
(2002) 12 KL CK 0073

In the High Court Of Kerala

Case No : T.R.C. No's. 529 of 2001, 6 and 18 of 2002

Palma Bread and Pastries

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10

Citation : (2006) 143 STC 619

Hon'ble Judges : P.R. Raman, J;G. Sivarajan, J

Bench : Division Bench

**Advocate : O.P. Nandakumar and V.A. Ajai Kumar, for the Appellant;
Georgekutty Mathew, Government Pleader, for the Respondent**

Judgement

G. Sivarajan, J.—All these tax revision cases are filed by the same assessee against the common order of the Sales Tax Appellate Tribunal, Additional Bench I, Palakkad, in T.A. Nos. 398, 399 and 400 of 2000. The assessee is engaged in the business of manufacture and sale of bread and bakery items. The assessment years concerned are 1994-95, 1995-96 and 1996-97. In the assessment for the aforesaid three years the assessee claimed exemption from payment of sales tax on the basis of notifications issued u/s 10 of the Kerala General Sales Tax Act, 1963 (for short "the Act"). The assessee had obtained an eligibility certificate dated August 18, 1994 from the District Level Committee of sales tax exemption to small-scale industrial units. As per the eligibility certificate the assessee is entitled to exemption from payment of sales tax up to an amount of Rs. 6,55,942 in respect of the sale of bakery items manufactured by it for the period from June 19, 1993 to June 18, 2000. The assessing authority, however, rejected the claim for exemption made by the assessee on the ground that the said exemption was taken away by Notification S.R.O. No. 404/94. The first appellate authority dismissed the appeals filed by the assessee for all the three years. The Appellate Tribunal also confirmed the order of the two authorities in further appeals.

2. The learned Counsel appearing for the assessee submits that the assessee is entitled to exemption from payment of sales tax under Notification S.R.O. No. 1729/93 and that the amendment made to the said Notification by S.R.O. No. 404/94 taking away the exemption will not apply to the assessee. The counsel in support of the above relied on a speech made by the Finance Minister on the floor of the assembly. The counsel further submitted that the principles of promissory estoppel enunciated by the Supreme Court in *Pournami Oil Mills v. State of Kerala* [1987] 65 STC 1, would squarely apply to the assessee's case. He further submitted that an eligibility certificate issued by the competent authority under the notification is valid and binding on the authorities under the Act and since the said certificate has not been cancelled by the competent authority the denial of exemption from payment of sales tax for the three years in question is illegal and unjustified.

3. The learned Government Pleader appearing for the respondent submitted that in view of the amendment to the Notification S.R.O. No. 1729/93 made by Notification S.R.O. No. 404/94 the petitioner is not entitled to the exemption for the period from April 1, 1994. The Government Pleader further submitted that the principles of promissory estoppel has no application in this case. He also relied on the decisions of the Supreme Court in *State of Orissa Vs. M/s. Orissa Road Transport Co. Ltd. and Others*, and *State of Rajasthan v. Mahaveer Oil Industries* [1999] 115 STC 29 raj.

4. We have perused the order of the Tribunal as well as the orders of the assessing authority and of the first appellate authority. The assessing authority had originally completed the assessments for all the three years and granted the exemption allowed in the eligibility certificate. The assessment was reopened on the basis of Notification S.R.O. No. 404/94. Exemption claimed was denied in the reassessment order. The first appellate authority affirmed the said order relying on the said notification. Though the assessee had claimed that it is entitled to exemption from payment of sales tax under S.R.O. No. 1729/93 on the basis of the eligibility certificate already granted for the full period, the Tribunal had rejected the same on the ground that S.R.O. No. 404/94 took away the benefit in respect of biscuit manufacturing units from April 1, 1994. The Tribunal did not accept the contention of the assessee that the department is bound by the principle of promissory estoppel. Reliance placed by the assessee on annexure 5 circular and annexure 6 of notification were not found favour with.

5. In this case, admittedly the assessee is engaged in the manufacture and sale of bakery items. It was registered as a small-scale industrial unit provisionally with effect from June 25, 1992 and permanent registration was granted evidenced by annexure 1 certificate. The product manufactured by the assessee is shown as bakery items. The assessee had started commercial production of bakery items on June 19, 1993. The eligibility certificate also gives the details of the items manufactured as bakery items. The eligibility certificate is dated August 18, 1994. The exemption period is from June 19, 1993 to June 18, 2000.

Admittedly the eligibility certificate has not been cancelled or varied. So far as the assessing authority is concerned, he is not entitled to grant any exemption under the notification unless the assessee produces an eligibility certificate issued by the competent authority under the notification. Once such an eligibility certificate is obtained and produced the assessing authority has no option but to accept the same and to pass assessment order taking into account the items concerned, period of exemption and the amount of exemption allowed in the said certificate. If the assessing authority had any doubt either with regard to the genuineness of the eligibility certificate or with regard to the entitlement of the assessee to get the benefit of the notification in respect of the eligibility, certainly it is a matter for the assessing authority to raise the same before the competent authority who issued the eligibility certificate. In other words so long as the eligibility certificate issued by the competent authority is in force it is not a matter for the authorities and for the Tribunal to consider the question of entitlement to exemption under the notification. However, it is a matter for consideration as to whether as a result of an amendment by way of a notification u/s 10 of the Act withdrawing the benefit granted under an earlier notification the exemption already granted by the competent authority by issuing an eligibility certificate can be denied prospectively as done in the instant case. It is also a matter for consideration by the authorities as to whether the principle of promissory estoppel laid down by the Supreme Court in *Pournami Oil Mills and Others Vs. State of Kerala and Another*, mentioned above and other cases will apply to this particular case. In this case we notice that the assessing authority and the two appellate authorities had taken the view that since the benefit under Notification S.R.O. No. 1729/93 was taken away by S.R.O. No. 404/94 from April 1, 1994, the assessee is not entitled to the benefit of the eligibility certificate already granted for a period beyond April 1, 1994. The principle of promissory estoppel pleaded by the assessee was rejected on the ground that the assessee had set up the unit and started commercial production prior to the date of Notification S.R.O. No. 1729/93. It appears that the Tribunal has not kept in mind that even before the Notification S.R.O. No. 1729/93 exemption was granted to a small-scale industrial unit without any break till the supersession of the Notification S.R.O. No. 499/ 90 by S.R.O. No. 1729/93. Here it is relevant to refer to clause 12 of the S.R.O. No. 1729/93 which clearly provides that the industrial units which have been set up prior to the April 1, 1993 in pursuance of notifications mentioned in the Schedule, and as are entitled to claim any concession under any of them, shall continue to enjoy such concessions whichever is applicable in each case, notwithstanding that they have been superseded by this notification, and any proceedings pending or any application for concession to be filed in pursuance of such notification, shall be disposed of in accordance with the provisions contained in such notifications. It is further relevant to note that the Notification S.R.O. No. 499/90 is specifically mentioned in the Schedule. Since the assessee had set up the small-scale industrial unit and started commercial production prior to November 4, 1993, i.e., the date of Notification S.R.O. No. 1729/93, the notification that applied to the assessee is

the Notification S.R.O. No. 499/90 as amended by S.R.O. No. 521/92. It must be noted that the eligibility certificate dated August 18, 1994 was granted to the assessee under the said notification. Therefore, the reasoning of the Tribunal that the principle of promissory estoppel will not apply to the case of the assessee does not appear to be correct. However, it must be noted that the question of promissory estoppel will depend on factual foundation. It does not appear that the assessee had placed all relevant facts for the application of the principles of promissory estoppel laid down by the Supreme Court in *Pournami Oil Mills and Others Vs. State of Kerala and Another*, mentioned above. Anyhow, we are of the view that the Tribunal had not properly adverted to all relevant matters while disposing of appeals which are the subject-matter of these revisions. In these circumstances, we set aside the common order of the Sales Tax Appellate Tribunal in T.A Nos. 398, 399 and 400 of 2000 and direct the Tribunal to consider the matter afresh in the light of the observations made hereinabove. It is open to the assessee to produce all materials in the form of an additional affidavit as contemplated by the Appellate Tribunal Regulations before the Tribunal and also to rely on the decisions having bearing on the questions. We note here the crucial points to be considered--(1) in a case where an eligibility certificate has been issued by the competent authority under the notification whether is it open to the assessing authority or to the appellate authorities to deny the benefit of exemption without cancelling or varying the eligibility certificate in spite of the Notification S.R.O. No. 404/94. In other words whether a subsequent notification taking away the benefit of tax exemption prospectively can nullify the exemption already granted by issuing the eligibility certificate without it being cancelled ? and (2) Whether the principle of promissory estoppel is applicable to the facts of the assessee's case ? Certainly it is a matter for the assessee to place all the facts relevant for the purposes of considering these questions as already indicated. It does not appear that the eligibility certificate already issued has been varied. The Tribunal will certainly consider the decisions relied on by the Government Pleader also while disposing of the appeals pursuant to the directions issued in this judgment. We make it clear that the entire matter is at large before the Tribunal.

6. The counsel appearing for the assessee submitted that pursuant to the revenue recovery proceedings initiated for the realisation of the disputed demand, the moveables belonging to the assessee have been attached and that sale of the same is deferred only because of the interim order passed by this Court in T.R.C. No. 529 of 2001. The counsel also submits that the assessee had already paid 50 per cent of the demand for the year 1994-95 as per the conditional order passed by this Court. He accordingly submitted that all further proceedings for the sale of the movable properties already attached may be directed to be deferred till the disposal of the appeal afresh by the Tribunal pursuant to this judgment. Now that we have set aside the order of the Tribunal, the assessee is free to move the Tribunal for stay. However, the sale of the moveables already attached will be deferred for a period of three months from

today. This is to enable the assessee to move the Tribunal for further stay.

These tax revision cases are disposed of as above.

Order on C.M.P. No. 6444 of 2001 in T.R.C. No. 529 of 2001 dismissed.