(2007) 06 KL CK 0011

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 117, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137 and 138 of 2007

Padinjarekara Agencies Limited — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 06-06-2007

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 10, 3, 41

Citation : (2007) 06 KL CK 0011

Hon'ble Judges : H.L. Dattu, C.J;K.T. Sankaran, J

Bench : Division Bench

Advocate : A.M. Shaffique, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, C.J.—Sri.V.V.Ashokan, learned Special Government Pleader (Taxes) is directed to take notice for the respondent. He is permitted to file his memo of appearance in one month''s time.

2. Since common questions of law and facts involve in all these Sales Tax Revisions, they are clubbed together, heard and disposed of by this common order.

3. Petitioner is a Public Limited Company, incorporated under the provisions of the Companies Act. It is also a registered dealer, both under the Kerala General Sales Tax Act, 1963 ("KGST Act" for short) and Central Sales Tax Act, 1956 ("CST Act" for short). It is engaged in the production and sale of centrifuged latex. It is also registered as an industrial unit.

4. For the assessment years after 1.4.1988, the assessee, while filing annual returns before the assessing authority, had claimed the benefit of the notification issued by the State Government in S.R.O. No. 1727/93. In the said notification, the benefit is granted to an industrial unit which is involved in the manufacturing activity.

5. The assessing authority, keeping in view the circulars/instructions issued in Circular No. 16/98 dated 28.5.1998, has rejected the claim on the ground that rubber latex and centrifuged latex are one and the same commodity and since there is no manufacturing activity, the assessee cannot claim the benefit of S.R.O.1727/93.

6. Aggrieved by the findings and conclusions reached by the assessing authority, petitioner had unsuccessfully filed first appeal before the first appellate authority; thereafter had filed second appeal before the Kerala Sales Tax Appellate Tribunal, Kottayam for several assessment years. Since the issues involved in all the appeals were common, the Tribunal by its common order dated 1.6.2005 has rejected the appeals. Aggrieved by the orders so passed by the Tribunal, the assessee is before us in these Revision Petitions filed u/s 41 of the KGST Act.

7. The questions of law framed by the assessee for our consideration and decision are as under:

(i) Whether in the facts and circumstances of the case the Hon''ble Tribunal was right in law in holding that the Petitioner is not entitled to the benefit of Government Notification SRO 1727/1993 and SRO 1728 of 1993?

(ii) In the facts and circumstances of the case ought not the Hon''ble Tribunal have held that the Petitioner was entitled to the benefit of SRO 1727/1993 and SRO 1728 of 1993, more so in view of the judgments of the Supreme Court reported in Kalyani Packaging Industry Vs. Union of India (UOI), and (2005) 142 STC 595?

8. Before we consider and decide the question of law framed by the assessee for our consideration and decision, we intend to remind ourselves the revisional powers of this Court u/s 41 of the Act.

9. Section 41 of the Act empowers an officer empowered by the State Government or any other person who objects to an order passed by the Appellate Tribunal to file a revision petition before the High Court. In the revision so filed, what requires to be considered by this Court is only whether the Appellate Tribunal has either decided erroneously or failed to decide any question of law. Keeping in view the restrictions imposed in the statutory provision, let us consider the case pleaded by the learned Counsel Sri.Anil D.Nair.

10. The learned Counsel for the petitioner would vehemently contend before us that the Commissioner of Commercial Taxes in exercise of his powers u/s 3 of the Act could not have granted exemption from payment of sales tax under KGST Act and, further, it could be done only by the State Government in exercise of its powers u/s 10 of the Act. Apart from this, the learned Counsel would submit that in view of catena of decisions rendered by a Full Bench of this Court, the Tribunal was not justified in holding that the assessee is not entitled to the benefit under the notifications SRO 1727/93 and 1728/93.

11. It is not questioned or disputed before us by the counsel for the assessee

that the circular/instructions issued by the Commissioner in exercise of the powers u/s 3 of the Act will be binding on the assessing authority.

12. Up to 1.4.1988, there were entries 38 and 39 of First Schedule to the Act and those entries have been substituted with effect from 1.4.1988. Up to 1.4.1988, the decisions rendered by this Court in Padinjarekkara Agencies Ltd. v. Asst. Commissioner 1996 K.L.J. 243 would be binding on the dealers as well as revenue. With effect from 1.4.1988, the entries 38 and 39 have been substituted and keeping those substituted entries in view, the Commissioner has issued certain clarification and according to him since raw rubber latex and centrifuged latex find a place under the same heading, he is of the opinion that raw rubber latex and centrifuged latex are one and the same commodity, and therefore, according to the Commissioner, since no manufacturing activity is involved when raw rubber is converted into centrifuged latex, the assessee cannot claim the benefit of the notification SRO 1727/93.

13. In the instant case, as we have already noticed, the claim made by the assessee before the assessing authority for the assessment years 1988-89 and onwards was that the assessee was entitled for exemption in view of SRO 1727/93. The notification specifically provided that an industrial unit which is engaged in manufacturing activity alone is entitled to the benefit of the notification. Since there is change in the entry and there is clarification issued by the Commissioner of Commercial Taxes, which is binding on the assessing authority, the assessing authority was justified in holding that since there is no manufacturing activity while raw rubber is converted into centrifuged latex the assessee cannot claim the benefit of the notification SRO 1727/93. This view of the assessing authority has been approved by the first appellate authority. Even before the Tribunal, taking into consideration that the notification SRO 1727/93 speaks of the manufacturing activity and in the absence of manufacturing activity by an industrial unit, it cannot claim any benefit under that notification. Since the Legislature itself has thought that raw rubber and centrifuged latex are one and the same commodity, the benefit of the notification, which is meant for a manufacturing industrial unit, cannot be extended to the assessee industry. This view, in our opinion, is justified in view of the substituted entries as well as the circulars/instructions issued by the Commissioner of Commercial Taxes. Lastly, the judgments relied on by the learned Counsel in no way would assist the assessee since those judgments were rendered in different context altogether. In view of the above, in our view, the question of law that has been framed by the assessee requires to be answered in negative and in favour of the Revenue. Accordingly, the following:

ORDER

(i) The revision petitions are rejected.

14. After rejection of the revision petitions, Sri. Anil D.Nair, learned Counsel appearing for the petitioner would submit that he may be permitted to question

the legality or otherwise of the circular/directions issued by the Commissioner in Circular No. 16/98 dated 28.5.1998 in appropriate proceedings. In our opinion, if the request of the petitioner is granted, no prejudice will be caused to the Revenue. Therefore, while rejecting the revision petitions, liberty is given to the petitioner, if it so desires, to question the legality or otherwise of the circular/ directions issued by the Commissioner in Circular No. 16/98 dated 28.5.1998 in an appropriate proceedings.

Ordered accordingly.

Consequently, the applications for dispensing with the production of original order passed by the Tribunal are closed.