(2003) 08 KL CK 0078

In the High Court Of Kerala

Case No : W.A. No. 2581 of 1998

Silical Metallurgic Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Kerala Tax on Entry of Goods into Local Areas Act, 1994 — Section 3(1)

Citation : (2004) 1 KLT 120

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; S. Soman, Government Pleader, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The issue raised in this appeal is in a narrow campus. The appellant/writ petitioner is a registered dealer and manufacturer of Fero Silicon. He has to import raw-materials like iron and steel from outside State. The schedule to the Kerala Tax on Entry of Goods into Local Areas Act, 1994 provides that every tax shall be payable on iron and steel imported to the State. This shall have effect from 1.4.1997. Therefore the appellant importing iron and steel from outside State is liable to pay entry tax based on Item No. 9 of the Schedule to the Act introduced with effect from 1.4.1997. The Government later issued Ext. P1 notification exercising the power vested in Government u/s 12 of the Act. The said provision enabled the Government to exempt any specified class of imports from payment of whole or part of the tax payable under the said Act. That notification was published in gazette on 23.3.1998. It is submitted by the counsel for the appellant that Government is maintaining a view that exemption will be applicable only from the said date and not from the commencement of the assessment year namely, 1.4.1997. The appellant contended that, the benefit of Ext. P1 exemption shall be available from the commencement of the assessment year concerned, namely 1.4.1997. The learned Single Judge did not accept this contention. Therefore this appeal.

2. It is contended by the appellant relying on the decision reported in Mathra Parshad and Ors. v. State of Punjab and Ors. 1962 13 STC 180 that Supreme Court had in a similar matter taken a view that exemption granted during the middle of the year shall come to the aid of the assessee, right from the commencement of the year concerned. It is contended that Ext. P1 did not fix any date of commencement of exemption. Therefore, following this dictum, it shall have commencement from 1.4.1997.

3. Unfortunately, we are unable to agree with this contention, because the levy of tax is as mentioned in Section 3(1) of the Act. The tax liability falls on entry of any goods. In respect of the goods already entered until the date of publication of Ext. P1, the liability clause is attracted. The exemption order did not specify that the exemption is applicable from the commencement of the year concerned. Therefore, we are of the view that there is no reason for interference with the impugned judgment. It is necessary to make it clear that the petitioner will be entitled to exemption from the date of publication of Ext. P1 to the close of the year on 31.3.1998, in respect of such goods imported during the said period.

