

(2006) 07 KL CK 0003

In the High Court Of Kerala

Case No : W.A. No's. 2390 of 2005 and 468 of 2006

E.G. Bindhu

APPELLANT

Vs

Addl. Sales Tax Officers and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

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

Citation : (2006) 07 KL CK 0003

Hon'ble Judges : K.P. Balachandran, J;K.A. Abdul Gafoor, J

Bench : Division Bench

Advocate : K.U. Vijayan, K.N. Sreekumaran, Sreelal N. Warriar and Sachin Joseph, for the Appellant; Julian Xavier, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.A. Abdul Gafoor, J.—The Appellants have approached this Court impugning Ext.P-8 marked in O.P. No. 17633/05, whereby the exemption from payment of sales tax granted as per Ext. P-10 had been cancelled. The learned Single Judge did not accept the challenge. Therefore, these appeals.

2. The Appellants are manufacturers of bottled drinking water. There were several such units. There was dispute, including up to this Court and the Supreme Court, as to the taxability of the package of drinking water. This Court and the Supreme Court found that they were not entitled for the exemption, as allowed to the small scale industries. In spite of that, Government issued Ext. P-10 notification marked in W.P.(C) No. 23111/05 as S.R.O. No. 731/04 on 17-7-2004 exempting these units from payment of sales tax during the period from 1-1-1994 to 9-2-2002. This was issued exercising the power conferred on Government in terms of Section 10(1) of the Kerala General Sales Tax Act, 1963 (for short "the Act"). Later, it came as a bolt from the blue when Government issued Ext. P-8 notification as S.R.O. NO. 377/05 dated 19-4-2005 whereby Ext. P-10 has been cancelled, thereby tax liability is cast on them retrospectively. It was contended by them before the learned Single Judge that Ext. P-8 was

initiated on two counts: (1) The statutory provisions empowering such cancellation as contained in Sub-section (3) of Section 10 of the Act did not confer a power to cancel, retrospectively a benefit, which had been granted. The effect of Ext. P-8 is to cancel the benefit which has been granted for the period from 1-1-1994 to 9-4-2002; and (2) that the Government was estopped from issuing Ext. P-8 because of the promise that they have already represented to the Appellants and other unit holders in Ext P-10 that the units have been exempted from payment of tax during the said period. "Withdrawal of this promise visits them with adverse consequences. Government cannot do so based on the doctrine of promissory estoppel.

3. The learned Single Judge did not consider either of these contentions. According to the learned Single Judge, Ext. P-10 happened to be passed as the Government was posted with wrong data regarding the tax effected and the earlier decisions taken and because of the misplaced sympathy. Therefore, cancellation of Ext. P-10 was justified.

4. Going by the impugned notification Ext.P-8, it can be seen that, that notification was issued exercising the statutory power conferred on Government in terms of Sub-section (3) of Section 10 of the Act. When the Government exercised the power so conferred by the statute, it cannot be made use of beyond the powers so conferred. That position is now trite. Ext.P-10 exemption was granted retrospectively. That notification was issued in terms of sub-section (1) of Section 10 of the Act, which enabled the Government to issue a notification exempting from payment of tax either retrospectively or prospectively. This power to issue retrospective exemption was conferred, on Government by way of a statutory amendment effected on 1-4-1980. Even at that time Sub-section (3) was on the statute book concerning the cancellation of the orders of exemption passed in terms of Section 10(1) of the Act When the legislature conferred the executive by specific amendment power to issue notification granting exemption retrospectively, it did not grant similar power while issuing notification cancelling the exemption notification. When thus, the power conferred on Government to cancel the exemption notification did not carry with it a power to issue notification retrospectively, Ext. P-8 dated 19-4-2005, which cancels the tax exemption for the period from 1-1-1994 to 9-4-2002, casting liability on the Appellants and other incumbents to pay tax, is ultra vires the powers conferred u/s 10(3) of the Act.

5. On that reason, the impugned judgment has to be reversed and consequently, Ext. P-8 has to be quashed in the light of these findings, there is no reason for considering the contention on promissory estoppel.

6. We have also carefully considered the contention of the Government Pleader that Ext. P-8 does not amount to retrospective cancellation, but only withdrawing the benefit conferred in Ext. P-10. But the particular method adopted in Ext. P-8 is cancellation and the power exercised to issue Ext.P-8 is that conferred by sub-section (3) of Section 10, which enabled the Government to cancel or vary the

notification only prospectively. Anyhow, what is done by Ext. P-8 is not a variation of Ext P-1, but only cancellation of Ext P-10. Necessarily, that contention cannot be countenanced.

Writ appeals are accordingly allowed.