
(1989) 08 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 447 of 1988

Sales Tax Officer and Others

APPELLANT

Vs

Ragam Plastics and Others

RESPONDENT

Date of Decision : 08-08-1989

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 5(3)

Citation : (1990) 2 ILR (Ker) 352 : (1990) 77 STC 313

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; T. Karunakaran Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

K. A. Nayar, J.—The respondents in the original petition are the appellants. The petitioners in the original petition are small-scale industrial units set up after 1st April, 1979. They are registered dealers engaged in the manufacture of plastic bags and covers and rigid PVC pipes and selling the same. The main raw material for the manufacture of plastic bags, covers, etc., is the plastic granules which is taxable at 8 per cent under entry 145 of the First Schedule to the Sales Tax Act. The assessee's units were entitled to the benefits of the Government Order S.R.O. No. 968 of 1980 under which all small-scale industrial units set up after 1st April, 1979, are entitled to exemption from payment of sales tax on the turnover of the sale of goods produced and sold by them for a period of five years from the date of commencement of sales of such goods by them subject to the limit prescribed therein of which we are not concerned. Therefore, the goods manufactured and sold by the assessee are exempt from payment of sales tax for a period of five years under the said Government Order. Section 5(3) of the Sales Tax Act gives certain other benefits to persons like the assessee. u/s 5(3) of the Act, the industrial raw materials and component parts sold to industrial units for use in the manufacture of finished products inside the State for sale

shall be taxed at the rate of 2 per cent only. But under the proviso to Section 5(3) the concessional rate is not available where the sale of such finished products is not liable to tax either under the Kerala General Sales Tax Act or under the Central Sales Tax Act or when such finished products are exported out of the territory of India. Therefore, the short question arose for consideration in the original petition was whether new industrial units entitled to a limited exemption from sales tax as per the notification of the Government, S.R.O. No. 968 of 1980, are excluded from the benefit of a lower rate of tax as provided for in Sub-section (3) of Section 5 of the Act on the ground that no tax is payable by such small-scale industrial units because of the exemption.

2. The learned single Judge, after detailed examination of the case, held that the small-scale industrial units which are entitled to the benefit of exemption are also entitled to the concessional rate of tax on the sale of industrial raw materials and component parts.

3. The assesseees are entitled to purchase at concessional rate the industrial raw materials only on production of form 18 and it is when the form was denied to them they approached this Court. It is against the judgment in the original petition, the writ appeal is filed by the respondents in the original petition--the Revenue.

4. We heard counsel.

5. There is no dispute that the assesseees are small-scale industrial units set up after 1st April, 1979, and they are entitled to the benefit of S.R.O. No. 968 of 1980. That notification is issued u/s 10(2) of the Act which reads:

"10. Power of Government to grant exemption and reduction in rate of tax.--

(1) . . .

(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."

Since S.R.O. No. 968 of 1980 is issued u/s 10 of the Act, it only gives an exemption in respect of any tax payable under the Act. This is clear from a reading of the Notification S.R.O. No. 968 of 1980 which reads :

"S.R.O. No. 968/80.....hereby make an exemption in respect of the tax payable under the said Act on the turnover of the sale of goods produced and sold by the new industrial units under the small-scale industries for a period of five years from the date of commencement of sale of such goods by the said units subject to the conditions that the tax if any collected by such units by way of tax on their sales shall be paid over to Government and that sales tax, if any,

already paid by such units to Government shall not be refunded :

Provided that such units shall produce proceedings of the General Manager, District Industries Centre, declaring the eligibility of the units for claiming exemption from sales tax :

Provided further that the cumulative sales tax concession granted to a unit at any point of time within this period shall not exceed 90 per cent of the cumulative gross fixed capital investment of the unit."

The notification issued u/s 10 of the Act, therefore, gives an exemption in respect of tax payable under the Act on the turnover of the sale of goods produced and sold by the new industrial units under the small-scale industries for a period of five years from the date of commencement of such sale on complying with the conditions mentioned in the notification.

6. Section 5 of the Act is the charging section which imposes a levy of tax on every dealer. It says that every dealer shall pay tax on his taxable turnover for that year at the rate and at the point specified against such goods in the First or Second Schedule of the Act. Sub-section (3) of Section 5 of the Act reads :

"Notwithstanding anything contained in Sub-section (1) or Sub-section (2), the tax payable by a dealer in respect of any sale of industrial raw materials, component parts or packing materials which is liable to tax at a rate higher than two per cent when sold to industrial units for use in the production of finished products inside the State for sale or for packing of such finished products inside the State for sale, as the case may be, shall be at the rate of only two per cent on the taxable turnover relating to such industrial raw materials, component parts, or packing materials, as the case may be :

Provided that this sub-section shall not apply where the sale of such finished products is not liable to tax either under this Act or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) or when such finished products are exported out of the territory of India."

The only question is whether the proviso, is attracted to the assessee-respondents in this case. If the finished products are "liable to tax" the assesseees are entitled to purchase raw materials at the concessional rate by virtue of Section 5(3) of the Act and therefore they will be entitled to get form 18 for availing the concessional rate of tax.

7. In order to attract the proviso, the finished products should not be liable to tax either under the Kerala General Sales Tax Act or under the Central Sales Tax Act or when such finished products are exported out of the territory of India. The words "liable to tax under this Act" mentioning along with the liability under the Central Sales Tax Act or liability under export sale would indicate that the proviso will apply to exclude Section 5(3) only in the case of a non-applicability of "the Act", as in the case of liability under the Central Act or liability for export sale. Since the assesseees are given limited exemption by the notification from

payment of sales tax in respect of their turnover, it cannot be construed that there is "no liability" to tax under "the Act". The second proviso to the notification states that the cumulative sales tax concession granted to a unit at any point of time within this period shall not exceed 90 per cent of the cumulative gross fixed capital investment of the unit. Therefore, Section 5(3) of the Act would apply to the assesseees and the goods manufactured by them are liable to tax under the Act though tax is not payable by virtue of the notification exempting the small-scale industrial units for a limited period on complying with certain conditions.

8. The counsel for the appellants wanted us to read the proviso to Section 5(3) as "provided that this sub-section shall not apply where the sales tax in respect of such finished products is not payable.....". This would be rewriting the section. Therefore, we find no ground to interfere with the judgment under appeal. We agree with the reasoning and conclusion of the learned single Judge.

The writ appeal is without merit and it is, therefore, dismissed. There will be no order as to costs.