(2009) 02 KL CK 0058

In the High Court Of Kerala

Case No : S.T. Rev. No. 140 of 2007

State of Kerala APPELLANT

Vs

Ecowood Limited RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Citation : (2009) 2 ILR (Ker) 810 : (2009) 2 KLJ 98 : (2009) 25 VST 469

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.K. Shamsudeen, G.P, for the Appellant; V. Jyothiprasad, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in the revision filed by the State is whether the Tribunal was justified in granting exemption on purchase turnover of rubber wood by the respondent for the year 2001 -2002. We have heard Government Pleader appearing for the petitioner and counsel appearing for the respondent.

2. Respondent was approved as a 100% Export Oriented Unit (EOU) by the Central Government on 20-02-95. The approval was for a period of 5 years ending on 20-02-2000. Respondent claimed exemption on purchase turnover of rubber wood under notification SRO No. 1090/99, which provided for exemption for five years for purchase of industrial raw-material by 100% EOU from the date of approval of such EOU by the Central Government. The Notification was later amended whereby exemption for 5 years was to commence from date of commencement of commercial production instead of date of approval as an EOU. In the course of assessment, the assessing officer did not grant exemption for purchase during the year 2001 -02, for the reason that exemption was over on 20-02-2000.Eventhough first appeal was also dismissed, respondent filed second appeal before the Tribunal contending that the renewal of recognition as 100% EOU subsequently granted will entitle them for exemption for another 5 years. Tribunal accepted this argument and allowed the appeal holding that the

respondent will be entitled to exemption for a period of 5 years from the date of renewal of recognition granted by the Central Government to the respondent as a 100% EOU. Government Pleader contended that the interpretation placed to the notification by the Tribunal is erroneous. However, counsel for the respondent contended that recognition granted by the Central Government takes in periodical renewal granted and so much so, exemption has been considered with reference to the recognition granted each time. The relevant clause, namely item 11 of the Third Schedule to Notification, SRO No, 1090/99, is as follows:

Sl No. Name of the Industrial undertakings/ Conditions manufactures to which such goods are sold or by which such goods are purchased and the turnover which is exempted (1) (2) (3) ____ ____ XXX XXX XXX

7. Turnover of sale of industrial raw (1) the exemption shall be for a materials plant and machinery period of 5 years from the date (including components) spare parts, of approval of such Units by the tools and consumable in relation Central Government. thereto other than petroleum products, 100% Export Oriented Units (ii) These seller shall obtain a certificate in the form in Annexure I from the purchaser and produce before the assessing Authority ____

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____________________ 3. Admittedly for the first time the respondent was granted approval as a 100% EOU by the Central Government, by order dated 20-02-95. The approval was valid up to 20-02-2000. However, later the Central Government again granted approval to the respondent on 07-06-2000 for another period of 5 years. The question to be considered is whether the subsequent approval granted entitles the respondent for exemption for a period of 5 years from the date of approval granted a second time. We are unable to uphold the order of the Tribunal because, the exemption granted under the Notification is only for a period of 5 years, from the date of approval of the unit as 100% EOU by the Central Government. In fact, it is seen that by subsequent amendment to the Notification with effect from 01 -01 -02, the period of limitation for exemption is charged from the date of approval to the date of commencement of commercial production. There may be cases where industry may be set up and commence commercial production after obtaining approval as EOU. Therefor, if exemption is granted with effect from the date of approval, it will not give any real benefit to the industry because raw-material is required only after the commencement of commercial production. Therefore, in order to give effective relief for 5 years as per Notification, the date of commencement of exemption as changed from the date of approval to the date of commencement of commercial production. The original Notification and the amendment establish beyond doubt that exemption is available only for a period of 5 years and it is available from the date of first approval which in this case is 20-02-95. If the argument raised by the respondent which found acceptance by the Tribunal is upheld, the result will be that a unit getting renewal of the registration will get perpetual exemption, which is against the letter and spirit of the Notification. The benefit visualised under Notification is only for 5 years which is from the date of first approval of the industry as 100% EOU no matter whether the original approval granted is for 5 years or for lesser period of renewed thereafter, In other words, the condition of the Notification is such that exemption is available to the industry so long as it remains as a 100% EOU and such exemption is only for a period of 5 years and that it should be reckoned from the date of first approval and the period cannot be extended by renewals of approval. The tax revision petition is consequently allowed, reversing the order of the Tribunal and by restoring the assessment. However, we make it clear that the industrial unit is entitled to claim any other exemption or concession if available under any other Notification. Respondent is free to claim the same and while revising the assessment, the assessing officer should consider alternate claims, if any, made.