(2012) 10 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30274 of (D)

Hi-Tech Electro Thermics (P.) Ltd. APPELLANT

Vs

State Level Committee for Sales Tax Exemption and Others RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Citation : (2013) 63 VST 223

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : C.K. Thanu Pillai and T.K. Shaij Raj, for the Appellant; Sojan James, Special Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

Antony Dominic J.

1. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents. The petitioner is a small-scale industrial unit. By exhibit P1, it obtained provisional registration as a SSI unit with effect from May 21, 1992. Thereafter, they commenced production from January 9, 1995 and the product manufactured was calcium carbide. The petitioner claimed benefit of exemption from sales tax on the strength of Notification SRO No. 1729/1993 as amended by Notification SRO No. 1092/1999. Accordingly, exemption was granted for the period from January 9, 1995 to January 8, 2002 for an amount of Rs. 73,51,747.

2. While the petitioner was enjoying this benefit, their provisional registration was converted as a permanent registration with effect from February 14, 1995. Exhibit P3 is the certificate. Subsequently, they commenced manufacture of silico manganese and ferro manganese with effect from March 10, 2000 and December 21, 2000, respectively. These facts are not in dispute. Thereupon, the petitioner submitted exhibit P4 application to the second respondent for inclusion of the two new products also for exemption from sales tax. It is to be mentioned that

the petitioner was not claiming enhancement of the limit of exemption or modification of the period of exemption.

3. However that request of the petitioner was rejected by the second respondent as per exhibit P5 order. Reason mentioned in exhibit P5 is that the petitioner commenced manufacture of the two new products after January 1, 2000. Against exhibit P5, the petitioner filed exhibit P6 appeal before the first respondent. That appeal was rejected by exhibit P7 order. The main reason mentioned in exhibit P7 is that the production of the additional two items were commenced after the unit seized to have its provisional registration.

4. Subsequently, assessment was completed against the petitioner under the Central Sales Tax Act, 1956 for the years 1999-2000 and 2000-01 and under the Kerala General Sales Tax Act, 1963 under 2000-01. It is in these circumstances, the writ petition is filed challenging exhibits P5, P7 and P8 to P10.

5. In so far as exhibit P5, the proceedings of the second respondent rejecting exhibit P4 application is concerned, as already seen the only ground mentioned is that production of the additional two items were commenced after January 1, 2000. This reason is plainly untenable because by Notification SRO No. 295/2000 dated March 31, 2000, the cut-off date for commencing production specified in Notification SRO No. 1729/1993 as amended by Notification SRO No. 1092/1999 was extended to December 31, 2001. It was therefore, without taking note of the amendment made, the second respondent passed exhibit P5.

6. Coming to exhibit P7, the appellate order passed by the first respondent is concerned, although the appeal was filed against exhibit P5, the appellate authority has not chosen to deal with the validity of the ground on which, the original authority rejected the petitioner''s application. Instead, the appellate authority has assigned his own reasons and rejected the appeal. Such a course, adopted by the appellate authority, and that too without putting the petitioner on notice of the grounds relied on, itself is violative of the principles of natural justice.

7. That apart, the petitioner has produced exhibits P11 and P12, orders passed by the office of the second respondent, which prima facie, show that the benefit of exemption has been granted in respect of a unit, which is similarly situated. If this is factually correct, there is no reason at all to deny the benefit to the petitioner.

8. In so far as the reason that the petitioner has ceased to be a provisionally registered unit and therefore, cannot be granted the benefit is concerned, the provision in the SRO, providing the benefit of exemption in the units having provisional registration and commenced production within the period specified therein, prima facie, does not mean that units, which were initially having provisional registration and subsequently obtained permanent registration and commenced production within the time specified are ineligible for the benefit. In any case, there is no such prescription in the exemption notifications. Therefore,

it is a matter to be considered whether the fact that the petitioner has obtained permanent registration with effect from February 14, 1995 itself will render the petitioner ineligible for the benefit of exemption.

9. For all these reasons, I set aside exhibits P5, and P7 and direct the second respondent to reconsider the matter and pass fresh orders. Orders shall be passed, at any rate, within three months from the date of receipt of a copy of this order and in the meantime, further proceedings pursuant to exhibits P8 to P10 and the Revenue recovery notice issued, will stand stayed.

10. Needless to say that the claim is recognized, consequential relief will also be granted. Writ petition is disposed of as above.

