
(2009) 07 KL CK 0018
In the High Court Of Kerala
Case No : Writ Petition (C) No. 1982 of 2006

Moly Eldhose

APPELLANT

Vs

The Additional Sales Tax Officer-I and Another

RESPONDENT

Date of Decision : 09-07-2009

Acts Referred:

Central Sales Tax (Kerala) Rules, 1957 — Rule 6(8)
Central Sales Tax Act, 1956 — Section 8, 8(1), 8(4), 8(5)

Citation : (2009) 07 KL CK 0018

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : R. Lakshminarayan and R. Ranjini, for the Appellant; K.P. Pradeep, for the Respondent

Final Decision : Allowed

Judgement

C.K. Abdul Rehim, J.—Petitioner is the Proprietrix of a Small Scale Industrial Unit engaged in manufacture of Rubber Bands. The unit is recognized and financed by Kerala Khadi and Village Industries Board. The Petitioner is a registered dealer under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act. The assessment in dispute pertains to the year 2002-2003. The Petitioner is challenging validity of Ext. P-6 notification SRO. No. 958/02, dt. 21-11-2002 and Ext. P-7 revised assessment of CST for the year 2002-2003.

2. The Petitioner's unit was exempted from payment of tax on interstate sale as per SRO. No. 1731/93. As per SI. No. 3 in Schedule IV of the above said notification Khadi and Village Industrial units recognized by the Kerala Khadi and Village Industries Board were given tax exemption for the period during which they remain as village industry from payment of tax on the products manufactured by such units within the State. Accordingly the Petitioner claimed exemption on turnover of interstate sale to the tune of Rs. 13,98,197 for the year 2002-2003 and the assessing authority completed the assessment granting the exemption claimed, as per Ext. P-2. The Petitioner was also exempted from

payment of tax due under the Kerala General Sales Tax Act, as per SRO. No. 291/2000 and 292/2000. Ext. P-3 is the assessment under the KGST Act.

3. In the year 2005, the Petitioner was issued with Ext. P-4 notice proposing re-opening and revision of Ext. P-2 assessment under Rule 6(8) of the Central Sales Tax Act (Kerala Rules) 1957, alleging that the Petitioner was obliged to submit Form C declarations from 1-6-2002 onwards for availing concession, in view of the provisions in Finance Bill 2002, and she was entitled only for payment of tax at the concessional rate of 2%. Since she failed to submit Form C declarations the assessment need be revised fixing tax liability at 10% on the entire interstate sale. The Petitioner objected the proposal through Ext. P-5 contending that the subsequent notification issued in this regard, SRO. No. 958/02 is dt. 21-11-2002, is arbitrary, illegal and void. Further it is contended that the said notification was published only on 22-11-2002 and no retrospective effect can be given to the same from 1-6-2002 onwards. Since the Petitioner had not collected any tax or procured any C Form during the relevant period in view of the total exemption available, the demand for payment of tax with retrospective effect is illegal, is the contention. But ignoring the objections the 1st Respondent finalised assessment under Ext. P-7, treating the entire interstate sale turnover as taxable at 10% along with fixing liability to pay interest with effect from 1-5-2003 onwards.

4. SRO. No. 1731/93 was issued by the State Government exercising powers vested u/s 8(5) of the Central Sales Tax Act, 1956. Through Finance Bill 2002 amendment was brought into Section 8(5) of the Act. Ext P-6 is the notification, (SRO. No. 958/02) issued consequent to the amendment, by which SRO. 1731/93 is superseded. As per SI. No. 3 in Schedule III of Ext. P-6, the concessional rate of tax for products of the units recognised by the Khadi and Village Industries Board was re-fixed at 2% and production of C/D Forms was insisted as a condition for availing the concession. Ext. P-6 notification is dt. 21-2-2002. It was published in the official gazette only on 28-11-2002. But in Ext. P-6 it is stated that the notification shall be deemed to have come into force with effect from 1-6-2002.

5. The challenge against Ext. P-6 notification is on the ground that the withdrawal of exemption is opposed to principles of promissory estoppel. It is clear that exemptions/concessions are issued exercising the power conferred u/s 8(5) of the CST Act depending on the policy decision of the Government from time to time. It is well-settled through various legal precedents that no challenge on the ground of promissory estoppel is sustainable against concessions granted based on policy decisions of the Government. Hence I am inclined to hold that notification SRO. No. 958/02 (Ext. P-6) is valid and sustainable.

6. The next question to be considered is whether the retrospectivity of Ext. P-6 notification is valid or not. As stated above, Ext. P-6 notification is dt. 21-11-2002. But it is stated therein that the notification will be deemed to have come into force with effect from 1-6-2002. It is clear that the Petitioner was

enjoying total exemption on the basis of SRO. No. 1731/93 till Ext. P-6 notification. During the said period there was no necessity for the Petitioner to collect Form C from any purchasers interstate, because there was no such conditions insisted in SRO. No. 1731/93. Therefore it is clear that Petitioner was disabled from collecting tax or from securing Form C declarations during that period. Therefore the question arise for consideration is whether the retrospectivity of Ext. P-6 can be sustained, and whether the Petitioner is eligible for total exemption during the period between 1-6-2002 and 21-11-2002.

7. Production of declarations in the prescribed form, for the purpose of claiming concessional rate of tax, as provided u/s 8(1) of CST Act, is insisted by virtue of provisions in Section 8(4) of the Act. By virtue of Section 8(5) the State Government is given power, notwithstanding anything contained in Section 8, to issue notification in public interest declaring that no tax is payable by any dealer with respect to any goods or class of goods in the course of interstate trade or declaring that the tax on such sale shall be calculated at such lower rates than those specified in Sub-section (1) or (2) of Section 8. By virtue of Finance Bill 2002, amendment was brought into Sub-section (5) restricting power of the State Government for declaring such exemption or concessional rate, only subject to fulfillment of the requirement laid down in Sub-section (4) by the dealer. It is contended by the learned Government Pleader that by virtue of the said amendment the total exemption granted through SRO. No. 1731/93, without insisting for production of declarations prescribed u/s 8(4), will become nullified. Ext. P-6 is a notification brought in consonance with the amendment effected to Section 8(5). Since SRO. 1731/93 got nullified it became necessary to give retrospective effect to Ext. P-6 notification, from the date of amendment, is the contention.

8. Yet Anr. contention advanced is that, even when the Petitioner was enjoying full exemption by virtue of SRO. 1731/93, there was obligation to produce declarations. In support of this argument a decision of the Hon''ble Supreme Court in State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., is pointed out by the Government Pleader. In the said case while considering a notification issued by the State of Rajasthan u/s 8(5) of the CST Act, the Hon''ble Supreme Court observed:

The conditions prescribed by the notifications are the conditions prescribed for availing the further reduction of rate provided by the notification. The notifications merely reduce the rate of tax; they do not do away with the levy altogether. All that the notifications have done is to reduce the rate of tax from 4% to 1 1/2% (2 1/2%, as the case may be). Separate conditions are prescribed for availing the rate (which itself is a concessional rate) prescribed in Section 8(1) and for availing the further reduction provided by the notification. Those two sets of conditions are prescribed by Section 8(4) and by the notifications respectively. One cannot conceive of the said notifications independent of, or apart from Section 8(1). They merely reduce the rate in Section 8(1) as already

mentioned. One must first satisfy the condition in Section 8(4) to become eligible for the concessional rate in Section 8(1). It is only thereafter that he can claim the benefit of the said notifications, for which purpose again he has to satisfy the conditions prescribed in the notifications. It is therefore wrong to think that Section 8(5) or the notifications are self-contained and operate de hors the other provisions of the Act/Rules. Hence production of C Form is essential for availing the benefit of the notification.

But in the case at hand, SRO. 1731/93 does not insist for payment of any reduced rate of tax than the concessional rate prescribed u/s 8(1) or 8(2) of the Act, nor it prescribed any additional conditions for getting the benefit. But on the other hand it provided total exemption. So on facts of the case the dictum in the decision cited above is not applicable. Therefore I am not inclined to agree with the proposition that even while exemption under SRO. 1731/93 was available, the Petitioner was under obligation to produce the declarations.

9. In view of the above findings the question to be decided is whether retrospectivity of Ext. P-6, taking away the benefit of SRO. 1731/93 from a previous date than the date of actual promulgation of Ext. P-6, can be sustained or not. In this regard the Petitioner had pointed out a further notification issued by the Government, SRO. No. 328/2004, by which retrospectivity of Ext. P-6 notification has already been taken away, with respect to certain items mentioned in Column (1) of Ext. P-6. The said notification along with its Explanatory note is extracted below:

SRO. No. 328/2004.-In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act, 74 of 1956), the Government of Kerala, having considered it necessary in the public interest so to do, hereby make the following amendment to the Notification issued in GO.(P) No. 170/2002/TD, dated 21st November, 2002 and published as SRO. No. 958/2002, in the Kerala Gazette Extraordinary No. 1763, dated 28th November, 2002, namely:

Amendment

In the said notification, the following proviso shall be added at the end, namely:

Provided that in respect of the goods specified in column (2) of Schedule I against Serial numbers 1,2,3,4,6,8,11 and 13 in column (1) thereof, the notification shall be deemed to have come into force on the 21 st November, 2002.

By order of the Governor.

Explanatory Note

(This does not form part of the notification, but is intended to indicate its general purport.)

Consequent to the amendment to Central Sales Tax Act, 1956, Central Sales Tax

had to be levied in arecanut, ginger, pepper, rubber, caprolactam, coconut oil, coconut oil cake and copra from 1-6-2002. As the notification in this regard was issued only on 21st November 2002, the dealer could not collect Central Sales Tax from 1-6-2002 and if demand for tax for the intervening period is enforced it will have adverse impact on the agricultural sector. In the budget for the year 2003-2004, Government have therefore, announced to exempt registered dealers from the liability to pay Central Sales Tax for the period from 1-6-2002 to 20-11-2002 in respect of the interstate sales turnover of the above goods. This notification is intended to achieve the above object.

(Notn. GO.(P) No. 328/2004/TD., Dt Tvm. 1-4-2004 in K.G. Ex. No. 824 dt.3-4-2004)

10. From the explanatory note extracted above it is clear that the Government have realised the difficulty caused to dealers because of the retrospectivity given to Ext. P-6, but they have restricted the amendment only with respect to certain products. Why similar benefit was denied to dealers like that of the Petitioner, when amendment was brought in order to rectify the anomalous position, is not discernible. There is no convincing explanation forthcoming in this regard. The Petitioner contends that the attitude of the Government in this regard is clearly discriminatory.

11. The Petitioner had produced a copy of a judgment of this Court in W.P.(C) No. 29012/2005 (unreported), wherein this Court held that the tax at 2% cannot be demanded from a similarly situated dealer for the period from 1-6-2002 to 21-11-2002 on the basis of retrospectivity of Ext. P-6 notification.

12. Under the above-mentioned circumstances it is evident that the Petitioner was disabled from collecting tax or from procuring Form C declarations during the period when S.R.O. 1731/93 was in force. Since the said notification was superseded by Ext. P-6 notification (S.R.O. 958/2002) issued only on 21-11-2002, the Petitioner cannot be put to the burden of tax liability or obligation for production of declaration, for any period prior to 21-11-2002. Therefore the retrospectivity given in Ext. P-6 is held as unsustainable. Hence it is held that the Petitioner is entitled for exemption from payment of tax on the turnover of interstate sale effected during the period between 1-6-2002 to 22-11-2002.

13. In the result, Ext. P-7 assessment is hereby quashed. The matter is remanded to the 1st Respondent for fresh assessment on the basis of the findings rendered above. The liability for payment of interest also need be re-worked accordingly. The revised assessment may be issued as early as possible, at any rate within a period of two months from the date of copy of this Judgment.

The writ petition is allowed to the above extent.