

(2003) 04 KL CK 0025

In the High Court Of Kerala

Case No : O.P. No's. 30028 and 28737 of 2000

Khadi Grama Vyavasaya Association

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Constitution of India, 1950 — Article 14

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

Citation : (2003) 3 KLT 854 : (2006) 143 STC 333

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Bechu Kurian Thomas, Prakash Puthiadam, K.I. Mayankutty Mather, C.K. Abdul Rehim, K.S. Hariharan Nair, P.K. Ibrahim, P. Ravindra Babu, V.V. Asokan, C.V. Subash, Sunil Shanker, Paul Abraham Vakkanal, K. Vinod Chandran, Lissy Devassy and M.P. Madhavankutty, for the Appellant; Raju Joseph, Govt. Pleader, V.V. Joshy and Babu Cherukara, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioners in these Original Petitions who are either Associations of Khadi and Village Industries or Khadi and Villages Industries as such (hereinafter referred to as "KV Industries"), are challenging the withdrawal of sales tax exemption hitherto enjoyed by them. The Government notification under challenge is SRO 291/2000 dated 13.3.2000 which came into force with effect from 1.4.2000 under which sales tax exemption is limited to 21 KV Industries, while other KV Industries are liable to pay sales tax like any other "dealer" under the KGST Act, but at a lower rate of tax on their products at 4% vide Government notification, SRO 292/00 dated 31.3.2000 also effective from 1.4.2000. The prayer of the petitioners is to quash SRO 291/00 and to declare that the products of all KV Industries are entitled to sales tax exemption. According to them, if this prayer is allowed, then SRO 292/00 providing for concessional rate of tax at four per cent has no relevance and will have no application; and therefore there is no challenge against the said notification, which of course is otherwise beneficial to the petitioners and other KV Industries,

if they are found to be not entitled to total exemption.

2. I have heard the various counsel appearing for the petitioners, Sri. Raju Joseph, Special Government Pleader appearing for the State, and Sri. V.V. Joshi, appearing for the KV Industries Board.

3. Before proceeding to decide the issue raised in the Original Petitions, it is useful to trace the nature of sales tax exemption enjoyed by the KV Industries and the periodical changes effected by the Government leading to the impugned notifications.

4. All KV Industries were granted absolute and unqualified sales tax exemption on the sale of their products by periodical government notifications, the last of which is SRO 1727/93 which provided for sales tax exemption on the sale of products of KV Industries and exemption on the purchase of goods taxable at the last purchase-point used by them in the manufacture of their products. However, the Government amended the notification SRO 1727 of 1993 vide notification SRO 293/98 with effect from 1.4.1998 providing for sales tax exemption only to KV Industries whose annual turnover was below rupees twenty five lakhs. Even though tax was introduced for KV Industries with annual turnover of rupees twenty five lakhs and above, the Government issued another notification SRO 644/1998 again amending SRO 1727/93 and reintroduced complete sales tax exemption for all KV Industries irrespective of their annual turnover. However, the Government later issued SRO 1090 of 1999 dated 31.12.1999 with effect from 1.1.2000 superseding SRO 1727 of 1993 and among other things providing for sales tax for KV Industries with annual turnover of rupees ten lakhs and above. By virtue of this notification, KV Industries were entitled to sales tax exemption from 1.1.2000 onwards only if their annual turnover was below rupees ten lakhs and those KV industries with annual turnover of rupees ten lakhs and above were liable to pay tax on their products like any other dealer at the normal rate. This position prevailed from 1.1.2000 to 31.3.2000 when the Government issued notification SRO 291/00 dated 13.3.2000 effective from 1.4.2000 where under SRO 1090 of 1999 was amended and total exemption was introduced to the products of 21 KV Industries listed therein, thereby withdrawing sales tax exemption for all other KV Industries. The ceiling on turnover limit was also taken away and with the result all KV Industries other than 21 listed in SRO 291/2000 were liable to pay sales tax like other dealers if their annual turnover is Rs. 2 lakhs and above, as provided u/s 5(1) of the KGST Act. However, the Government simultaneously issued SRO 292/00 dated 31.3.2000 effective from 1.4.2000 providing for concessional rate of tax on the products of all KV Industries, of course except the products of those Industries which are granted exemption. The position as emerging after notifications SRO 291/00 and 292/00 still continues where under while the 21 KV Industries listed in the impugned notification enjoy exemption, the other KV Industries with turnover of rupees two lakhs and above are liable to pay sales tax at the rate of 4 per cent on their products.

5. What is clear from the various notifications above referred is that Government does not want to grant exemption indefinitely to all KV Industries, but was only trying to identify such of the KV Industries which should enjoy complete exemption and balance Industries should be subjected to tax at least at a concessional rate. However, apparently the Government took inconsistent stand on various occasions and have obviously handled the matter in an indifferent and inconsistent manner, Even though KV Industries with turnover of rupees twenty five lakhs and above were identified as capable of paying tax and notification SRO 293/98 was issued effective from 1.4.1998, the Government withdrew the introduction of tax by SRO 644/98 by stating that restriction in the form of tax for KV Industries with annual turnover of rupees twenty five lakhs and above would adversely affect such Industrial units. It is not known as to how and on what basis within a short time the Government found that the KV Industries with annual turnover of rupees twenty five lakhs and above will be affected on account of levy of sales tax on their products especially when even small scale Industries and other dealers are liable to pay tax under the Act if their annual turnover is rupees two lakhs and above and every dealer including KV Industries are allowed to pass on the tax to the Buyers through collection. Moreover the classification of dealers based on annual turnover has been upheld by courts as a reasonable basis for the levy of tax. Refer to the decision of this Court in Hotel Elite and Ors. v. State of Kerala, 69 STC 119 and that of the Supreme Court in M/s. Khadi and Village Soap Industries Association and another Vs. State of Haryana and others, . Apparently after being convinced about the mistake committed in issuing SRO 644/98 the Government re-introduced tax on KV Industries with annual turnover of rupees ten lakhs and above vide SRO 1090/99 effective from 1.1.2000. Strangely the Government does not rest there also but proceeds to shift its stand in three months by amending SRO 1090/99 by SRO 291/00 whereunder exemption was provided for the products of twenty one KV Industries and providing tax for all other KV Industries, but simultaneously reducing the rate of tax on products of KV Industries to 4 per cent, vide notification SRO 292/00. Probably the Government has not again changed its stand on account of filing of the Writ Petitions and pendency of the same in this Court.

6. Even though the challenge is against various notifications, I feel the same can be confined mainly to notification SRO 291/00 which is effective from 1.4.2000 and is presently in force. For assessments and demands of tax upto 31.3.2000 on limited number of KV Industries, I feel the claim of the petitioners should be allowed for the reason that notifications, SRO 293/98 was immediately withdrawn and SRO 1090/99 without amendment remained operational only for a very short period. While the effect of SRO 293/98 providing for tax on KV Industries with turnover of rupees twenty five lakhs and above was neutralised by the Government by SRO 644/98, SRO 1090/99 providing for tax on KV Industries with annual turnover of rupees ten lakhs and above remained operational from 1.1.2000 to 31.3.2000. Since SRO 1090/99 providing for levy of

tax on KV Industries with turnover of rupees ten lakhs and above survived for only three months, and in view of the stay granted by this Court, no collection of tax also would have been made by those Industries. By the time the departmental officers could start enforcing the notification, the notification itself was withdrawn leaving the liability for only three months, and that too for a limited number of dealers. I do not think the respondents should be permitted to enforce SRO 1090/99 for a short period of three months, that is for the last three months of assessment year 1999-2000 even though I find nothing illegal or arbitrary about both the notifications providing for tax based on annual turnover. Therefore I declare that no KV Industries should be subjected to sales tax upto 31.3.2000. However, the assessing officers are entitled to forfeit the tax if any collected and remitted or retained by any KV Industry during the period of three months from 1.1.2000 to 31.3.2000. Therefore I proceed to dispose of the OPs confining the dispute only to SRO 291/00 for the assessment years commencing from 2000-01 onwards.

7. The main contention raised by the petitioners is that SRO 291/00 is violative of principle of promissory estoppel. According to the petitioners, the petitioners started KV Industries based on sales tax exemption granted by the Government. Therefore the Government cannot withdraw the exemption. In other words, their contention is that once sales tax exemption is granted, the same should be perpetually available to KV Industries. The Special Government Pleader on the other hand contended that exemption granted under Government notification is not for any indefinite period, and the Government is absolutely competent to amend or cancel any notification and since there was no promise for any perpetual sales tax exemption by the Government, there is no violation of rule of promissory estoppel. In support of their contention that is against withdrawal of exemption on the ground of promissory estoppel, the petitioners have cited decisions of the Supreme Court in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*, ; *Pournami Oil Mills and Others Vs. State of Kerala and Another*, *Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another*, , and of this Court in *Poornima v. Sales Tax Officer 1997 (1) KLT 872*. In all these cases, the notification granting exemption was for a definite period and what was challenged was full or partial withdrawal of the exemptions prior to the full period or otherwise imposing conditions disabling the parties from claiming the benefit originally granted based on which they have made investments. There is not even a single case where perpetual sales tax exemption is declared by the Supreme Court to any industry or to any class of Industries. It is conceded that products of KV Industries were granted sales tax exemption under notification u/s 10 of the KGST Act which provides for grant of exemption by the Government in public interest to any class of Industries or class of products. There is specific provision in Section 10(3) which provides for withdrawal or modification of notifications granting exemption. Section 10 is extracted hereunder 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 prospectively 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).

It is clear from Section 10(3) that any dealer claiming exemption based on the notification issued u/s 10(1) should be taken to have notice of the chances of exemption being withdrawn or modified by the Government in public interest. In other words, exemption- notifications are liable to be revoked, cancelled or modified in public interest. Therefore the rule of promissory estoppel claimed is indirectly against the statutory power vested in Government u/s 10(3) which is not permissible at all. In the case on hand, the petitioners have no case that at any time there was any commitment by the Government through any notification or order granting exemption perpetually or for a specific duration based on which the petitioners have made investments. Notifications granting exemption were without mentioning any period, and therefore the Government is absolutely free to withdraw such exemption partially or fully at any time in exercise of statutory power u/s 10(3). Withdrawal or modification of exemption granted under a notification always also should be made in public interest and Government's decision on what is public interest is not justiciable. Therefore I do not think the petitioners can succeed in their challenge against the impugned notification based on promissory estoppel for continued sales tax exemption perpetually.

8. The next contention raised against impugned notification, namely, SRO 291/00, is discrimination and violation of Article 14 of the Constitution of India. According to the petitioners, there are around 115 industries declared as KV Industries in the Schedule to the Kerala Khadi and Village Industries Act, 1957, hereinafter called the KV Industries Act which is based on the pattern of the Central Act on the subject. According to them there is no difference among these industries coming under the Schedule to the KV Industries Act and they are one class namely, "KV Industries". There is no basis for the Government to group 21

KV Industries to grant exemption, while providing for tax on all other KV Industries coming under the Schedule to the KV Industries Act. In the statement filed for the Government, it is conceded that 21 KV Industries are granted exemption because only 21 industries were declared as KV Industries in the Schedule to the KV Industries Act originally and the balance Industries were later introduced to the Act periodically. It is further stated in the statement that there was decision taken by the various States to provide sales tax exemption only to Industries originally declared as KV Industries in the Act. The 21 Industries which are granted exemption are the following:

1. Manufacture of matches, fire works and Agarbathies.
2. Manufacture of soaps.
3. Tanning of hides and skins and ancillary industries connected with the same.
4. Manufacture of leather goods.
5. Manufacture of handmade paper.
6. Manufacture of canegur and Khandsari.
7. Manufacture of manure and methane gas from cow dung and other waste products.
8. Manufacture of limit products.
9. Manufacture of Shellac.
10. Manufacture of Bamboo and cane goods.
11. Manufacture of vegetable and fruit products.
12. Manufacture of goods through black smithy other than manufacture of furniture.
13. Manufacture of goods through carpentry other than manufacture of furniture.
14. Manufacture of fibre products other than coir.
15. Manufacture of household utensils on aluminum.
16. Manufacture of maize and ragi products.
17. Manufacture of dipped rubber latex products such as rubber band gloves and balloons.
18. Manufacture of palm products.
19. Manufacture of pottery.
20. Manufacture of honey.
21. Manufacture of ghani oil.

On going through the above list, I do not find anything common to bring these Industries under one class. While some Industries are only engaged in processing of goods some others are engaged in manufacture of products and yet another category are handling farm products. Apart from the fact that these Industries were first declared as KV Industries by including them in the Schedule to the KV Industries Act as originally enacted, there is nothing very common about 21 industries. There are no distinguishing factors or features between these industries and the other remaining industries left out which are 94 numbers presently in the Schedule to the KV Industries Act. Therefore the basis of classification adopted by the Government for providing for sales tax exemption to one class while providing tax to others is only the relevant date of declaration of the Industries as "KV Industries". This difference does not satisfy the test of reasonable classification for upholding levy of tax on one class while providing for exemption to the class left out. It is well settled that in order to sustain a levy applicable to one class while exempting others there should be rational difference between the two classes and such difference should have nexus to the object of the legislation. When KV Industries are treated as one class by the Government for various incentives such as margin money loan, industry subsidy, etc., I do not know how a classification can be made based on the date of declaration of Industry as a KV Industry for the purpose of levy of tax. Section 10 of the KGST Act gives power to the Government to grant exemption to any class of dealers or to any class of products. However, this does not mean within the same class the Government cannot make further classification into different groups. In fact, it is clear from the earlier notifications that among the same class of dealers, namely, KV Industries, the Government grouped Industries based on their annual turnover, though the quantum of turnover adopted for classification was different for different periods. Similarly it could be possible to classify industries based on products or other reasonable basis. Such an attempt is also not seen made by the Government. Therefore, I do not find the classification based on the date of declaration of industry as KV Industry has any relevance for the purpose of levy of tax and such a classification cannot be said to be a reasonable classification to satisfy the test of Article 14 of the Constitution of India. As I see no basis for the classification of 21 KV Industries for the purpose of exemption while providing for tax for the rest of the KV Industries, I do not go into the decisions cited by both sides. Therefore, I hold that SRO 291/00 is arbitrary and discriminatory and is therefore violative of Article 14 of the Constitution of India.

9. The next question is as to what is the consequential relief to be granted to the petitioners. According to the petitioners, they were entitled to a declaration that the benefit of the notification should be extended to all KV Industries. They have also referred to the decision of this Court in *Associated Cement Companies Ltd. v. Asst. Commissioner* (1996 KLJ (TC) 30 wherein this Court has extended a similar relief after finding the notification granting exemption to some categories of dealers as discriminatory. However, I do not think the petitioners are entitled to such a relief for various reasons. In the first place granting of sales tax

exemption is to be done by the Government in public interest u/s 10 of KGST ACT and this Court has no power to grant exemption to any class of dealers. Secondly, out of 115 declared KV Industries Government rightly or wrongly granted exemption only to 21 KV Industries and from 1.4.2000 onwards the other Industries are liable to pay sales tax though at a lower rate of four per cent like other dealers under the KGST Act. Therefore while holding that exemption granted to 21 KV Industries is not on proper basis, this Court cannot declare that all industries under the class of KV Industries are entitled to sales tax exemption. If that be so, why not this Court declare sales tax exemption for Small Scale Industries, Industries run by Women or such other classes of dealers who may approach and invoke the sympathy of this Court! The petitioners were well aware of their liability to pay tax at four per cent from 1.4.2000 and they would have arranged their affairs to meet the liability, in case the cases filed in this Court were decided against them. The challenge against notification even if is upheld does not mean that petitioners are entitled to a declaration of positive relief in their favour which the court is not empowered to grant under the statute. I do not find there is any case for extreme hardship to the petitioners. If such a relief is declined, because while issuing SRO 291/00, the Government immediately issuing SRO 292/00 providing for concessional rate of tax at four per cent on all products of KV Industries not coming under the exempted category. Therefore in view of the concessional rate available to the petitioners and in view of the fact that the taxable categories of industries constitute several times the number of Industries which were granted exemption (that is 94 as against 21), I do not think the petitioners are entitled to a declaration from this Court that all KV Industries are also entitled to exemption or for a direction to the Government to grant exemption to balance 94 categories of KV Industries in addition to 21 categories of industries granted exemption by the Government. Therefore this relief is declined. However, it is upto the Government to consider, while granting exemption, if at all granted, to any class of KV Industries, either based on products, turnover or on whatever other basis, to grant such exemption retrospectively, if the Government so feels. The result of declaring SRO 291/00 as invalid would be to hold that those 21 categories industries will also be liable to pay tax from 1.4.2000 onwards. I feel such a consequence to them should be avoided because those 21 industries are not before this Court and for no fault of theirs, they would be made to pay tax retrospectively. Even though notification SRO 291/00 is illegal and arbitrary, it holds out a promise to those 21 industries that no tax will be payable by them and Government has forfeited their right to levy and recover tax from them as long as the notification remains valid. Therefore SRO 291/00 until it is declared as invalid by this Court acts as a promise to those industries and Government should not be permitted to collect tax from them until the notification is declared as invalid by this court. At the same time, they should not be allowed to enjoy an undue advantage at least in future over others under notification declared illegal. However, they should be given reasonable time to arrange for collection and payment of tax.

10. In the result, the OPs are disposed of with the following directions:

1. All the KV Industries are entitled to enjoy sales tax exemption granted under SRO 1727 of 1993 and SRO 1090/99 irrespective of their turnover upto 31.3.2000.

2. All KV Industries other than 21 industries referred to in SRO 291/00 are liable to pay tax at the concessional rate of 4 percent on the sale of their products from 1.4.2000 onwards.

3. Even though notification SRO 291/00 is struck down as invalid, 21 KV Industries referred to in SRO 291/00 will enjoy sales tax exemption from 1.4.2000 till date and for a further period of three months say upto 31.7.2003 and thereafter if the Government does not issue fresh notification, will be liable to pay tax at four per cent on their products like other KV Industries. Even though the 21 Industries which were granted exemption may also be members of the Associations which filed some of these Writ Petitions, as all of them adversely affected by this judgment are not parties, the Government is directed to notify in the Gazette the decision of this Court declaring SRO 291/2000 as invalid before 31.7.2003 to enable them to collect and remit tax from 1.8.2003 onwards.

4. It is open to the Government to reconsider the matter providing for exemption prospectively or retrospectively to such categories of KV Industries on any proper and reasonable basis.

In view of the fact that tax involved is from 1.4.2000 onwards, the petitioners are granted time till 31.8.2003 to file returns and remit tax. I make it clear that in view of the pendency of the Original Petitions, and stay granted by this Court, there will be no liability for the petitioners to pay penal interest u/s 23(3) of the KGST Act, if the tax is paid along with the returns before 31.8.2003. However, if tax is not paid before 31.8.2003, then waiver of penal interest will not be applicable to the defaulters and tax and interest will be recovered from them in accordance with law.

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