

(2006) 10 KL CK 0090

In the High Court Of Kerala

Case No : T.R.C. No's. 7, 9, 12 and 14 of 2000

Radhas Printers (Corrugated)

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Citation : (2009) 20 VST 550

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty, for the Appellant; V.V. Asokan, Special Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The common question raised in all these tax revision cases is whether the petitioner is entitled to sales tax exemption as an industrial unit set up by harijans under notification SRO No. 969 of 1980 dated October 21, 1980. We have heard senior counsel Dr. K.B. Mohammed Kutty appearing for the petitioner and Special Government Pleader Sri. V.V. Asokan appearing for the respondent.

2. Notification SRO No. 969 of 1980 provides among other things sales tax exemption on products manufactured by small-scale industrial units set up by harijans. Even though the benefit under the notification is generally available for industrial units set up after April 1, 1979, under the first proviso to notification, exemption was available to mini industries, women industrial units and small-scale industrial units set up by harijans even before April 1, 1979, but the exemption will be available only from April 1, 1979 to the date on which such industrial units complete six years from the effective date of starting commercial production. It is seen from annexure E that the petitioner started commercial production on May 1, 1978 and if it is a SSI unit set up by harijans, then it is entitled to exemption up to April 30, 1984. Even though the petitioner claimed exemption from April 1, 1979 onwards, it appears that the petitioner was collecting and remitting tax for six months in 1979-80. However, according to the

petitioner, collection was later discontinued and the petitioner claimed exemption. It is obvious from the records that no certificate of exemption was obtained or produced by the petitioner from the Industries Department. According to the petitioner, no such certificate is required to get the benefit of the notification, but the petitioner can establish the ingredients of notification by obtaining community certificate and SSI registration. Community certificate was issued to the partners of the petitioner stating that Konda Reddy community to which they belong to is a scheduled tribe vide order dated January 23, 1984. The District Collector vide annexure H order dated December 24, 1984 cancelled the certificate stating that Konda Reddy community does not exist in Kerala. Against annexure H order petitioner filed writ petition in this Court and we are told that the matter stands now remanded to KIR-TADS under the Act for conducting an enquiry whether Konda Reddy community is a scheduled tribe or not. We do not know whether the decision by KIR-TADS itself entitles the petitioner for exemption because the notification does not use the word scheduled caste or scheduled tribe and the eligibility is for small-scale industrial units set up by "harijans". It is not known as to whether the Government meant by harijans all members of scheduled caste and scheduled tribe community. It is a known fact and Government Pleader contended that partners of the petitioner-firm are well known industrialists who are held in high recognition and position in the society. Besides this, it is not known whether the identification of industrial unit with harijans as proprietorship concern is a requirement of notification, or whether institutions like partnerships and companies owned and managed by harijans are also entitled to exemption. If benefit has to go to artificial persons like partnerships, companies, trust or the like, then the notification should have defined as to how it has to be identified with the people behind it, and if so, what should be the nature and extent of shares to be held by members of the eligible community or women to get the benefit. Moreover, the benefit is linked to 90 per cent of the capital employed at a given time, which is not borne out by records. Therefore we are satisfied that none of the authorities, including the Tribunal, has rightly considered the exemption with reference to the conditions stated in the notification. It is now reported by Government Pleader that petitioner has remitted tax for all the years and filing of tax revision cases is only for refund. We do not think at this point of time, we should decide the issue on merit, because the petitioner's claim based on community certificate issued and cancelled by the District Collector now stands referred to KIR-TADS for their decision. As and when KIR-TADS decides the question, the issue has to be considered afresh which we feel the assessing officer should do.

3. Therefore we set aside the order of the Tribunal and that of the authorities below pertaining to the question of exemption and direct the officer to consider exemption in the light of the above observations and based on certificate to be issued by KIR-TADS. If the officer feels any clarification is required at the Government level, or from the Department of Industries or Department of Commercial Taxes, it is up to him to take clarification. In any case no adverse

order shall be issued against the petitioner unless a proposal is communicated giving the basis of the same and the party heard in the matter.

4. Tax revision cases are disposed of as above.