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**(1999) 02 KL CK 0050**

**In the High Court Of Kerala**

**Case No : O.P. No. 15994 of 1994-D**

Eastern Condiments (Private) Ltd.

APPELLANT

Vs

General Manager, District Industries Centre and Others

RESPONDENT

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**Date of Decision : 23-02-1999**

**Acts Referred:**

Kerala General Sales Tax Act, 1963 — Section 10

**Citation : (2000) 119 STC 250**

**Hon'ble Judges : G. Sivarajan, J**

**Bench : Single Bench**

**Advocate : K.K. Vijayaraghavan and S.K. Devi, for the Appellant; V.M. Kurian, Sr. Government Pleader, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

G. Sivarajan, J.—The matter arises under the Kerala General Sales Tax Act, 1963 (for short "the Act"). The question involved herein relates to the grant of exemption from payment of sales tax under Government notifications issued u/s 10 of the Act.

2. The petitioner is a private limited company registered under the Companies Act and is engaged in the manufacture and sale of chilli powder, coriander powder and other curry powders. It is a small-scale industrial unit registered with the Industries Department evidenced by the provisional registration certificate No. 09/9E/11/529/SSI.PROV dated December 6, 1989 (exhibit P-7). The petitioner is a registered dealer under the Act and is an assessee on the files of the third respondent. The petitioner had set up the unit and started commercial production on February 28, 1991. It is stated that permanent registration as SSI unit was given to the company as per certificate No. 09/11/02017/PMT/SSI/531 dated January 2, 1992. The petitioner submitted application to the first respondent-General Manager, District Industries Centre, Idukki, for issue of eligibility certificate for exemption on the sales of its products in terms of the Notifications, S.R.O. Nos. 968/80, 654/89, 499/90, 717/91 and 521/92. The

main products manufactured by the company are stated to be chilli powder, coriander powder, turmeric powder, pepper powder and mixed curry powders. The first respondent issued eligibility certificate dated October 15, 1992 (exhibit P-1) to the effect that it is eligible for a tax exemption of a sum of Rs. 35,14,413 (rupees thirty-five lakhs, fourteen thousand four hundred and thirteen only) for the period from February 26, 1991 to February 25, 1996. The petitioner produced the same before the assessing authority-Sales Tax Officer, Adimali, who directed the petitioner to produce the same along with the proceedings of the Deputy Commissioner of Agricultural Income Tax and Sales Tax. The petitioner thereupon applied to the second respondent-Deputy Commissioner of Agricultural Income Tax and Sales Tax on October 27, 1992 for necessary orders. The second respondent thereupon issued notice dated November 3, 1992 with reference to Notifications SRO. No. 654/ 89 [G.O. (P) No. 94/89/TD dated April 27, 1989] and SRO No. 499/90 [G.O. (P) No. 68/90/TD dated March 31, 1990] stating that the application for exemption cannot be allowed and called for objections, if any, from the petitioner. The reason stated is that the products sold by the petitioner, i.e., chilli powder, coriander powder, turmeric powder, etc., are not commercially different commodities from the raw material and that there is no manufacture of a new product from the raw material. The second respondent relied on the decision of this Court in Deputy Commissioner of Sales Tax Vs. Rani Food Products, He also relied on the decision of the Madras High Court in State of Tamil Nadu v. S.V.S. Natarajan and Sons [1992] 84 STC 581(ker) in support of the contention that mixing of various powders cannot be said to bring into existence a new commodity for the purpose of levy of tax. Petitioner filed detailed objections to the above on November 21, 1992. It was contended that when chillies are turned into chilli powder and coriander into coriander powder, new and distinct commercial commodity emerge out of the manufacturing process as held by this Court in Ambika Provision Stores Vs. State of Kerala, It was also pointed out that in the Notification S.R.O. No. 654/89 and the earlier Notification S.R.O. No. 968/80 the expression used is "goods produced" and that it is only in S.R.O. No. 499/90 the word "manufacture" is used. It is contended that the word "produced" will take in the powdering of chilli, coriander, turmeric, etc. Petitioner had also relied on the decision of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) v. Surya Refineries Pvt. Ltd. 1991 KLJ 513 and the decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Raghavan, The second respondent, after due consideration of the objections and the decisions mentioned above, ordered that exemption will be allowed. This order is dated February 23, 1993 (exhibit P-3). Based on the above, the second respondent issued order of exemption on the same date (exhibit P-2). Later, on October 1, 1993, the successor officer who held the post of the second respondent issued a notice asking the petitioner to appear before him for an enquiry in connection with the sales tax exemption granted as per exhibit P2. It was followed by another notice dated March 2, 1994 to which the petitioner sent a reply dated March 12, 1994. Then the second respondent issued a detailed notice dated May 9, 1994 without reference to the

earlier notices. It was stated in the said notice that the second respondent granted exemption to the unit as per exhibits P2 and P3 orders finding that there was manufacture of the items sold by the petitioner, but a Full Bench of the High Court by judgment dated January 27, 1993 in Namputhiris Pickle's case [1994] 92 STC 1 (Ker) : (1993) 1 KTR 327 (Ker) has taken the view that when chilli, coriander and turmeric are converted into chilli powder, coriander powder and turmeric powder they essentially and substantially remain the same commodity and hence, the element of manufacturing is not involved in the process. It is stated that the sales tax exemption granted is therefore erroneous and hence proposed to cancel the said orders. It was also stated that the matter is proposed to be placed before the District Level Committee for sales tax exemption constituted as per G.O. (P) No. 16/93/TD dated February 15, 1993. The petitioner filed its objections on May 18, 1994. Petitioner stated that the entire matter was considered by the predecessor in office of the second respondent and granted exemption and further stated that Notification S.R.O. No. 521/92 does not confer any powers on the second respondent to cancel the orders already issued. Petitioner further pleaded the principle of promissory estoppel. The second respondent rejected the objections and passed an order dated September 1, 1994 cancelling the earlier orders dated February 23, 1993 (exhibit P5). He took the view that the earlier orders, exhibits P2 and P-3, have become illegal and erroneous in view of the subsequent decision of the Full Bench of this Court in Namputhiris Pickle's case [1994] 92 STC 1ker : (1993) 1 KTR 327 and the second respondent has got the inherent power to correct the mistake. It is also stated that the principle of promissory estoppel is not applicable in the instant case. Subsequently, the third respondent-assessing authority of the petitioner completed the assessment of the petitioner for the assessment year 1991-92 under the Kerala General Sales Tax Act on November 20, 1994 after remand. The exemption from payment of sales tax claimed by the petitioner on the basis of exhibits P1, P2 and P3 was rejected in the light of the order dated September 1, 1994 (exhibit P5).

3. In this original petition as amended the petitioner seeks to quash exhibit P5 order passed by the second respondent and also sought for a declaration that the second respondent has no authority to pass such an order.

4. A statement is filed on behalf of the third respondent-assessing authority. It is stated therein that the petitioner started business on August 10, 1990 as a partnership firm and that it subsequently constituted a private limited company under the Companies Act after closing the partnership business for the production of chilli powder, coriander powder, turmeric powder, fish and meat masala, sambar powder, pickle powder, coffee powder, etc. It is further stated that the petitioner applied for eligibility certificate for sales tax exemption being an S.S.I. unit before the first respondent, that as per S.R.O. No. 521/92 the eligibility certificate for exemption from sales tax is to be issued by the first respondent on application and orders of exemption to such unit will be issued by the Deputy Commissioner of Sales Tax concerned and that in the light of the

above S.R.O. the second respondent, after obtaining the certificate of eligibility, granted sales tax exemption for the sale of chilli powder, coriander powder, turmeric powder, etc., manufactured by it for the period from February 26, 1991 to February 25, 1996 on a sum of Rs. 35,14,413. It is further stated that after the judgment in *Namputhiris Pickle Industries v. State of Kerala* [1994] 92 STC 1 (Ker) : (1993) 1 KTR 327 (Ker) [FB] : 1993 KLJ 198 (TC) the position is that when chilli and coriander are powdered, it essentially and substantially remains the same commodities and that no element of manufacture is involved in the conversion of chilli into chilli powder, coriander into coriander powder and turmeric into turmeric powder. As per Notification S.R.O. No. 499/90, the exemption is given in respect of the goods manufactured by the small-scale industrial unit and unless there is manufacture, exemption will not be available. The statement also contains an averment that the firm Eastern Coffee and Curry Powder closed down the above business and started in the new banner and style Eastern Condiments (P) Ltd. and therefore, the exemption is, not available to the business once closed down and reopened under new name and style under the above notifications.

5. In paragraph 6 of the statement it is also stated that the contention that the unit is started in 1989 and therefore the relevant notification for the purpose of exemption was S.R.O. No. 968/80 and S.R.O. No. 654/89 as per which exemption is available to the "goods produced" and not "manufactured" has no basis since the business was actually started on August 10, 1990. It is also stated that the principle of promissory estoppel is not applicable since the earlier order itself is erroneous. Regarding the contention that S.R.O. No. 521/92 does not confer any powers on the Deputy Commissioner to cancel or modify an order of exemption, it is stated that the Deputy Commissioner has not done anything against the directions of S.R.O. No. 521/92, but only tried to correct a defective or erroneous order passed by him relying on the decision of this Court.

6. I have heard the learned counsel appearing on both sides. The counsel for the petitioner submitted that the petitioner is a small-scale industrial unit set up pursuant to Government Notification S.R.O. No. 968/80. She submitted that the first respondent issued exhibit P1 eligibility certificate on October 15, 1992 noting that the unit has started commercial production on February 26, 1991, that the unit has invested a sum of Rs. 44,85,947.64 and holding that it is entitled to exemption of a sum of Rs. 35,14,413 for the period from February 26, 1991 to February 25, 1996. The counsel also submitted that the second respondent was not inclined to accept the eligibility certificate issued by the first respondent and therefore, issued a notice proposing to reject the application for exemption on the ground that no "manufacture" is involved in the conversion of chilli into chilli powder, coriander into coriander powder and turmeric into turmeric powder, etc. She submitted that the predecessor in office of the second respondent, after due consideration of the objections raised by the petitioner and in the light of the decision of this Court in *Surya Refineries*" case 1991 KLJ (TC) 513 etc., granted exemption. In such circumstances, the counsel submitted that

a successor officer in the post of the second respondent cannot sit in judgment over the decision already taken and to cancel the same, for, he has no authority under the Government Order or under the exemption notification or under any of the provisions of the Act to do so. The counsel further relied on the decision of this Court in Deputy Commissioner of Sales Tax (Law), Ernakulam v. Surya Refineries (P) Ltd. (1991) KLJ 513 and also the decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Raghavan, and submitted that once the certificate is issued by the General Manager, District Industries Centre declaring the eligibility of the unit for claiming exemption from sales tax, it is not for the Sales Tax Officer to assume the role of a statutory authority and ignore the proceedings of the General Manager. The counsel further submitted that even on the merits of the case, chilli powder, coriander powder, turmeric powder, pepper powder and mixed curry powder are different commercial commodities from that of chilli, coriander, turmeric, pepper, etc., as per the decision of this Court in Ambika Provision Stores Vs. State of Kerala, where it has been held that when chillies are turned into chilli powder and coriander into coriander powder new and distinct commercial commodity emerges out of the manufacturing process. It is also pointed out that as per the notifications which stood at the relevant time the exemption was available to the goods produced and not manufactured. She accordingly submitted that the second respondent acted arbitrarily and without jurisdiction in cancelling the orders of exemption exhibits P1 to P3.

7. Learned Government Pleader appearing for the respondents, on the other hand, submitted that the first and second respondents ought not have issued the eligibility certificate and the exemption order in view of the fact that the petitioner unit was not engaged in any manufacturing operation and that the conversion of chilli powder, coriander powder and turmeric powder will not amount to manufacture. He, in support of the said contention, relied on the decision in Namputhiris Pickle Industries v. State of Kerala [1994] 92 STC 1 (Ker) : (1993) 1 KTR 327 (Ker) : 1993 KLJ (TC) 198 and the Notification S.R.O. No. 499/90, etc. He also submitted that the petitioner should not have been granted eligibility certificate or exemption from payment of sales tax in view of the fact that the earlier unit started by the firm was closed down and a private limited company for doing the same business was formed. The Government Pleader also submitted that the second respondent was well within his jurisdiction in cancelling the exemption order.

8. I have considered the rival submissions. Respondents have not disputed the fact that the petitioner-company is a small-scale industrial unit falling under the Government orders granting exemption from payment of sales tax. It is also not denied that the petitioner was given permanent registration as a small-scale industrial unit from January 2, 1992 and that commercial production was started from February 26, 1991. Along with C.M.P. No. 36903 of 1997 the petitioner has produced a copy of the provisional registration certificate issued to it as exhibit P-7. It is a duplicate copy of the provisional certificate. It is seen from the said

certificate that the petitioner-company had applied for registration on December 6, 1989 and provisional registration was granted to it from the said date. It is further seen that the certificate was revalidated up to June 6, 1991. The first respondent issued eligibility certificate on October 15, 1992. It is seen from the said eligibility certificate that the petitioner-company is the applicant, that it was having permanent registration from January 2, 1992, that it started commercial production on February 26, 1991, that the products of the unit are chilli powder, coriander powder, turmeric powder, pepper powder and mixed curry powder, that it had invested a sum of Rs. 44,85,947.64 and that it is eligible for exemption on a sum of Rs. 35,14,413 for the period from February 26, 1991 to February 25, 1996. A copy of the said certificate is sent to the second respondent also. Pursuant to the eligibility certificate issued by the first respondent, the petitioner made application dated December 20, 1992 to the second respondent for tax exemption. The second respondent, though initially proposed to reject the claim for exemption on the ground that no manufacturing activity is involved in the conversion of chilli, coriander and turmeric into chilli powder, coriander powder and turmeric powder, after due consideration of the objections filed by the petitioner granted sales tax exemption to the petitioner accepting the eligibility certificate issued by the first respondent. It is during the subsistence of this order passed by the second respondent that the successor in office of the second respondent again sought to cancel the exemption order on the ground that there is no manufacturing process in the conversion of chilli, coriander and turmeric into chilli powder, coriander powder and turmeric powder. In this background, it is relevant to consider the various notifications under which the exemption order is granted and also the decisions bearing on this point.

9. The Government issued Notification, S.R.O. No. 968/80 u/s 10 of the Kerala General Sales Tax Act, 1963 granting exemption from payment of sales tax on the turnover of the sale of goods produced and sold by the new industrial units under the small-scale industrial unit for a period of five years from the date of commencement of sale of such goods by the said units subject to conditions. As per the said notification, in order to get the exemption, the unit must produce proceedings of the General Manager, District Industries Centre, declaring the eligibility of the units for claiming exemption from sales tax. An explanation was inserted to the said notification by S.R.O. No. 1564/87 effective from July 1, 1980 to the effect that new industrial units under the small-scale industries shall mean undertakings set up on or after April 1, 1979, and registered with the Department of Industries and Commerce as a small-scale industrial unit and further added by S.R.O. No. 1185/80 that it shall not include old industrial units under the small-scale industries closed down and reopened under a new banner and style of business, after April 1, 1979. The Government by S.R.O. No. 654/89 made an exemption in respect of the tax payable under the Act on the turnover of the sale of goods produced and sold by the new industrial units for a period of five years from the date of commencement of sale of such goods by the said units. The said notification provided that the units shall produce the proceedings

of a committee declaring the eligibility of the units for claiming exemption from sales tax. It was provided that the committee for the said purpose shall consist of the Commissioner and Secretary (Finance), (Chairman), Member, Board of Revenue, Taxes, the Secretary II, Board of Revenue, Taxes, Commissioner and Secretary (Industries) (Members) and the Managing Director, Kerala State Industrial Development Corporation Limited (Convener). It further provided that the applications for the purposes of tax concessions mentioned in the notification shall be submitted to the Kerala State Industrial Development Corporation, which shall act as the nodal agency in such cases. It further provided that it shall be sufficient for the Committee to issue the proceedings by not less than two members of the Committee and a decision shall be taken by the Committee within three months from the date of submission of application by any unit provided the required details are furnished along with the application. The explanation also provided that "New industrial units" shall mean large and medium undertakings set-up on or after April 1, 1989 and registered with Department of Industries and Commerce as an industrial unit, but shall not include old industrial units closed down and reopened under a new banner and style of business, after April 1, 1989. Later the Government issued S.R.O. No. 499/90 in supersession of S.R.O. No. 968/80. By the said Government order also the Government in the public interest, made an exemption in respect of the tax payable under the Act by new industrial units under the small-scale industries and by such of the existing industrial units which effect diversification/expansion/modernisation. The exemption was on the turnover of sale of goods manufactured and sold by such units and on the turnover of goods taxable at the point of last purchase in the State and used by such units in the manufacture of goods intended for sale within the State or inter-State subject to certain conditions and restrictions. The exemption was for a period of five years from the date of commencement of commercial production and in the case of an existing industrial unit under the small-scale industries which effects diversification/expansion/modernisation, the exemption mentioned above shall be for a period of three years from the date of completion as certified by the General Manager, District Industries Centres of such diversification/expansion/modernisation. The notification further provided that those small-scale industrial units which were registered with the department of Industries and Commerce prior to 1st day of April, 1990, which have not fully availed of the concession granted as per S.R.O. No. 968/80 shall also be eligible for the concesssion granted under this notification provided that the aggregate exemption including that already availed shall not exceed the period and monetary limits prescribed in this notification. It further provided that any such unit which claims exemption from tax shall produce the proceedings of a committee declaring the eligibility for such exemption. The committee for the purpose of the notification it is stated, shall consist of the Chairman of the District Council, the District Collector (Member), the Deputy Commissioner of Sales Tax (Member) and the General Manager, District Industries Centre (Member Secretary) having jurisdiction over the district. It also provided that it shall be sufficient for the committee to issue the

proceedings by not less than three members. Clause (5) of the said notification provided that industrial unit under the small-scale industries shall mean undertakings registered as such with the Department of Industries and Commerce of Kerala State and "new industrial unit under the small-scale industries" shall mean undertakings set up on or after 1st April, 1990 and have obtained permanent registration from the Department of Industries and Commerce on or after that date, but shall not include old industrial units under the small-scale industries closed down and reopened under a new banner and style of business after 1st day of April, 1990. The word "manufacture" has also been defined to mean the use of raw materials and production of goods commercially different from the raw materials used but shall not include mere packing of goods, polishing, cleaning, grading, drying, blending or mixing different varieties of the same goods, sawing, garbling, processing one form of goods into another form of same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. Government issued S.R.O. No. 521/92 in partial modification of S.R.O. No. 499 of 1990 and S.R.O. No. 654 of 1989 effective from September 23, 1991. As per the said notification the exemption is for a period of seven years from the date of such commercial production. Under Clause (3) of the said notification the eligibility certificate for exemption to small-scale industrial units will be issued by the General Manager, District Industries Centre on application by the unit and orders of exemption to such units will be issued by the Deputy Commissioner of Sales Tax concerned. It is further stated that the eligibility certificate and orders on exemption will be issued by the abovementioned authorities, if the unit is eligible for exemption or deferment of taxes and on satisfying the condition for the exemptions or deferment of taxes, and that the eligibility certificate shall contain the date of commencement of commercial production and the monetary limit of exemption the unit is eligible for. By Sub-Clause (d) of Clause (3) of the notification, the corresponding provisions in the Notifications S.R.O. No. 654/89 and S.R.O. No. 499/90 were omitted. The provisions of S.R.O. No. 654/89 and S.R.O. No. 499/90 in respect of all other matters continued to apply in respect of exemption under the present notifications.

10. From the aforesaid notifications, it would appear that up to April 1, 1990, the exemption was on the turnover of sale of goods produced and sold by the new industrial units under the small-scale industries. But from April 1, 1990, the exemption was on the turnover of sale of goods manufactured and sold by such units. Likewise, up to April 1, 1989 the authority competent to issue eligibility certificate was the General Manager, District Industries Centre concerned. But from April 1, 1989 the authority competent to issue certificate was a committee consisting of the Commissioner and Secretary (Finance) as its Chairman and Member, Board of Revenue (Taxes) as its members. Again from April 1, 1990, the committee for the purpose of issuing eligibility certificate consisted of the Chairman of the District Council, the District Collector, the Deputy Commissioner

of Sales Tax and the General Manager, District Industries Centre. But from September 23, 1991 the said procedure was given a go-by and a two tier method for grant of exemption was provided. First, the unit has to make an application to the General Manager, District Industries Centre concerned for issuance of the eligibility certificate. The competent authority to issue the eligibility certificate was the General Manager. After obtaining the said certificate, the petitioner has to make an application to the Deputy Commissioner of Sales Tax concerned for grant of exemption. The said two authorities will issue the eligibility certificate and the exemption order only if the unit is eligible for exemption.

11. In the instant case, it is evident that respondents 1 and 2 have adopted the procedure provided in S.R.O. No. 521/92. Eligibility certificate, as already stated, is issued by the General Manager, District Industries Centre concerned, and the exemption order is issued by the Deputy Commissioner of Sales Tax concerned. The petitioner did not have any complaints regarding the procedure adopted by the said respondents in the matter of issuance of eligibility certificate or in the matter of the issuance of exemption order. Certainly, the petitioner cannot have any grievance since the orders were issued in favour of the petitioner. Even otherwise in matters of procedure it is well-settled that the procedure that should be followed is the one available at the time of consideration of the application. S.R.O. No. 521/92 was the one in force at the time of consideration of the application submitted by the petitioner.

12. Now the question for consideration is as to whether the second respondent acted legally and with jurisdiction in cancelling the exemption order. This again will depend on the provisions of the notifications as well as the established principles governing the matter. As already stated, the power to issue the eligibility certificate, is with the General Manager, District Industries Centre and the power to grant exemption is with the Deputy Commissioner of Sales Tax concerned. Here a question may arise as to whether the grant of exemption is entirely dependent on the eligibility certificate to be issued by the General Manager, District Industries Centre or whether the Deputy Commissioner of Sales Tax can also independently scrutinise the application and arrive at an independent finding on the question. What the Notification S.R.O. No. 521/92 says is that the eligibility certificate for exemption to small-scale industrial units will be issued by the General Manager, District Industries Centre on an application by the units and orders of exemption to such units will be issued by the Deputy Commissioner of Sales Tax concerned.

13. From the above, *prima facie*, it would appear that the role of the Deputy Commissioner in the matter of grant of exemption is only a formal one and that the claim for issuance of eligibility certificate will have to be adjudicated by the General Manager, District Industries Centre. But Sub-Clause (b) of Clause (c) of the said notification provides that eligibility certificate and orders on exemption will be issued by the abovementioned authorities if the unit is eligible for

exemption. From the above, it is clear that independent powers are given to both the authorities to consider the question of eligibility for exemption. In this context, it is necessary to note that originally, by the Government Order dated April 11, 1979, the power to grant exemption was given to the Sales Tax Officer concerned. Later, by the notification issued u/s 10 of the Act, the said power was conferred on the General Manager, District Industries Centre concerned. Again by the subsequent notification, the said power was conferred on committees of different constitutions. Later, by the Notification S.R.O. No. 521/92, it is made a two tier affair. All these will go to show that the attempt of the Government was to ensure that the exemption granted under various Government Orders goes only to eligible units. In this context, it is worthwhile to note that in many cases the assessing authorities under the Kerala General Sales Tax Act were not accepting certificates issued by the District Industries Centres under the Government notifications and matter came up before this Court also in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Surya Refineries (P) Ltd. (1991) KLJ 513 (TC) and other cases where it has been held that the assessing authorities under the Act cannot sit in judgment over the said certificates. It is only to avoid such a situation that a two tier scrutiny of the claim for exemption is provided by the notification mentioned above. Viewed in the above light, it would appear that if the Deputy Commissioner, while considering the application for exemption on the basis of the eligibility certificate issued by the General Manager, District Industries Centre, finds that the General Manager had not considered the relevant clauses of the notification or the decisions bearing on the point, it is open to the said authority to bring the above fact to the notice of the General Manager and to get the matter again considered by him and get the certificate modified. It is equally possible to construe that if the Deputy Commissioner of Sales Tax, while considering the question of grant of exemption based on the eligibility certificate issued by the General Manager, District Industries Centre, finds that the exemption is erroneously granted or that the quantum of eligible amount determined was not correct, he can reject the application or limit the exemption to the eligible amount. This, of course, can be done only by affording a reasonable opportunity of being heard to the unit. These are the two possible interpretations that can be placed on the Government Notification, S.R.O. No. 521/92.

14. In the instant case, the General Manager, District Industries Centre issued the eligibility certificate. The second respondent initially was not inclined to issue the exemption order on the basis of the eligibility certificate since he was of the opinion that no manufacture is involved in the conversion of chilli and coriander into chilli powder and coriander powder in view of the decision of this Court in Deputy Commissioner of Sales Tax Vs. Rani Food Products, The second respondent, however, after due consideration of the objections filed by the petitioner, accepted the eligibility certificate and ordered exemption with the observation that it is for the officer to bring this to the notice of the General Manager so as to amend the certificate of eligibility. The successor incumbent of

the second respondent, instead of pursuing the matter on the lines suggested in exhibit P3 order, had chosen to issue a notice proposing to cancel the exemption already granted and ultimately cancelled the exemption. According to me, the second respondent acted illegally and without jurisdiction in the matter.

15. The power to grant exemption from payment of sales tax is a power vested in the Government by issuing notifications u/s 10 of the Act. In exercise of the said power, the Government had issued various notifications granting exemption to small-scale industrial units, etc., which satisfy the conditions specified therein. The authorities competent to determine the eligibility and to grant exemption are also specified in the said notifications. In the instant case, the General Manager, District Industries Centre, who is the authority competent under Notification S.R.O. No. 521/92 to issue the eligibility certificates, had considered the claim of the petitioner and found that the petitioner is eligible for exemption claimed and had issued the eligibility certificate. The second respondent, Deputy Commissioner, who is the authority empowered to grant exemption under the said notification, had also considered the matter with reference to the eligibility certificate issued by the General Manager and had granted exemption to the petitioner. It is an admitted position that at the time of consideration of the application for eligibility certificate the decision of this Court was to the effect that chilli powder, coriander powder, etc., are different commercial commodities from that of chilli, coriander, etc. [see *Ambika Provision Stores Vs. State of Kerala*, . The second respondent sought to reject the claim on the basis of another decision of the division Bench of this Court in *Deputy Commissioner of Sales Tax Vs. Rani Food Products*, However, the second respondent, by a very detailed order, exhibit P3, ordered exemption in view of the decision in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Surya Refineries (P.) Ltd.* 1991 KLJ 513 (TC) and the decision in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Raghavan*, Another incumbent in the post of the second respondent again sought to cancel the exemption order on the basis of the decision of a Full Bench of this Court in *Namputhiris Pickle Industries v. State of Kerala* [1994] 92 STC 1 ker : (1993) 1 KTR 327 : 1993 KLJ (TC) 198.

16. In this context, it has to be noted that exemption under the notifications issued by the Government are for a specified period from the date of commencement of commercial production. If a small-scale industrial unit which is an assessee to sales tax is entitled to exemption from payment of sales tax by virtue of the said notifications, it cannot collect sales tax on the turnover of sale of goods manufactured by the said unit during the period of exemption. If an assessee which is a small-scale industrial unit registered with the Industries Department, based on the Government notification and the decisions bearing on the point, applies for sales tax exemption and does not collect any sales tax, can it be denied exemption on the ground that the legal position has been altered by subsequent decisions ?

17. In this case, the petitioner, on the basis of the Government notification and the exemption order dated February 23, 1993 (exhibit P2), was not entitled to collect any sales tax for the period from February 26, 1991 up to February 25, 1996. The second respondent sought to reject the claim in spite of the eligibility certificate issued relying on another decision of this Court but granted exemption after considering the objections of the petitioner. If the respondents are allowed to go on with the proposal for cancellation based on subsequent decisions to be rendered by this Court and the Supreme Court, there will not be any finality to an exemption order. If such a position is allowed, it will prejudicially affect the parties and in certain cases the very object of exemption granted will be defeated. It must be noted that there is no provision in the various Government orders for review of the eligibility certificate issued by the District Industries Centre or to review the exemption order issued by the second respondent. However, if there is an error or a mistake apparent on the face of the record, the authority, who had passed the orders, can rectify such mistakes in their orders. In the absence of any prohibition either in the Government notifications or in the Act, such a power has to be inferred. In this case, the second respondent had issued notice proposing to reject the claim for exemption and after due consideration, granted exemption as per exhibit P3 order. Another incumbent of the second respondent on the very same ground cannot be allowed to cancel the exemption order by issuing a second notice for the said purpose. In this case, the second respondent has in fact cancelled the exemption order on the very same grounds which were considered by his predecessor in office. Only difference is that whereas the reason stated by the then incumbent of the second respondent for rejecting the claim for exemption was a decision of a division Bench of this Court in Deputy Commissioner of Sales Tax Vs. Rani Food Products, the reason stated for cancellation of exhibit P3 exemption order is the decision of a Full Bench of this Court in Namputhiris Pickle's case [1994] 92 STC 1 ker : (1993) 1 KTR 327: (1993) KLJ 198 (TC). It must be noted that one of the Judges constituting the Full Bench took the view that chilli and coriander converted into chilli powder and coriander powder are different commercial commodities and manufacture is involved in the said conversion. It is also relevant to note that Namputhiris Pickle's case [1994] 92 STC 1 (Ker) : (1993) 1 KTR 327 [FB] : 1993 KLJ 198 (TC) was taken up before the Supreme Court in Civil Appeal No. 3849 of 1993 [ State of Kerala and Another Vs. Namputhiris Pickle Industries, The Supreme Court dismissed the appeal by order dated March 19, 1998. This is the order :

"The question in these cases is whether chillies and chilli powder are different products, both exigible to sales tax. The chilli powder is produced from chillies on which sales tax under the same entry has been paid. Whether, the chilli powder is the result of a process of manufacture which the chillies have undergone and whether chilli powder is a commodity commercially distinct from chillies are questions of fact to answer which the party proposing that the chilli powder is also exigible to tax must place relevant evidence before the appropriate taxing

authority. In the instant case, the sales tax authorities should have placed such material to establish that the chillies underwent some process or manufacture and that the end-product, namely, chilli powder, was recognised by those who dealt in it as being distinct from chillies. They did not do so. Upon this ground alone, therefore, we decline to interfere with the judgments under appeal. The appeals are, accordingly, dismissed with no order as to costs."

The above order shows that these are questions of facts which have to be established by adducing evidence. Apart from the above, the petitioner had a case that the expression used in the Government Notification Nos. S.R.O, 968/80 and S.R.O. 654/89 was "goods produced" and not "manufactured", that these are the Government orders based on which the petitioner had set up the unit and that the expression "production" need not result in bringing into existence a commercially different product. The petitioner had also a case that the concept of "different commercial commodity" was brought in only by the Government Notification, S.R.O. No. 499/90 which did not apply to the petitioner's case in view of the decision of the Supreme Court in Pournami Oil Mill's case [1987] 65 STC 1ker since the petitioner has set up the unit in 1989 itself as is evident from the provisional certificate of registration issued by the Industries Department. All these were matters which should have been considered by the authorities under the Government notifications while granting eligibility certificate and exemption. These are matters on which discussion of alternate views is required which cannot be allowed to be done by a new incumbent of the second respondent in view of exhibit P3 order. I accordingly quash exhibit P5 order passed by the second respondent.

The original petition is allowed as above. In the circumstances of the case there will be no order as to costs.

Order on C.M.P. No. 34551 of 1995 in O.P. No. 15994 of 1994 dismissed.

Order on C.M.P. No. 36903 of 1997 in O.P. No. 15994 of 1994 allowed.