs on 27.10.1999. Appellant applied for registration as a small scale industrial unit to the General Manager, District Industries Centre and got provisional registration on 14.8.2000. The Unit got permanent registration on 5.11.2001. According to the appellant, he could not start commercial production due to reasons beyond his control. Request for exemption was considered by the General Manager, District Industries Centre and the application was rejected stating as follows:

"The provisional registration of the unit is dated 14.8.2000. As the unit is not found eligible for sales tax exemption, the party was heard by General Manager to know the effective steps taken prior to 1.1.2000 for setting up the unit.

The District Level Committee for sales tax exemption held on 10.2.2003 after detailed discussion of the arguments put forward by the unit resolved to reject, the application, since it observed that the unit is not eligible for sales tax exemption as per S.R.O. No.1092/99 and clarification issued in State Level Committee dated 4.2.2002 since the unit is having provisional registration after 1.1.2000."

Appellant took up the matter in appeal before the Director of Industries and Commerce and the appeal was rejected stating as follows:

"The SLC examined the case and held that the condition (a) stipulating provisional SSI registration before 1.1.2000 is a compulsory condition of effective steps to qualify for S.T.E. as per the notifications. Whatever be the circumstances the unit has obtained provisional SSI registration only on 14.8.2000. As this is on a date after 1.1.2000 the unit cannot be regarded as one that has fulfilled the essential condition of eligibility for the benefit of sales tax exemption applicable to small scale industrial units in accordance with S.R.O.No. 1092/99 and S.R.O.

No. 295/2000. Hence it was resolved by the SLC to reject the appeal. In the circumstances the appeal of M/s.Anaswara Offset Private Ltd., Elamakkara, Ernakulam stands rejected."

The General Manager, District Industries Centre as well as the Director of Industries and Commerce have rightly rejected the application. Appellant had started commercial production after 1.1.2000. Appellant would be entitled to get the benefit of S.R.O. No. 1092/99 only if the appellants could establish that he had started commercial production prior to 1.1.2000. Admittedly production was started subsequent to that date. Hence he is not entitled to get exemption. This legal position has been reiterated by the Apex Court in the recent decision in State of Jharkhand and Ors. v. Ambay Cements and Anr. 2005 (1) KLT 17 : 2004 (8) Supreme 163. The Apex Court was dealing with Bihar Finance Act, 1981 read with S. 7(3)(b) of the Industrial Promotion Policy, 1995. Reference was also made to S.R.O.Nos.478 and 479 dated 22.12.1995. Government of Bihar granted exemption to those new industrial units which started production during the period between 1995 to 31.8.2000 and who have obtained registration certificate from the competent authority. In that case respondent company, small scale industrial unit, obtained temporary registration certificate and the unit had applied for eligibility certificate. As per the notification prior permission from the Industries Department before 31.8.2000 is an important condition precedent for any unit to become eligible to be deemed as new industrial unit for the purpose of exemption. In that case, the Apex Court held as follows:

"In our view, the conditions prescribed by the authorities for grant of exemption are mandatory for availing the exemption and the High Court exercising jurisdiction under Art. 226 of the Constitution cannot direct the grant of exemption in favour of the respondent overlooking the statutory conditions prescribed for the said grant and that too in the absence of any challenge to the validity of such condition."

The Court also held that the exception or the exempting provision in a taxing statute should be construed strictly and it is not open to the Court to ignore the conditions prescribed in the industrial policy and the exemption notifications. In this case appellant has not satisfied the mandatory condition of starting commercial production before the stipulated date.

4. Counsel further submitted, in view of the notification S.R.O.No. 1729/93 petitioner purchased the land and started construction of the building and applied for finance assistance. Petitioner, according to the counsel has altered his position to his detriment and the respondent cannot withdraw the notification. In our view, there is no factual or legitimate foundation to the petitioner''s plea. Facts would show that the petitioner has not complied with the mandatory condition of starting production before 1.1.2000. In Bannari Amman Sugars Ltd. v. Commercial Tax Officer 2005 (1) KLT 601 (SC), the Apex Court held that the rule of promissory estoppel can be invoked only if on basis of representation made by the Government, the industry was established to avail benefit of

exemption. There is no factual basis for the petitioner''s plea. That being the position, we find no infirmity in the decision rendered by the learned Single Judge. The appeal is therefore dismissed.

