
(2005) 08 KL CK 0049
In the High Court Of Kerala
Case No : W.A.No. 1266 of 2005

Prima Industries Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-08-2005

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 10(1), 10(3)

Citation : (2005) 4 ILR (Ker) 159 : (2005) 4 KLT 253 : (2008) 11 VST 806

Hon'ble Judges : Rajeev Gupta, C.J.;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Nalini Chitambaram, Rajiv A. George and Eapen A. George, for the Appellant; Raju Joseph, Spl. Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioner is a private limited company engaged in the manufacture and sale of De-oiled cake, solvent extracted and refined oil. Company is a dealer on the roles of Additional Salestax Officer, II Circle, Palakkad.

2. Government of Kerala had issued SRO 1729/03 in exercise of the powers conferred by Section 10 of the Kerala General Salestax Act, 1963 granting exemption to industrial units under medium and large scale industries and also small scale industrial units for a period of seven years from the date of commencement of commercial

production in respect of tax payable under the Kerala General Salestax Act on the turnover of sale of goods manufactured and sold within the State. The company had started commercial production on 31-12-1996. Petitioner industry was also entitled to get the benefit of the said Government Order. On their application the Kerala State Industrial Development Corporation had issued eligibility certificate for sales tax exemption equal to 100% of the fixed capital investment. On the basis of the eligibility certificate the Deputy Commissioner (General), Commercial

Taxes, Thiruvananthapuram as per order No. C4.71164/97/CT dated 2-8-1999 granted exemption to the tune of Rs. 10,76,65,000/- from 31-12-1996 to 30-12-2003. Petitioner was also enjoying concession in the power tariff as well. On 17-11-2003 petitioner made a request to the Commissioner of Commercial Taxes to grant extension of the period of sales tax exemption for one year from 31-12-2003 stating that the petitioner could not avail of the exemption due to various reasons including power cut during the period. Commissioner of Commercial Taxes rejected the request as per order No. C4-6048/03/CT dated 17-11-2003 on the ground that there was no provision under the Kerala General Salestax Act 1963 or in the Sales tax exemption Manual to give extension of the period of exemption already granted. Petitioner had approached this Court and filed WP(C). 37672 of 2003 challenging the said order which was disposed of by this Court directing the Government to consider his request. Request was considered and rejected by the Government vide its order dated 13-8-2004 which was under challenge before the learned single Judge. Learned single Judge found no infirmity in the Government Order rejecting the petitioner's request. Aggrieved by the same this writ appeal has been preferred.

3. Learned senior counsel appearing for the appellant Smt. Nalini Chitambaram submitted that the learned single Judge has committed an error in holding that the Government have no power u/s 10 of the KGST Act, 1963 to extend period of salestax exemption. Counsel also submitted Section 10(3) of the Act empowers the Government to cancel or vary any notification issued under Sub-section (1) thereof by notification in the Gazette. In order to establish the said contention counsel made reference to Notification G.O.(P) No. 16/03/TD dated 29-1-2003 granting extension of the period of salestax exemption to the industries engaged in the manufacture of cement using fly ash for a further period of two years. Reference was also made to the benefit of extension of exemption granted to M/s. Cochin Cements Ltd. on the basis of the Government Notification. Counsel also referred to the orders issued by the Electricity Board granting tariff concession to certain industries for few more days due to power cut. Counsel submitted same principle should apply to the petitioner industry as well in the matter of salestax concession. Counsel also made reference to the decision of the Apex Court in Hitech Electrothermics and Hydropower Ltd. Vs. State of Kerala and Others, .

4. Learned Special Government Pleader for Taxes Sri. Raju Joseph on the other hand, contended that petitioner cannot seek extension of the benefit already granted vide SRO. 1729/03. Counsel submitted exemption was granted in view of the then existing Industrial Policy for a specified period which cannot be extended for petitioner alone. Counsel also justified issuance of SRO 78/03. Counsel also submitted in any view the tax holiday declared by SRO. 1729/03 was discontinued from 1-1-2000 by issuing SRO 295/2000 and therefore the benefit is no more available.

5. The Government in exercise of the powers conferred u/s 10 of the K.G.S.T. Act, 1963 issued SRO 1729/03 on the basis of the then existing industrial policy.

Benefit was given only for a period of seven years. Petitioner could have enjoyed the benefit during the said period. Petitioner's case is that due to power cut the industry could not function in its full strength and therefore Government should have extended the period to mitigate the hardship caused to persons like the petitioner. The Government issued the notification u/s 10 is on the basis of the then Industrial Policy. Whatever benefit petitioner could have availed of during the said period could have been enjoyed by the petitioner. No legal right is conferred on the petitioner to insist that Government should issue a statutory notification so as to extend the period beyond seven years. No duty is cast on the Government to issue such a notification and the petitioner has no corresponding right. Apex Court in *State of Jharkhand and Others Vs. Ambay Cements and Another*, held that Court cannot direct the grant of exemption under the industrial policy ignoring the eligibility conditions prescribed therein and in exemption notifications and an exception or exemption provision in a taxing statute has to be construed strictly and not liberally.

6. Section 10 of the KGST Act empowers the Government to grant exemption or reduction in rate of tax. The said provision is extracted below for easy reference.

"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)"

Government have got power under Sub-section (3) of Section 10 to cancel or vary the notification already issued under Sub-section (1) of Section 10. Government have also got power to extend the period of exemption as well. In exercise of that power Government have issued SRO.78/03. Explanatory Note to the notification reads as follows:

"As per Notification issued in G.O.(P) No. 83/96/TD, dated 30-4-1996, sales tax exemption was given to industrial units manufacturing cement using fly ash

generated in the State as raw material for 7 years from the date of commencement of commercial production, subject to the condition that the total quantum of exemption shall not be 500% of the Fixed Capital Investment of the unit. Now, the said industrial units have requested Government to extend the period of exemption from 7 years to 9 years, since the industry could not avail the full quantum of incentive within the stipulated period, due to various reasons unfavourable to the industry. The Government have considered the matter in detail and considering the role of fly ash based industries in checking environmental pollution, decided to grant the said exemption subject to the condition that the quantum of exemption shall not exceed 500% of the Fixed Capital Investment of the unit or for a further period of two years whichever is earlier."

The above note is self explanatory which has got a purpose to achieve. Notification is not meant to give extension of the exemption to a particular industry but to the industrial units manufacturing cement using fly ash. The above concession was originally granted in tune with the policy of the Government of India to avoid environmental pollution due to the piling up of hazardous fly ash in the country. The order was issued considering the role of fly ash based industries in checking environmental pollution as a general issue. The notification covers a class of industry. We are therefore of the view, there is sufficient justification for issuance of SRO. 78/03. Petitioner's case will not fall within that category. Therefore the contention of the petitioner that the same benefit be extended to the petitioner's unit cannot be sustained. In the above mentioned circumstance we find no infirmity in the impugned judgment of the learned single Judge to be interfered by us.

Writ appeal lacks merits and the same would stand dismissed.