

(2005) 01 KL CK 0005
In the High Court Of Kerala
Case No : W.A. No. 2072 of 2004

Anaswara Offset Private Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-01-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 8 VST 342

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

Bench : Division Bench

Advocate : G.K. Thanu Pillai and S.S. Hussain, for the Appellant; Raju Joseph, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The appellant is a small-scale industrial unit engaged in the production of brochures, folders, leaflets, dockets, etc. They have approached this Court under Article 226 of the Constitution of India seeking a declaration that the condition prescribed in the notifications issued as per S.R.O. No. 1092 of 1999 as amended by Notification S.R.O. No. 295 of 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 Notification S.R.O. No. 1729 of 1993.

2. The appellant had purchased 29.387 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 bulky and unwieldy. Production of the copies of sale deeds was unnecessary. The 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. The appellant after purchasing the above-mentioned property had applied for financial assistance from the Kerala State Industrial Development Corporation Limited, as per application dated October 27, 1999. The Financial Corporation sanctioned financial assistance as per order dated April 7, 2000. The appellant-company started construction of the building for the factory and placed orders for purchase of machinery. The appellant had acquired necessary machinery and started the offset press in a rented building. The commercial production was started on September 30, 2000. The construction of the building was completed on May 15, 2001, occupancy certificate was issued and electric connection was received on October 25, 2001. The permission to instal machinery was received from the Corporation on September 11, 2001 and the unit was shifted to the new building.

3. The printing industry was exempted from sales tax as per notification issued in S.R.O. No. 1090 of 1999. Later as per Notification S.R.O. No. 802 of 2001, the exemption was withdrawn by the Government and printing industrial products was made liable to sales tax. The application was therefore made on September 23, 2002 for sales tax exemption. The appellant had also submitted application for financial assistance with the Vijaya Bank, Ernakulam for Rs. 160 lakhs on October 27, 1999. The appellant applied for registration as a small-scale industrial unit to the General Manager, District Industries Centre and got provisional registration on August 14, 2000. The unit got permanent registration on November 5, 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 August 14, 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 January 1, 2000 for setting up the unit.

The District Level Committee for sales tax exemption held on February 10, 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 of 1999 and clarification issued in State Level Committee dated February 4, 2002 since the unit is having provisional registration after January 1, 2000.

4. The appellant took up the matter in appeal before the Director of Industries and Commerce and the appeal was rejected stating as follows:

The State Level Committee examined the case and held that the condition (a) stipulating provisional SSI registration before January 1, 2000 is a compulsory condition of effective steps to qualify for STE as per the notifications. Whatever be the circumstances the unit has obtained provisional SSI registration only on

August 14, 2000. As this is on a date after January 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 of 1999 and S.R.O. No. 295 of 2000. Hence it was resolved by the State Level Committee to reject the appeal. In the circumstances the appeal of M/s. Anaswara Offset Private Ltd., Elamakkara, Ernakulam, stands rejected.

5. The General Manager, District Industries Centre as well as the Director of Industries and Commerce have rightly rejected the application. The appellant had started commercial production after January 1, 2000. The appellant would be entitled to get the benefit of S.R.O. No. 1092 of 1999 only if the appellants could establish that he had started commercial production prior to January 1, 2000. Admittedly, the 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 Others Vs. Ambay Cements and Another, . The apex court was dealing with the Bihar Finance Act, 1981 read with Section 7(3)(b) of the Industrial Promotion Policy, 1995. Reference was also made to S.O. Nos. 478 and 479 dated December 22, 1995. The Government of Bihar granted exemption to those new industrial units which started production during the period between 1995 to August 31, 2000 and who have obtained registration certificate from the competent authority. In that case the respondent-company, a 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 August 31, 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 is mandatory for availing the exemption and the High Court exercising jurisdiction under Article 226 of the Constitution cannot direct the grant of exemption in favour of the respondent overlooking the statutory conditions prescribed for such grant and that too in the absence of any challenge to the validity of such condition.

6. 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 the appellant has not satisfied the mandatory condition of starting commercial production before the stipulated date.

7. The counsel further submitted, in view of Notification S.R.O. No. 1729 of 1993, that the petitioner purchased the land and started construction of the building and applied for finance assistance. The 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 January 1, 2000. In Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and Others, , the apex court held that the rule of promissory estoppel can be invoked only if, on the 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.