(2014) 09 KL CK 0014

In the High Court Of Kerala

Case No : WP(C). No. 24216 of 2008 (G)

Malabar Latex (P) Ltd. APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala General Sales Tax Act, 1963 — Section 10, 10(1), 10(3), 35

Citation : (2014) 09 KL CK 0014

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : Arikkat Vijayan Menon, Harisankar V. Menon, Meera V. Menon and Mahesh V. Menon, Advocate for the Appellant; K.T. Lilly, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Since these three writ petitions involve common issues they are taken up together and disposed by this common judgment.

2. All these three writ petitions involve the issue as to whether or not there was an exemption available to manufacturers of centrifuged latex and crumb rubber, from the payment of tax payable under the Kerala General Sales Tax Act, on the purchase turnover of rubber in any form used for the manufacture of centrifuged latex and crumb rubber.

3. The petitioners in these writ petitions have approached this Court at different stages of the assessment proceedings that are pending against them. While the petitioner in W.P.(C). No. 24228 of 2008 is a dealer whose KGST and CST assessments for the assessment years 2001-2002 to 2003-2004 were completed vide Exts. P1 to P6 orders granting the exemption in terms of SRO 316/2005, he was served with Ext. P9 notice by the 2nd respondent who proposed to reopen the assessments by invoking powers under Section 35 of the KGST Act on the ground that the exemption to the petitioner had been erroneously granted in that there was no process involving manufacture when the petitioner converted the

field latex to centrifuged latex and crumb rubber and further that Notification SRO 316/05, the benefit of which had been granted to the petitioner, had since been rescinded by Notification 316/05 and hence the exemption granted to the petitioner during the assessment years in question had been erroneously granted. In W.P.(C). No. 2249 of 2011, the assessment year in question is 2003-2004 and Ext. P5 assessment order was passed against the petitioner placing reliance on SRO 946/07 and finding against the petitioner on the issue of availability of exemption. The petitioner approached this Court through the said wit petition when he was faced with recovery steps for recovery of the amounts confirmed against him in the assessment order. In W.P.(C). No. 24216 of 2008, the assessment year in question is 2002-2003. The assessments were concluded in favour of the petitioner by Ext. P1 assessment order wherein the petitioner was given the benefit of SRO 316/05. Thereafter, Ext. P2 notice was issued to the petitioner by invoking the powers under Section 35 of the KGST Act for the purposes of reopening the assessments. The said notice is impugned by the petitioner in the said writ petition.

4. As already noted, the issue to be considered in all these three writ petitions is the availability of exemption to a manufacturer of centrifuged latex and crumb rubber, from the payment of tax payable under the KGST Act on the purchase turnover of rubber in any form used for the manufacture of centrifuged latex and crumb rubber. The contention taken by the respondent authorities is that in view of decisions of the Supreme Court and of this Court which had expressed the view that field latex, centrifuged latex and crumb rubber were essentially the same commercial commodity, it could not be said that there was any manufacturing process involved in the conversion of field latex into centrifuged latex and crumb rubber. The benefit of the Notification granting exemption was therefore sought to be denied to the petitioners on that ground. It was also the view of the respondent authorities that Notification SRO 316/2005, which granted the benefit of exemption from payment of tax on purchase turnover of rubber during the period from 10.10.2001 to 31.03.2004, had since been resented by Notification SRO 946/07 whereby the exemption under the former Notification had been withdrawn for the period in question. The writ petitions seek to impugn the assessment orders and the notices issued under Section 35, inter alia, on the ground that the Notification SRO 946/07 that was relied upon by the departmental authority, while seeking to deny the benefit of the exemption Notification to the petitioners, is ultra vires the KGST Act insofar as it is a Notification that has the effect of retrospectively withdrawing the benefit of an exemption granted to assessees. As this was a contention that could not be taken before the authorities under the KGST Act, recourse was had to the remedy available under Article 226 of the Constitution to prefer the writ petitions.

5. Counter affidavits have been filed on behalf of the respondents. Therein the issuance of SRO 946/07 is highlighted to contend that it was the policy of the Government to prevent an assessee from obtaining a double benefit by way of getting an exemption from tax on the purchase of rubber and also getting an

exemption from the payment of tax on the sale of centrifuged latex or crumb rubber, when such sales were effected to other persons within the State. This was because the purchase of rubber was taxable in the State only at the point of last purchase and if the assessee had sold the centrifuged latex and crumb rubber to dealers who purchased it within the State then, as long as they obtained the necessary declaration from the purchasing dealer, they would not be liable to pay any tax on the sake of centrifuged latex or crumb rubber. It is also pointed out that at any rate, in view of the earlier decisions of this Court and the Supreme Court, there was no process of manufacture involved in the conversion of field latex into centrifuged latex or crumb rubber and in that view of the matter, the assessees were not entitled to the benefit of Notification SRO 316/05.

6. I have heard Sri. Harisankar V. Menon, the learned counsel appearing on behalf of the petitioners as also the Smt. Lilly K.T. the learned Government Pleader appearing on behalf of the respondents.

7. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that the present writ petitions must necessarily succeed. The exemption from payment of tax payable under the KGST Act on purchase turnover of rubber used for the manufacture of centrifuged latex and crumb rubber was covered by Notification SRO 695/03 for the period from 01.04.1988 to 09.10.2001. Thereafter, the same exemption continued for the period from 10.10.2001 to 31.03.2004 through SRO 316/05. The benefit of exemption granted by the latter Notification was sought to be taken away through the introduction of a third Notification, namely SRO 946/07. The contention that is put forwarded by counsel for the petitioners is that SRO 946/07 could not have legally taken away the exemption that was already granted vide SRO 316/05 for the period from 10.10.2001 to 31.03.2004. Reliance is placed on the express provisions of Section 10 of the KGST Act as it stood during the relevant period which reads as follows:

"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)."

8. It is pointed out that there is a distinction between the power to grant exemption which is available under Section 10(1) and the power to cancel or vary any Notification that is available to the Government under Section 10(3) of the Act. While the power to grant exemption or reduction in rate of tax payable under the Act can be exercised either prospectively or retrospectively, the power of the Government to cancel or vary any Notification issued under Sub Section (3) of Section 10 is one that can be exercised only prospectively. In support of the said contention reliance is placed on the decisions of this Court in Sajini Vs. State of Kerala and Geekay Hygenics Pvt. Ltd. Vs. State of Kerala, . On a perusal of the above decisions, it is apparent that the issue as to whether a Notification that cancels or varies a Notification granting exemption can have retrospective effect to nullify the exemption already granted, is no longer res integra. The aforesaid decisions would clearly indicate that a Notification that seeks to deprive assessees of the benefit of an exemption already granted for a prior period cannot be legally sustained for want of any power in the Government to do so in terms of the KGST Act. Placing reliance on the said decisions and following the same, I would hold that in the instant case, the respondents cannot rely on SRO 946/07 for the purposes of denying the benefit of exemption in terms of SRO 316/05 to the petitioners for the period from 10.10.2001 to 31.03.2004.

9. I must now turn to the next contention on behalf of the respondents namely that the process of conversion of field latex to centrifuged latex and crumb rubber, is one that does not involve a process of manufacture for the purposes of the Notification granting exemption. This again is no longer an issue that is res integra. A learned Single Judge of this Court, in the judgment dated 17.06.2009 in W.P.(C). Nos. 21251 & 21286 of 2008, had occasion to consider the very same contention in the context of the Notification SRO 695/03 which was the exemption Notification in force for the period from 01.04.1988 to 09.10.2001. Dealing with a contention similar to that taken by the respondents in the instant case, it was found as follows in paragraph 13 of the said judgment:

"13. What is stated, as already noted, is that the Apex Court has held that there is no manufacture. What is essentially involved is the interpretation of the Notification SRO 695/2003. The facts are not in dispute. The petitioners purchased field latex. They make centrifuged latex out of the field latex and either it is sold within the State or it is sold in inter-state transactions. SRO No. 695/2003 which I have adverted to, unambiguously appears to provide for exemption for manufacturers of centrifuged latex and crumb rubber from payment of tax under the KGST Act, 1963 on the purchase turnover of rubber in any form used for manufacture of centrifuged latex and crumb rubber. The Notification granting exemption is issued under Section 10 of the Act. As held by the Apex Court in M/s. Padinjarekara Agencies'' case, when the question is one as to whether a person is entitled to exemption, one has to look to the terms of the Notification. Going by the language of the Notification, clearly the Author of the Notification has proceeded on the basis that there is manufacture involved, if the latex is used for making centrifuged latex. Even though the decision of the Apex Court in M/s. Kurian Abraham''s case has been extensively referred to, I was not in a position to find out any pronouncement by the Apex Court to the effect that there is no manufacture involved when centrifuged latex is made from field latex. This is not a matter about which there can be any ambiguity. The present notices proceed, as already noted, on the supposition that the Apex Court has pronounced that there is no manufacture involved. Such a finding by the Apex Court, as already noted, is not to be found in the judgment. Therefore, the very premise of the notices appears to be unsupportable."

10. It will be seen from a perusal of the afore quoted extract of the judgment of the learned Single Judge that insofar as the exemption Notifications in question clearly indicate the understanding of the State Government that there is a process of manufacture involved in the conversion of field latex to centrifuged latex and crumb rubber, it cannot be the stand of the department that there is no manufacturing process involved in such a conversion. In that view of the matter, the 2nd objection raised by the departmental authority while denying the benefit of exemption to the petitioners, also does not have any legal basis.

11. Resultantly, the petitioners in the present writ petitions, cannot be denied the benefit of the exemption envisaged under SRO 316/05 for the period from 10.10.2001 to 31.03.2004. The assessments completed against the petitioners taking a contrary view, as also the notices issued by the respondents under Section 35 of the KGST Act on the basis that the exemption is not available to the petitioners, cannot be legally sustained. I therefore allow these writ petitions by quashing Ext. P9 notice in writ petition 24228/08 to the extent it relates to Exts. P1 to P6 orders for the assessment years 2001-2002 to 2003-2004, Ext. P5 assessment order in W.P.(C). No. 2249 of 2011 and Ext. P2 notice in W.P.(C). No. 24216/08. In W.P.(C). No. 24228 of 2008 and W.P.(C). No. 24216 of 2008, the assessments already completed against the petitioners vide Exts. P1 to P6 orders in the former and Ext. P1 order in the later shall stand confirmed. As regards W.P.(C). No. 2249 of 2011, Ext. P5 assessment order having been quashed by this judgment, the Assessing Officer shall pass a fresh assessment order for the assessment order 2003-2004 taking into account the findings in this judgment on the issue of availability of exemption.

The Writ Petitions are allowed as above.

