
(2004) 11 KL CK 0039
In the High Court Of Kerala
Case No : T.R.C. No. 369 of 1998

Deputy Commissioner

APPELLANT

Vs

K.N.S. Mohammed Iyoob Labbai Sahib and Sons

RESPONDENT

Date of Decision : 12-11-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2005) 1 ILR (Ker) 138 : (2005) 1 KLT 693 : (2006) 144 STC 189

Hon'ble Judges : K.P. Balachandran, J;J.B. Koshy, J;C.N. Ramachandran Nair, J

Bench : Full Bench

Advocate : Raju Joseph, Spl. Government Pleader, for the Appellant; P. Balachandran and Preetha S. Nair, for the Respondent

Judgement

J.B. Koshy, J.—Interpretation of Notification S.R.O. No. 287/64 as well as correctness of the decision of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M.K. Subbayya Pillai (1993) 91 STC 406 are the issues to be considered in this case. The Notification S.R.O. No. 287/64 reads as follows:

"S.R.O. No. 287/64.....hereby make an exemption in respect of the tax payable under the said Act on the sale of ready made Khadi garments (woollen, silk or cotton) and the products of village industries where such goods are manufactured and/or sold by the institutions or persons recognised by the Khadi and Village Industries Commission constituted under the Khadi and Village Industries Commission Act, 1956 (Central Act LXI of 1956), and/or the Kerala Khadi and Village Industries Board constituted under the Kerala Khadi and Village Industries Act, 1957 (Kerala Act 9 of 1957)".

The respondent assessee is a dealer under the Kerala General Sales Tax Act, 1963 (in short "the Act") for the assessment year 1984-85. He claimed exemption from payment of sales tax on the turnover of "Gopuram Brand Bar Soap" which is a product of village industries, manufactured by an institution recognised by the Khadi and Village Industries Commission constituted under the

Central Act LXI of 1956. However, the assessee was not an institution recognised under the above Act. He is a dealer of various articles including "Gopuram Brand Bar Soap". The assessment under the Act was originally completed granting exemption from payment of sales tax on the sales turnover of Gopuram Brand Bar Soap. Later, the assessing authority re-opened the assessment u/s 19 of the Act holding that since the assessee was not a recognised institution, he is not entitled to the exemption. The Deputy Commissioner (Appeals) as well as the Appellate Tribunal held that the assessee is entitled to the benefit of Notification S.R.O.No. 287/64 as under the notification, exemption is available for "products of Village Industries".

2. The counsel for the assessee relied on Subbayya Pillai's case (supra). The Division Bench in that case, while interpreting the words "and/or" held that three categories of village products are comprehended by the notification, namely, (1) those manufactured by a recognised institution (2) those sold by them and (3) those manufactured and sold by them. The contention of the Revenue is that the notification intended that only a dealer who is recognised by the Khadi and Village Industries Commission or Board will get the benefit. It is contended by the Special Government Pleader that "and/or" used in the notification only comprehend two categories; (1) if the goods are manufactured by an institution recognised by the Board and sold the goods themselves, they will get the benefit, (2) even if it is sold by any other institution recognised by the Kerala Village Industries Commission or Board they will also get the benefit. In other words, the word "or" is used only to emphasis that very same recognised institutions which manufactured the products need not sell the products. It can be sold through another recognised institution. A Division Bench of this Court doubting the views in Subbayya Pillai's case (supra) referred the matter.

3. In this case, we have to consider the scope of exemption notification S.R.O. No. 287/64. The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretative process as held by the Apex Court in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, . In Subbayya Pillai's case (supra) the Division Bench observed that words used in the notification are overlapping. We are of the opinion that notification is drafted in a clumsy way. If the village products manufactured by the recognised manufacturer are entitled to the benefit, whoever be the seller, the wordings "and/or sold" are unnecessary. It was argued by the Special Government Pleader that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax payers and should be construed against the subject in case of ambiguity. But, counsel for the assessee pleaded for a liberal construction so as to get the full benefit. It is a well-known principle that a person who claims an exemption has to establish his case. As held by the

Apex Court in *Collector of Customs v. Bharat Heavy Electricals Ltd.* 1992 (81) ELT 332 (SC) while interpreting an exemption notification, a reasonable construction which gives effect to true intent and purpose of the provision has to be adopted without doing violence to the language used in the notification.

4. In *Union of India v. Wood Papers Ltd.* (1990) 4 SCC 258. Apex Court gave guidelines regarding interpretation of exemption notification. At paragraph 4 of the judgment it was observed as follows:

"4. Entitlement of exemption depends on construction of the expression "any factory commencing production" used in the Table extracted above. Literally exemption is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. For instance tax holiday to new units, concessional rate of tax to goods or persons for limited period or with the specific objective etc. That is why its construction, unlike charging provision, has to be tested on different touchstone. In fact an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden or progressive approach of fiscal provisions intended to augment State Revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction."

The above guidelines were quoted and adopted by the Apex Court in subsequent findings. Latest decision adopting the same principle is *Associated Cement Companies Ltd. v. State of Bihar* (2004) 7 SCC 842. Hence, notification giving exemption being an exception shall be construed strictly, initially, and once the ambiguity is lifted, a wide and liberal interpretation can be given.

5. As observed by the Apex Court in *State of Rajasthan and Another Vs. J.K. Udaipur Udyog Ltd. and Another*, an exemption is by definition a freedom from an obligation which the exemptee is otherwise liable to discharge. It is a privilege granting an advantage not available to others. An exemption granted under a statutory provision in a fiscal statute has been held to be a concession granted by the State Government so that the beneficiaries of such concession are not required to pay the tax or duty they are otherwise liable to pay under such statute. The recipient of a concession has no legally enforceable right against the Government to grant of a concession except to enjoy the benefits of the concession during the period of its grant. Sales tax is payable at the time of sale. Here, exemption from payment of sales tax on products of village industries is given to the selling dealer provided he is a recognised dealer as indicated in the notification. Products of village industries are not exempted from the levy of tax.

Notification under question is not given exemption to the commodity as such. In ordinary usage "and" is conjunctive and "or" is disjunctive. (See Maxwell on the Interpretation of Statutes, 12th edition at page 232). Exemption is available if the commodities called "village products" manufactured by a recognised manufacturer are sold by himself or by any other dealer who is recognised. The words "and/of" used in the context only provides that the recognised dealer himself need not manufacture the products and even if the village products are manufactured by another institution or person recognised, he will get benefit of exemption. If recognised manufacturer sells the products by himself also exemption is available. It appears that a third alternative is not intended.

6. Even though wordings in the notification are creating some confusion and ambiguity, considering the object of the notification, for getting the benefits, it is reasonable to assume that the specified goods in the notification should be sold by institutions or persons recognised by the Khadi Village Industries Commission constituted under the Khadi and Village Industries Commission Act, 1956 or the Kerala Khadi and Village Industries Board constituted under the Kerala Khadi and Village Industries Act, 1957. In fact, the notification itself is applicable only to the Khadi garments (woollen, silk or cotton) and the products of Village Industries. Such products even if manufactured and sold by the same institution or sold by another recognised institution, are entitled to get exemption. But to get the benefit under the above notification, intention appears to be that the dealer who is selling the goods and claiming exemption should be recognised by the Khadi and Village Industries Commission or Board. Therefore, we are of the view that the interpretation given by the earlier Division Bench in Subbayya Pillai's case (supra) appears to be not correct.

7. Learned counsel for the assessee pointed out that the decision in Subbayya Pillai's case (supra) was not appealed against, the notification was amended in 1992 itself and that correctness of the decision in Subbayya Pillai's case need not be considered exclusively. That judgment also deals with same product namely "Gopuram Brand Bar Soap" for the same assessment year sold by another dealer and discrimination cannot be made. The law was settled for a long time. Even before the above reported case, Sales Tax Appellate Tribunal had also taken the same view. The counsel also cited a three member Bench decision of the Supreme Court in Union of India and Others Vs. Kaumudini Narayan Dalal and Another, wherein the Supreme Court held as follows:

"If the Revenue did not accept the correctness of the judgment in the case of Pradip Ramanlal Sheth Vs. Union of India and Others, , it should have preferred an appeal there against and instructed counsel as to what the fate of that appeal was or why no appeal was filed. It is not open to the Revenue to accept that judgment in the case of the assessee in that case and challenge its correctness in the case of other assessees without just cause. For this reason, we decline to consider the correctness of the decision of the High Court in this matter and dismiss the civil appeal."

Same view was taken by the Supreme Court in *Union of India Vs. Satish Panalal Shah*, . Equal treatment should be given to all assesseees and Government cannot discriminate between assesseees. We are not holding that merely because appeal was not filed in one case, Government is prevented from filing an appeal in another case as rule of estoppel is not applicable in the taxation matters generally. In *I.T.C. Ltd. Vs. The Person Incharge Agricultural Market Committee, Kakinada and Others*, Apex Court after quoting its earlier judgment in *State of Maharashtra Vs. Digambar*, held as follows:

"In *State of Maharashtra Vs. Digambar*, , a three Judge Bench had expressly repelled such a contention and had held that non-filing of an appeal in one matter would not act as a bar against the State in filing appeal in another matter where similar point may be involved. The Court ruled as under:

"The circumstances of the non-filing of the appeals by the State in some similar matters or the rejection of some S.L.Ps. in limine by the Supreme Court in some other similar matters by itself, cannot be held as a bar against the State in filing an SLP or S.L.Ps. in other similar matter/s where it is considered on behalf of the State that non-filing of such SLP or S.L.Ps. and pursuing them is likely to seriously jeopardise the interest of the State or public interest".

But, the above observations also show that Court can overlook such judgments which were not appealed against by the State, in subsequent appeals filed by the State unless it will seriously jeopardise the interest of the State or public interest. While following the *Kaumudini Narayan Dalal*" case (supra) and *Satish Panalal*"s case (supra) Apex Court in *Hemalatha Gargya Vs. Commissioner of Income Tax, A.P. and Another*, held that only if there is "just cause" revenue can file appeal if previous decision on the same point is not appealed against. But, here the question considered is *Subbayya Pillai*"s case with regard to same product for the same assessment year and this Court held that tax is not payable even if the selling dealer is not a recognised one. The Government did not file an appeal and that decision has become final. With regard to the same product for the same assessment year if a different view is taken in the matter of another assessee on the same set of facts, it will be discriminatory. We also note that the amount involved is not substantial and the notification itself was amended in 1992 followed by another detailed amendment in 1993 and therefore revenue impact also is lesser. Therefore, it cannot be stated that it will "seriously jeopardise" the interest of the Revenue or public interest and there is no just cause in demanding an amount from one assessee alone without challenging *Subbayya Pillai*"s case (supra) on identical facts for the same assessment year. In the above circumstances, the assessee in this case alone cannot be denied exemption for the year 1984-85. Hence, though we are not accepting the ratio of the judgment in *Subbayya Pillai*"s case (supra) as such, we decline to reverse the Tribunal"s decision.

The T.R.C. is disposed of as above.