

(2004) 06 KL CK 0070
In the High Court Of Kerala
Case No : W.A. No. 543 of 2004

State of Kerala

APPELLANT

Vs

Pepsico India Holdings (P) Ltd.

RESPONDENT

Date of Decision : 15-06-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10

Citation : (2004) 3 ILR (Ker) 241 : (2004) 3 KLT 85 : (2006) 144 STC 442

Hon'ble Judges : Nauvdip Kumar Sodhi, C.J.;P.R. Raman, J

Bench : Division Bench

Advocate : Raju Joseph, Government Pleader, for the Appellant; Joseph Vellapally and Antony Dominic, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, C.J.—This Writ Appeal by the State of Kerala and others is directed against the judgment dated January 7, 2004 passed by the learned Single Judge allowing O.P.No.8563 of 2003 filed by the respondent herein challenging the order dated 8.6.2003 by which its application for the grant of eligibility certificate for sales tax exemption had been rejected. Facts necessary for the disposal of the appeal which lie in a narrow compass may first be noticed.

2. The respondent, a private Company with unlimited liability (hereinafter referred to as "the Company"), had set up an industrial unit at the Industrial Development Area at Kanjikode in Palakkad District and it commenced commercial production of soft drinks in March, 2001. It is an industrial unit under the large and medium category. It had set up the unit with its own fund and, therefore, is a self-financed unit within the meaning of the Government notification SRO No. 1092 of 1999. It applied to the Director of Industries and Commerce for the grant of an eligibility certificate to claim sales tax exemption under the aforesaid Government Order. In terms of the said order a new industrial unit other than a public sector undertaking which has taken effective steps for setting up a new industrial unit prior to the 1st day of January, 2000

was eligible to claim sales tax exemption. The application of the Company has been rejected by order dated 8.6.2003. The only reason that we could extract from the said order for the rejection of the application is that against the total cost of Plant and Machinery amounting to Rs. 32.10 crores, advance payments were seen made only for Rs. 21.75 lakhs before 1.1.2000 which represents not even one percent of the cost of total plant and machinery".

3. The short question that arises for our consideration is whether the Director of Industries and Commerce was right in rejecting the application of the Company for the aforesaid reason.

4. In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963, the Government of Kerala issued a notification published as SRO No. 1729/ 93 in the Kerala Gazette granting sales tax exemption to certain industrial units. This notification was amended by SRO No. 1092/99 and by reason of this amendment the parent notification granting exemption was made applicable to the following amongst other units:

"(ii) new industrial units other than public sector undertakings which have taken effective steps for setting up new industrial unit prior to the 1st day of January, 2000. An industrial unit shall be considered to have taken such effective steps if it has, (a) obtained provisional registration (applicable only in the case of SSI units), (b) owned or acquired or has been allotted land for establishing the industrial units and applied for financial support from any regular financial institution/Government before 1.1.2000 or (c) in the case of self financed units acquired or placed firm orders for the purpose of the necessary plant and machinery, before 1.1.2000 provided that the unit commences commercial production on or before the 31st December, 2001".

It may be mentioned that SRO No. 1092/99 was subsequently amended by SRO No. 295/2000 and Clause (ii) as reproduced above is in the amended form with which we are concerned in the present case.

5. A reading of the aforesaid Clause makes it clear that a new industrial unit other than a public sector undertaking which has taken effective steps for setting up a new industrial unit prior to January 1.1.2000 is entitled to claim exemption. Further, it is clear that an industrial unit is considered to have taken effective steps if it owns or acquires or has been allotted land for establishing the industrial unit and in the case of self-financed unit, if it has placed firm orders for the purchase of the necessary plant and machinery before 1.1.2000 provided that the unit commences commercial production on or before December 31, 2001. The dispute between the parties is in regard to Clause (c) of (ii) reproduced hereinabove. According to the Department the Company had deposited only a sum of Rs. 21.75 lakhs as advance with the seller for the necessary plant and machinery amounting to Rs. 32.10 crores which does not represent even one percent of the total cost of the plant and machinery and, therefore, it had not taken effective steps by placing firm orders for the purchase

of the necessary plant and machinery before 1.1.2000.

6. A plain reading of Clause (c) of (ii) reproduced hereinabove leave no room for doubt that in the case of self-financed industrial unit under the large and medium category which has placed firm orders for the purchase of the necessary plant and machinery before 1.1.2000 would be entitled to claim exemption if it commences commercial production on or before 31st December 2001. According to Clause (c) of (ii) the unit is required to place firm orders for the purchase of necessary plant and machinery. This Clause does not lay down any amount which the industrial unit has to pay by way of advances to the seller while placing the order for the plant and machinery. How much amount is paid as advance will depend upon the terms of the contract between the parties. What is necessary is that a firm order should be placed for the purchase of necessary plant and machinery. It cannot, therefore, be said that merely because the Company deposited a small percentage of the amount, as advance with the seller it did not place firm orders for the plant and machinery. The reason given by the Department for rejecting the application of the Company for the grant of eligibility certificate is patently erroneous and cannot therefore be sustained. In this view of the matter, the learned Single Judge was right in allowing the Writ Petition, setting aside the order dated 8.6.2003 and remanding the case to the Director of Industries for passing a fresh order in accordance with law.

In the result, the appeal fails and the same stands dismissed with no order as to costs.