
(2005) 12 KL CK 0027
In the High Court Of Kerala
Case No : T.R.C. No. 132 of 2003

Choice Plywood Industries

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-12-2005

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 10(1), 10(3), 2, 29A

Citation : (2006) 2 KLT 513 : (2006) 147 STC 72

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.B. Mohamed Kutty, Kochunny Nair, K.M. Firoz, V.P. Sukumar and Dale P. Kurien, for the Appellant; Georgekutty Mathew, Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Whether the petitioners are entitled to exemption from purchase tax u/s 5A of the Kerala General Sales Tax Act for the manufacture of block board as per SRO 403/94 read with the clarificatory letters dated 8.6.2002 and 29.6.2002 with effect from 1.1.1994 is the question that is posed for consideration in these cases.

2. Petitioners' earlier claim for exemption under SRO 419/90 from the levy of sales tax u/s 5A on the turnover of timber purchased from unregistered dealers in the State and used for the manufacture of block board and block board frames was rejected by the Sales Tax authorities and the Tribunals in the State. This was the subject matter of decision of the Supreme Court in State of Kerala Vs. M/s. Vattukalam Chemicals Industries, wherein it was held that SRO 419/90 is applicable only in respect of goods taxable at the last purchase point in the State. Several cases were decided on the basis of the above decision of the Apex Court. Certain cases were however pending before the Appellate Authorities and Appellate Tribunals and in those cases assessee took up a new contention that even if those items are taxable u/s 5A they are entitled to get exemption as per

SRO 403/94 and also on the basis of letter No. 20896/B1/2002/TD dated 8.6.2002 issued by the Secretary to Government, Taxes (B) Department to the Commissioner of Commercial Taxes, Thiruvananthapuram followed by communication No. 30780/01/CT dated 29.06.2002 from the Commissioner of Commercial Taxes, Thiruvananthapuram to Deputy Commissioner, Kannur.

3. Contention was raised by the assesseees before the Tribunals and various other forums that the above mentioned two letters are clarificatory in nature. Consequently, benefit of SRO 403/94 would be available to the assesseees who are using softwood for the manufacture of block boards. On the above plea conflicting views have been expressed by some of the Benches of the Salestax Tribunals; so also Appellate Assistant Commissioners placing reliance on the letter of the Government dated 8.6.2002 and the clarificatory letter dated 29.6.2002 of the Commissioner. So far as these revision petitions are concerned a uniform view has been taken by the Tribunals that those letters are not binding on the Tribunals and hence rejected the plea of exemption under SRO 403/94. Aggrieved by the same, petitioners have come up in these revision petitions.

4. Before we examine the binding nature of the letter dated 8.6.2002 issued by the Secretary to the Government as well as the Commissioner of Commercial Taxes, we shall refer to SRO 403/94 and its impact on the letter and the clarificatory letter issued by the Commissioner. SRO 403/94 is extracted below for easy reference.

S.R.O.403/94

In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963) the Government of Kerala having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable u/s 5A of the said Act by the manufacturers of goods mentioned in column (2) of the Schedule below with regard to their turnover of purchase of goods mentioned in column (3) thereof against each for consumption or use in the manufacture of goods specified therein namely:

SCHEDULE SI.	Name/Description	Description	Conditions	No. of manufacturers of goods purcha- sed and goods manufactured,
1	XX	XX	XX	XX
2.	XX	XX	XX	XX
3.	Manufacturers Soft wood manu- factured of matches, packing cases, plywood, spli- tea chests, wooden plywood, splints, under the KGST Act cable tea chests, wooden 1963 or the CST drums or veneers cables Act 1965 drums or veneers			

This notification shall be denied to have come into force with effect from 1st January 1994.

Explanatory Note

In the Budget Speech 1994 it has been announced to exempt the small scale industrial units manufacturing country bricks, tiles, matches, packing cases, lea

chests, plywood, splints, veneers, wooden crates, and wooden cable drums from the levy of purchase tax payable u/s 5A on the purchase turnover of soft wood, clay and firewood consumed or used in the manufacture of their respective goods with retrospective effect from 1.1.1994. The above notification is intended to achieve these objects.

Contention was raised that the purchase tax payable u/s 5A on the purchase turnover of softwood used for the manufacture of block boards and block board frames is liable to be exempted as per SRO 403/94 read with Government letter followed by the clarificatory note of the Commissioner, Commercial Taxes.

5. We may extract the Government letter as well as the clarificatory letter sent by the Commissioner of Commercial Taxes to the Deputy Commissioners for easy reference.

Copy of the letter No. 20896/B1/2002/TD dated 8.6.2002 from the Secretary to Government, Taxes (B) Department, Thiruvananthapuram addressed to the Commissioner of Commercial Taxes, Thiruvananthapuram.

Sir, Sub: Purchase Tax u/s 5A exemption granted to industrial units and clarification - reg. Ref: Your Lr: No 62-30750/01/01 dated 21.1.2002 and 22.5.2002

I am directed to invite your attention to the letter cited as to inform that if the raw materials come under the purview of the softwood, the SSI Unit qualifies for tax exemption provided the other requirements are satisfied under the notification concerned.

Yours faithfully, K.A.HashimKutty Under Secretary Secretary to Government.

Copy of Lr. No 30780/01/CTdated 29.06.2002 from the Commissioner of Commercial Taxes, Thiruvananthapuram addressed to the Deputy Commissioner, Kannur.

Sir, Sub: K. GST Act - Purchase Tax u/s 5A - exemption granted to industrial units - clarification issued - reg. Ref: Govt. Lr. No 20896/B1/01/TD dated 8.6.2002

As per SRO No. 403/94, Government have exempted manufacturers of matches, packing cases, tea chests, plywoods, splints, veneers, wooden crates and wooden cable drums from the levy of purchase tax payable u/s 5A on the purchase turnover of soft wood on the condition that the manufactured goods shall be liable to tax either under the KGST Act 1963 or CST Act 1956. Since block board and block board frames are not included in the said notification, a doubt has raised whether block board has to be treated as par with plywood and exemption in respect of tax u/s 5A can be granted.

Government vide reference cited, have clarified that if the raw materials used for the manufacture of block board and block board frames come under the purview of soft wood, such SSI unit qualifies for tax exemption u/s 5A of the KGST Act,

provided the other requirements are satisfied under the notification concerned. The copy of the letter issued by the Government is enclosed.

You are also requested to communicate this Government clarification to your subordinate officers.

Yours faithfully, Sd/- For Commissioner, Office of the Deputy Commissioner, Commercial Taxes, Kannur

Assessee tried to build up their entire case based on the above mentioned letter dated 8.6.2002 as well as the subsequent clarificatory letter dated 29.6.2002 issued by the Commissioner of Commercial Taxes.

6. We heard Senior Counsel Dr. K.B. Mohamedkutty, Sri V.P.Sukumar, Sri Dale P.Kurien and other learned Counsel with regard to the binding nature of those letters on the assessing authorities. Reference was made to several decisions of the apex court, other High Courts as well as the judgments of this Court including that of the Full Bench. We will refer to those decisions in the latter part of the judgment.

7. We also heard learned Govt. Pleader Sri Georgekutty Mathew who furnished a detailed note on various cases for our consideration. Learned Government Pleader took up the stand that the above mentioned letter issued by the Commissioner cannot override the statutory provisions. Learned Government Pleader submitted that block board and block board frames and other plywoods are commercially distinct and different commodities. Block board and block board frames have not been included in SRO 403/94 and therefore they are not entitled to get exemption from the tax payable u/s 5 A. Learned Government Pleader also submitted that the Government issued SRO 593/04 in exercise of the powers conferred u/s 10 of the KGST Act granting exemption for the manufacture of block board and block board frames from payment of tax on the turnover of purchase of softwood used for the manufacture of those items on condition that the manufactured goods shall be liable to tax either under the KGST Act or under the CST Act, 1956. Counsel submitted that the above notification came into effect only from the 1.1.2000 and assessee is entitled to get exemption only from the said date.

8. Apex Court in *Bengal Iron Corporation and Anr. v. Commercial Tax Officer* (1993) 90 STC 47 held that clarifications/circulars issued by the Central Government and/or the State Government represent merely their understanding of the statutory provisions and they are not binding upon the courts. The court also held that even though those clarifications and circulars were communicated to the concerned dealers nothing prevents the State from recovering the tax, if in truth such tax is leviable according to law. The understanding of the Government, whether in favour or against the assessee, is nothing more than its understanding and opinion and there cannot be any estoppel against the statute. The court held that clarifications and circulars would not bind the quasi-judicial authorities functioning under a statute. While acting in quasi judicial capacity,

they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. The above decision was later followed in *Commissioner of Salestax v. Indra Industries* (2001) 122 STC 100 and the court reiterated that the circular is not binding on courts and is not binding on "the assessee. However, it is stated that the interpretation thereby placed by the taxing authority on the law is binding on the taxing authority. In other words, the taxing authority cannot be heard to advance an argument that is contrary to their interpretation. Referring to paragraph 18 in *Bengal Iron Corporation's* case, (supra) the Apex Court held that that would apply only when a case of estoppel against statute is made out. Constitution Bench of the Supreme Court felt that there is conflict between the decision in *Collector of Central Excise, Patna Vs. Usha Martin Industries, etc.*, and *M/s. Motiram Tolaram and Another Vs. The Union of India and Another*, with regard to the correct interpretation to be placed to the words "on which the appropriate amount of duty of excise has already been paid" and referred the matter to larger bench. Upholding the view expressed in *M/s. Motiram Tolaram and Another Vs. The Union of India and Another*, the Apex Court in *Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries*, opined that regardless of the interpretation that has been placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding on the Revenue. Later Apex Court noticed that the above mentioned dictum laid down in *Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries*, was misunderstood and misinterpreted. Consequently in *Kalyani Packaging Industry Vs. Union of India (UOI)*, the Apex Court reminded that the law laid down by the court is the law of the land. Law laid down by the Apex Court is binding on all courts, tribunals and bodies. It was also made clear that circulars of the Board cannot prevail over the law laid down by the Apex Court. The circumstances under which such an observation was made in *Dhiren Chemical Industries'* case has been explained by the Apex Court in the above decision and held that to hold otherwise and to interpret in the manner suggested would mean that courts/tribunals have to ignore the judgment of the court and follow circulars of the. Board which was not what was meant by the court in *Dhiren Chemical Industries'* case. The Apex Court therefore categorically held that circulars, notifications, instructions etc. issued by the Central Government, State Government or the Departments would not be binding on the quasi judicial authorities and courts and it is fairly well settled that those circulars, notifications, instructions etc. would be binding on the taxing authorities and the taxing authorities cannot be heard to advance an argument which is contrary to that interpretation.

9. The question that arises for consideration in these cases is whether circular, notification or letter issued by the Government or by the Commissioner of Commercial Taxes which are in conflict with the statutory provisions would be binding on the taxing authorities. The Apex Court in *Bengal Iron Corporation's* case, (supra) held that clarifications or circulars issued by the Central

Government/State Government represent merely their understanding of the statutory provisions and they are not binding upon courts and those clarifications or circulars would not prevent the State from recovering the tax, if any, according to law. This dictum was laid down by the Apex Court on the principle that there can be no estoppel against statute. True in *Indra Industries*" case, supra 2001 (122) STC 100 the court held that the observation made in *Bengal Iron Corporation's* case, supra 1993 (90) STC 47 would apply only when a case of estoppel against statute is made out.

10. We are in this case faced with a situation where Government and the Commissioner were exercising powers which have not been conferred on them by the Act. The Kerala General Sales Tax Act, 1963 has conferred power on the State Government to grant exemption and reduction in rates of tax. The said provision is extracted below for easy reference.

10. Power of Government to grant exemption and reduction in rate of tax:

(1) The Government may, if they consider it necessary in the public interest, by notification in the gazette, make an exemption or reduction in rate (either protectively or retrospectively in respect of any tax payable under this Act.

(i) on the sale or purchase of any specified goods or class of goods, at all points or at a specified point or points in the series of sales or purchases by successive dealers, or

(ii) by any specified class of persons in regard to the whole or any part of their turnover.

(2) Any exemption from tax, or reduction in the rate of tax, notified under Sub-section (1).

(a) may extend to the whole State or to any specified area or areas therein.

(b) may be subject to such restrictions and conditions as may be specified in the notification.

(3) The Government may by notification in the Gazette, cancel or vary any notification issued under Sub-section (1).

Government can issue such a notification only in public interest. If exemption is not granted, evidently as per the Act assessee has to pay tax. Sub-section (3) of Section 10 also enables the Government to cancel or vary any notification issued under Sub-section (1) by notification in the gazette. Expression "notification" has been defined in the Act in Section 2 (xvA) to mean a notification issued by the Government under the provisions of the Act and published in the gazette. The question is when the statutory power to grant exemption has been specifically conferred on the Government u/s 10 of the Act, can that power be exercised by some other authority not authorised by the statute.

11. Dr. Mohammedkutty, counsel appearing for some of the assesseees submitted

that power could be traced u/s 3 of the Act and he placed considerable reliance on the decision of the Full Bench of this Court in Kurian Abraham (P) Ltd. Vs. Asst. Commissioner (ASSMT) II, . In the above case Full Bench was called upon to examine the legality of the circular issued by the Board of Revenue clarifying that latex and centrifuged latex are one and the same commodity for the purpose of levy of tax and whether it is binding on the Revenue. The Full Bench however noticing that Bengal Iron Corporation's case, supra 90 STC 47 the Supreme Court had expressed somewhat a contrary view placed reliance on the decision of the Apex Court in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, especially the following observation.

We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.

The above quoted portion of the judgment was subsequently clarified by the Apex Court in Kalyani Packaging Industry Vs. Union of India (UOI), stating that the circular of the Board cannot prevail over the orders of the Apex Court and held that to hold otherwise would mean that courts or tribunals have to ignore a judgment of the court and follow circulars of the Board and that was not what was meant by para 9 of the judgment in Dhiren Chemical Industries" case.

12. The Full Bench in Kurian Abraham's case, supra, also noticed that the power conferred on the Board of Revenue u/s 3 is very wide and held that circular would fall within the ambit of the power of the Board u/s 3(1A). In our view, since the decision in Dhiren Chemical Industries" case, supra was later clarified by the Supreme Court in Kalyani Packaging Industry's case, the dictum laid down by the Full Bench may not be fully correct.

13. The interpretation placed by the Full Bench to Section 3, in our view, requires a second look especially in view of the latter decision of the Apex Court in Kalyani Packaging Industries" case, and also in view of another Full Bench decision of this Court in MRF Ltd. v. Assistant Commissioner 1995 (1) KLT 809, which was not brought to the notice of the Full Bench when it decided Kurian Abraham's case. Full Bench in MRF Ltd."s case considered the scope of a circular issued by the Board of Revenue which empowered officers and authorities to invoke the provisions of Section 29A of the Act to demand and collect advance tax on the turnover of goods transported if they have reason to believe that tax payable on the consignment is not paid or dealer has defaulted payment of tax. Circular further details the instructions to be strictly followed by the officers in implementation of the provisions contained in Section 29A(2B) of the Act. Contention was raised that circular is beyond the powers of the Board of Revenue u/s 3(1A) in as much as Clause 5 of the circular authorises collection of advance tax for which there is no provision in the Act. Repelling the contention the Full Bench held as follows:

The circular in the circumstances can only be considered as one issued for the effective implementation of the authorisation given as per the sub-section and is fully within the powers of the Board u/s 3(1A) of the Act.

We are in full agreement with the view of the Full Bench in MRF Ltd.'s case that the Board of Revenue can issue circulars for the effective and proper implementation of the provisions of the Act.

14. The question is whether the Commissioner can exercise powers granting exemption from tax which have not been conferred on him u/s 3 of the Act. Our humble view is that Section 3 does not confer any statutory power on the Government or on the Commissioner for Commercial Taxes, to usurp the powers conferred on the Government u/s 10(1) of the Act. Section 3 has been enacted altogether for a different purpose. Power has been conferred on the authorities as rightly pointed out in MRF Ltd.'s case, for the effective implementation of the powers already conferred on other authorities under the Act. Petitioners also tried to trace the power of the Government u/s 59A of the Kerala General Sales Tax Act. This Court in Travancore Chemicals and Manufacturing Co. Ltd v. State of Kerala 1991 (1) KLT 196 has already struck down the powers conferred on the Government. Section 59A was later re-introduced by Act 20 of 2000 with effect from 1.4.2000 conferring powers on the Commissioner of Taxes. Admittedly the letter is not based on Section 59A and therefore we need not further examine that plea.

15. We will now examine the scope of Section 3 which is extracted below for easy reference.

3. Salestax Authorities:

(1) The Board of Revenue shall have and exercise all the powers and shall perform all the duties conferred or imposed upon it by or under this Act. (1A) The Board of Revenue shall have superintendence over all officers and persons employed in the execution of this Act and the Board of Revenue may, -

(a) call for returns from such officers and persons;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such officers and persons;

(c) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.

(2) The Government shall appoint as many Joint Commissioners, Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Salestax Officers and such other officers as they think fit for the purpose of performing the functions respectively assigned, to them by or under this Act. Such officers shall perform the said functions within such local limits as the Government or any authority or officer empowered by them in this behalf may assign to them.

(3) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them:

Provided that no such orders, instructions or directions shall be given so as to interfere with the discretion of the Appellate Assistant Commissioner in the exercise of his appellate functions.

(4) The Board of Revenue or the Deputy Commissioner may, by order in writing, -

(a) transfer any case or cases relating to any assessee or class of assessees pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or

(b) specify one of the assessing authorities having jurisdiction over an area, which shall deal with any case or cases relating to any assessee or class of assessees.

(5) Where any case is transferred to an assessing authority under Clause (a) of Sub-section (4), such assessing authority may deal with the case either de novo or from the stage at which it was transferred.

Section 3(1) states that the Board of Revenue, now the Commissioner of Commercial Taxes, shall have and exercise all the powers and shall perform all the duties conferred or imposed upon it by or under the Act. Sub-section (1A) states that the Board of Revenue (now the Commissioner) shall have superintendence over all officers and persons employed in the execution of the Act. This power is supervisory in nature and conferred on the Board of Revenue (Commissioner of Commercial Taxes) to supervise all officers and persons employed in execution of the Act. While exercising the supervisory power on officers and persons the Commissioner may call for report of such officers and persons so as to scrutinise as to whether they are exercising the powers in accordance with the Act and Rules. The Commissioner is also empowered to issue general rules and prescribe forms for regulating the practice and proceedings of such officers. It is also meant to see that they conform to the Act and Rules.

16. Section 3(1A)(c) enables the Commissioner to issue such orders, instructions and directions to such officers and persons as he may deem fit for the proper administration of the Act. Administration means management. Proper administration means, Commissioner of Commercial Taxes would see that officers and persons would act in accordance with the provisions of the Act. While exercising powers of administration, Commissioner cannot usurp powers which are not conferred on him under the Act. Section 3(2) of the Act also confers power on the Government to appoint as many Joint Commissioners, Deputy Commissioners, Appellate Assistant Commissioners, Inspecting Assistant Commissioners, Salestax Officers and such other officers for the purpose of performing the functions assigned to them by or under the Act. All the officers and persons employed in the execution of the Act shall observe and follow the

instructions and orders of the officers superior to them. Above mentioned provisions would show that it is for the Government to see that its officers and persons employed in execution of the Act would function in conformity with the Act.

17. Statute has not conferred any power on the Commissioner or the Government to act beyond the powers conferred on them u/s 3 of the Act. Under the guise of Section 3, in our view, Commissioner of Commercial Taxes cannot exercise power conferred on the Government u/s 10 (1) of the Act. So also Government exercising powers u/s 3 cannot bypass statutory procedure prescribed u/s 10 (1) of the Act by issuing letters or circulars. In our view, letter or circular issued by the Commissioner has no legal sanctity and those letters or clarificatory orders would not fall within the scope of Section 3 of the Act. At best it must be their understanding of the statutory provisions which is not binding upon the courts and would not prevent the taxing authorities from recovering the tax if such tax is leviable according to law.

18. The purpose of Section 3 is only to see that Salestax Authorities would function effectively and efficiently for the proper administration of the Act. Of course to maintain discipline taxing authorities would follow Government's or Commissioner's instructions which may be binding on them; otherwise there will be total indiscipline in the administration, it is to avoid such a contingency Apex Court in several decisions, which we have already referred to, held that those circulars and clarificatory orders are binding on the officers concerned and not on the courts or tribunals, all the same the courts have cautioned the Tax Authorities that they shall not go against the statutory provisions which are supreme. The Government, Commissioner and the Tax Authorities can function only under the statute.

19. The Government have got power to grant exemption under Section 10(1) and Government have subsequently granted exemption for the manufacture of block board and block board frames by SRO 593/04 by introducing serial No. 41A to SRO 1097 of 1999. Notification has been published in the gazette which came into effect from 1.1.2000. We have already indicated Government have got the power to grant exemption even retrospectively u/s 10(1) of the Act but Government in its wisdom felt that the notification would operate only from 1.1.2000. Consequently assesseees would get the benefit only from 1.1.2000. Contention that on the basis of the Government letter and the clarificatory letter of the Commissioner of Commercial Taxes the assesseees are entitled to get the benefit of SRO 593/04 retrospectively from 1.1.1994 cannot be sustained.

20. We are also not impressed by the argument of the counsel for the assesseees that block board and block board frames made of plywood are not different commodities. We are of the view block boards and block board frames are distinct and different commercial products having separate identity and market in the commercial circles. Processing, manufacture as well as their uses are different. Manufacturing process of block board and block board frames are

entirely different and block board cannot be equated with plywood. That is why block board and block board frames were not specifically mentioned in SRO 403/94. The exemption notification has to be strictly interpreted and unless the item falls within the four corners of the Notification the benefit of exemption cannot be extended to those items; legal position is well settled by several decisions of the apex court. Reference may be made to the latest decision of the Supreme Court in *State of Punjab v. Punjab Fibres Ltd.* 2005 (139) STC 200, *Associated Cements Ltd v. State of Bihar* 2004 (137) STC 389 etc.

In view of the above mentioned circumstances, we find no infirmity in the decisions taken by the various Tribunals. We reiterate that assesseees would be entitled to get the benefit of SRO 593/04 only with effect from 1.1.2000 and the letter issued by the Government or the clarificatory letter issued by the Commissioner would not operate retrospectively since they are issued without the authority of law. The T.R.Cs and S.T. Revisions would stand dismissed.