**(2004) 06 KL CK 0006**

**In the High Court Of Kerala**

**Case No :** W.A. No. 1014 of 2004

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| Malabar Oxygen Co. | APPELLANT |
| Vs | |
| Additional Sales Tax Officer | RESPONDENT |

**Date of Decision :** 22-06-2004

**Acts Referred:**
Kerala General Sales Tax Act, 1963 — Section 10

**Citation :** (2004) 3 ILR (Ker) 166 : (2004) 3 KLT 987 : (2008) 11 VST 643

**Hon'ble Judges :** Nauvdip Kumar Sodhi, C.J;P.R. Raman, J

**Bench :** Division Bench

**Advocate :** T.M. Sreedharan, M.S. Kiran and Deepak Joy K, for the Appellant; Government Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

N.K. Sodhi, C.J.—What is the scope of the words "taking effective steps" for the purpose of claiming sales tax exemption in terms of Government Notification S.R.O. No. 1092 of 1999 as amended by Notification S.R.O. No. 295 of 2000 is the short question which arises for consideration in this Writ Appeal directed against the judgment dated June 1st, 2004 passed by the learned Single Judge dismissing W.P.(C) No. 1512 of 2004 filed by the appellant.

2. The appellant is a small-scale industrial unit engaged in the manufacture of industrial and medical oxygen. The unit is situate at Chelari, Thenhipalam, District Malappuram. It is registered as a dealer under the Kerala General Sales Tax Act, 1963 (for short "the Act"). It applied for sales tax exemption to the General Manager, District Industries Centre, Malappuram. The application was rejected on the ground that the unit had not taken effective steps to start the industry before 1st January, 2000. Feeling aggrieved by this order, the appellant filed an appeal before the Director of Industries and Commerce, Thiruvananthapuram which was dismissed on 4th January, 2003 observing that "obtaining of provisional SSI registration prior to 1st January, 2000 is a compulsory condition" but the unit had taken provisional registration only on 2nd

August, 2000 and therefore it was not eligible for tax exemption. It is against the aforesaid two orders that the appellant filed W.P.(C) No. 1512 of 2004 out of which the present appeal has arisen. The matter was considered by the learned Single Judge who relied on his earlier judgment in W.P.(C) No. 20915 of 2003 dated 4th September, 2003 wherein it has been held that taking of provisional registration by the industry prior to 1st January, 2000 is mandatory and since the appellant had not taken the provisional registration prior to the cut off date, it had not taken "effective steps" for setting up the industry in terms of the aforesaid notifications. Consequently, the Writ Petition was dismissed. Hence, this appeal.

3. By S.R.O. No. 1729 of 1993, the State Government, in exercise of the powers conferred by Section 10 of the Act, granted tax exemptions to industrial units and/or reduction in the rate of tax payable on the sale or purchase of goods by such industrial units subject to the conditions and restrictions specified therein. This notification was amended by S.R.O. No. 1092 of 1999 which in turn was amended by S.R.O. No. 295 of 2000. The original Notification S.R.O. No. 1729 of 1993 after these amendments was made applicable only to the following amongst other categories of industries:

"(ii) new industrial units other than public sector undertakings which have taken effective steps for setting up new industrial unit prior to the 1st day of January, 2000. An industrial unit shall be considered to have taken such effective steps if it has, (a) obtained provisional registration (applicable only in the case of SSI units), (b) owned or acquired or has been allotted land for establishing the industrial units and applied for financial support from any regular financial institution/Government before 1st January, 2000 or (c) in the case of self-financed units acquired or placed firm orders for the purchase of the necessary plant and machinery, before 1st January, 2000 provided that the unit commences commercial production on or before the 31st December, 2001."

It is not in dispute that the appellant before us had obtained provisional registration as a SSI unit on 2nd August, 2000 and did nothing else before the cut off date. The question that we need to consider is whether the appellant had complied with the conditions enumerated in Clause(ii) reproduced above so as to claim sales tax exemption?

4. From a reading of Clause (ii) in S.R.O. No. 1092 of 1999 as amended in the year 2000, it is clear that the exemption originally granted by S.R.O. No. 1729 of 1993 would apply to new industrial units other than public sector undertakings which have taken effective steps for setting up a new industrial unit prior to first day of January, 2000. According to this Clause, an industrial unit shall be considered to have taken effective steps if it has (a) obtained provisional registration (in the case of SSI units), (b) owned or acquired or has been allotted land for establishing the industrial unit and applied for financial support from any regular financial institution/Government before 1st January, 2000 or (c) in the case of self-financing units acquired or placed firm orders for the purchase of the

 

necessary plant and machinery before 1st January, 2000 provided that the unit commences commercial production on or before December 31st, 2001. The argument of the learned Counsel for the appellant is that if any one of the three conditions in sub-clauses(a), (b) or (c) of Clause (ii) is satisfied, the unit should be considered to have taken effective steps so as to be entitled to claim sales tax exemption. In support of this submission, he placed reliance on some observations made by a learned Single Judge in Pepsico India Holdings (P) Ltd. v. State of Kerala and Ors. (O.P. No. 8563 of 2003) decided on January 7,2004, Learned State Counsel, on the other hand, contended that the condition in Clause (a) regarding provisional registration has to be satisfied by every small scale industrial unit, if it claims exemption and in addition, it has to own or acquire or has to be allotted land for establishing the industrial unit and if it has applied for financial support from any financial institution, it should have applied before 1st January, 2000. He further contends that if the industrial unit is a self-financing unit, then in that case, it has to acquire or place firm orders for the purchase of the necessary plant and machinery before 1st January, 2000 subject to the condition that the unit commences commercial production before December 31st, 2001. He placed reliance on a judgment of the learned Single Judge K.M. Sulekha v. The State Level Committee for Sales Tax Exemption and Ors. (W.P.(C) No. 20915 of 2003), decided on September 4,2003. From the rival contentions of the parties, what needs to be examined is whether the three conditions enumerated in Clause (ii) are to be satisfied cumulatively or is it enough for a unit to comply with any one of those conditions?

5. Having given our thoughtful consideration to the rival contentions of the parties, we are clearly of the view that there is merit in what the learned State Counsel has contended. Clause (ii) states when an industrial unit shall be considered to have taken effective steps so as to claim exemption under the notifications. These effective steps have to be taken prior to 1st January, 2000. Clause (a) requires a small scale industrial unit to obtain provisional registration. After Clause (a), there is a comma and Clause (b) is in two parts. The first part of this clause requires the unit to own or acquire or get allotted land for establishing the industrial unit and the second part of this clause relates to the financial support which it may require. If the unit is to apply for financial support from any regular financial institution or Government, it must apply for such financial support before 1st January, 2000. Then comes Clause (c). The word ''or'' appearing after Clause (b) and before Clause (c) makes it clear that Clause(c) is an alternative to the second part of Clause(b). Both, the second part of Clause(b) and Clause(c) deal with the financial aspect of the unit. If the unit requires financial support, then the second part of Clause(b) has to be satisfied in addition to the first part. But, if the unit is a self-financing institution, then Clause(c) will have to be satisfied in addition to the first part of Clause(b). In other words, a small scale industrial unit would be entitled to claim exemption in terms of Clause(ii) of the aforesaid notifications only if it obtains provisional registration prior to 1st January, 2000 and owns or acquires or has been allotted

 

land for establishing the industrial unit before the said date and if the unit is to apply for outside financial support, it must do so before the cut off date and if it has its own resources to run the industry, it must have acquired or placed firm orders for the purchase of necessary plant and machinery before 1st January, 2000 subject, of course, to the condition that the unit starts commercial production on or before 31st December, 2001. If the argument of the learned Counsel for the appellant that any one of the three conditions alone has to be satisfied to claim exemption were to be accepted, then it would lead to absurd results. Assuming, a small scale industrial unit gets provisional registration prior to the cut off date, but does not own or acquire or get any land allotted for establishing the industrial unit, can such a unit claim exemption? The answer has to be in the negative. Without land, an industrial unit cannot be set up. We do not think that such is the interpretation of Clause(ii). In this view of the matter, it has to be held that CI.(a) has to be satisfied along with the first part of Clause(b) and in addition, either the second part of Clause(b) or Clause(c) have also to be satisfied. If these Clauses are satisfied cumulatively, it is only then that a small scale industrial unit will become eligible to claim sales tax exemption.

6. Let us now examine the Judgments relied upon by the learned Counsel for the parties. Pepsico India Holdings (P) Ltd. ''s case (supra) was not a case of a small scale industrial unit and, therefore, Clause(a) was not required to be satisfied in that case. The question that arose in that case was whether the unit had satisfied sub-clause (c) of Clause(ii). The question whether all the three sub-clauses of Clause(ii) were to be satisfied cumulatively or whether any one of them could be satisfied to claim exemption from sales tax was not in issue before the learned Single Judge in Pepsico India''s case (supra). We have carefully gone through the judgment in this case and are of the view that the issue that arises for consideration before us had not directly arisen before the learned Single Judge. Reliance was, however, placed by the learned Counsel for the appellant on the following observations made in paragraph 30 of the judgment:

"Sub-cl.(ii) further provides that an industrial unit shall be considered to have taken such effective steps in any one of the following fact situations: (1) SSI units which have obtained provisional registration; (2) if the unit owned or acquired or has been allotted land for establishing the industrial unit and applied for financial support from any regular financial institution/ Government before 1st January, 2000 and (3) in the case of self- financed units if it has acquired or placed firm orders for the purchase of the necessary plant and machinery before 1st January'', 2000 provided that the unit commences commercial production on or before 31st December, 2001."

We are of the view that the aforesaid observations were made in a different context. However, if these observations are understood to mean that on compliance with any one of the conditions enumerated therein, the industrial unit should be considered to have taken effective steps for the purpose of claiming sales tax exemption, then we have no hesitation in holding that these observations do not lay down the correct law. On the other hand, the issue which has arisen before us had directly arisen before the learned Single Judge in KM. Sulekha''s case (supra) and therein the learned Single Judge has held that condition (a) along with the first part of condition (b) and either the second part of Clause(b) or Clause(c) have to be cumulatively satisfied. This, in our view, is the correct interpretation of the clause.

7. In the case before us, all that the appellant had done was to acquire land for the industry prior to 1st January, 2000 and nothing else was done by it. The provisional registration was obtained on 2nd August, 2000 which was beyond the cut off date and therefore it cannot be said that it had "taken effective steps" for setting up a new industrial unit prior to 1st January, 2000. The authorities below were right in rejecting its claim for sales tax exemption and the learned Single Judge was justified in dismissing the Writ Petition. No fault can, thus, be found with the order under appeal.

8. No other point has been raised.

In the result the appeal fails and the same stands dismissed with no order as to costs.

 