(2005) 11 KL CK 0060

In the High Court Of Kerala

Case No : W.A. No. 3066 of 2001

State of Kerala APPELLANT

Vs

Surabhi Steels (P) Ltd. RESPONDENT

Date of Decision : 07-11-2005

Acts Referred:

Kerala Tax on Entry of goods into Local Areas Act, 1994 — Section 12, 19, 2, 3, 3(2)
Kerala Tax on Entry of Goods into Local Areas Rules, 1994 — Rule 4

Citation : (2006) 2 KLT 169

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Georgekutty Mathew, Government Pleader, for the Appellant; C.P. Mohammed Niyas, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Whether ingot moulds imported by the writ petitioners intended to be used as raw materials at a later point of time would fall within the ambit of SRO.No. 263/98 is the question that has come up for consideration in these cases.

2. Original Petitions were filed for a declaration that petitioners are entitled to the benefit of SRO. 263/98 as amended by SRO 702 of 1998 in respect of goods mentioned in the said notification purchased by them from outside the State and used in the manufacture of other goods by them within the State. Petitioners have also sought for a declaration that the inclusion of item No. 9 (Iron and Steel) in the Schedule to the Kerala Tax on Entry of Goods into Local Areas Act 1997 with effect from 14-1-97 is unconstitutional and arbitrary. Learned single Judge repelled the challenge against the provisions of the Act. The only question to be considered in these cases is whether petitioners are entitled to get the benefit of the exemption notification. Notification is extracted below for easy reference.

S.R.O No. 263/98: - In exercise of the powers conferred by Section 12 of the Kerala Tax on Entry of goods into Local Areas Act, 1994 (15 of 1994) the

Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable u/s 3 of the said Act by the importers in respect of Cement or Iron and Steel imported by them for use as raw materials in the manufacture of other goods, subject to the condition that the goods in respect of which exemption is claimed is purchased in the State by issuing ''C forms and manufactured product thereof is liable to Sales tax eitherunder the Kerala General Sales-tax Act, 1963 (15 of 1963) or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

Explanatory Note

(This does not form part of the notification but is intended to indicate its general purport).

The Government have decided to exempt the manufacturers who import Cement or Iron and Steel for use as raw material in the manufacture of other finished products which are liable to Sales Tax either under the Kerala General Sales Tax Act, 1963 or under the Central Sales Tax Act, 1956.

This notification is intended to achieve the above object.

Petitioners are engaged in the manufacture of M.S. Ingots. Steel scrap and ferro alloys are the raw materials consumed by the petitioners during the course of manufacture of M.S. Ingots. On enquiry and verification of the accounts of the petitioners it was noticed that they had imported M.S. Ingot moulds from outside the State. u/s 3 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 entry of any goods into the local area for consumption or use or sale therein is taxable at the rates as may be fixed by the Government by notification on the purchase value of goods but not exceeding the rates specified for the goods in the respective schedule to the Kerala General Sales Tax Act, 1963. As per SRO 216/97 iron and steel was brought to the schedule and taxable at 4% under the Act.

3. The Government of Kerala in exercise of powers conferred by Section 12 of the Kerala Tax on Entry of goods into Local Areas Act, 1994 have decided to exempt the manufacturers who import cement or iron and steel for use as raw material in the manufacture of other finished products which are liable to Sales Tax either under the Kerala General Sales Tax Act, 1963 or under the Central Sales Tax Act, 1956. The notification and the explanatory note would positively show that the exemption would be available only to those importers of cement or iron and steel imported by them for use as raw materials in the manufacture of other goods. Petitioners admittedly had imported ingot moulds for use as consumable. Ingot moulds are used by the petitioners for pouring liquid metal into them to get the required size and shape of M.S. Ingots. After the liquid metal is solidified, the ingots are removed. Even in the accounts of the petitioners, ingot moulds are treated as consumable and not as raw material.

4. Question to be decided is as to whether the ingot moulds made out of raw

materials can on a later point of time be used as raw materials for claiming exemption under SRO 263/98.

5. The Apex Court in 139 STC 200 has held exemption notification has to be interpreted strictly. Reference may also be made to the decision of the Apex Court in State of Jharkhand and Others Vs. Ambay Cements and Another, . Unless and until petitioners fall within the four corners of the exemption notification they would not get the benefit of the notification. Exemption notification takes in iron and steel. Those products have to be imported for use as raw materials in the manufacture of other products. Ingot moulds are not steel and iron as such though made out of Iron. Serial No. 2 of Schedule II of K.G.S.T. Act refers to ingot moulds, taxable at 4%. Petitioner in OP. 9834 of 2001 has produced Ext. P2 invoice issued by K.G.N. Deccan Foundry, Manufacturer of ingot moulds. Evidently those materials were purchased not as raw material for use of manufacture of other goods. Raw material serves as starting point of manufacturing and technical process out of which something is made or makable or may develop. The mere fact that on a later point of time materials brought by the importers to the Kerala State could be used as a raw material in the manufacture of other goods would not satisfy the conditions of the exemption notification. Unless it is imported by the importers for its immediate use as raw materials they would not get benefit of the notification. In our view the purpose and object of the notification is its use as raw materials at the very first instance and not at a later point of time.

6. Entry Tax Act is an enactment relating to tax on entry of goods into local areas for consumption, use or sale therein. Section 2(g) defines the word "importer" means a person who brings or cause to be brought any goods whether for himself or on behalf of his principal or any other person, into a local area, from any place outside the State for use, consumption, or sales therein or who owns the goods at the time of entry into the local area. "Entry of goods into a local area" is defined u/s 2(d) means entry of goods into a local area from any place outside the State for use, consumption or sale therein. Section 3 is the charging section which says that subject to the provisions of the Act, tax shall be levied and collected a tax on the entry of any goods into any local area for consumption, use, or sale therein. The tax on such goods shall be at such rate or rates as may be fixed by Government by notification, on the purchase value of goods not exceeding the tax payable for the goods as per the Kerala General Sales Tax Act, 196. Section 3(2) stipulates that the tax shall be payable by the importer in such manner and within such time as may be prescribed. Section 12 enables the State Government in public interest to exempt any specified class of importers from payment of the whole or part of the tax payable under the Act. It was in exercise of that power the Government issued SRO. 263/98.

7. Government have framed the Kerala Tax on Entry of Goods into Local Areas Rules, 1994 in exercise of its powers conferred u/s 19. Rule 4 deals with filing of return which says that every importer, being a dealer in goods shall file before

the assessing authority, with whom he is registered as a dealer under the Kerala General, Sales Tax Act, 1963, on or before the 10th day of every month, a return in Form No. 1, showing the total purchase value, exempted purchase value and the taxable purchase value for the preceding month, together with a Government Treasury chalan receipt as token of having paid the amount of tax payable u/s 3 of the Act in respect of the preceding month or accompanied by a crossed demand draft drawn in favour of the assessing authority on any Nationalised Bank in full satisfaction of the amount of the preceding month. The above mentioned provision would positively show that details of iron and steel imported by them for use as raw materials in the manufacture of other goods should also be shown in return in Form No. 1. Petitioner are therefore not bringing iron ingots as raw materials but as consumables. Under such circumstance we are of the view those items will not fall under the exemption notification and learned single Judge was not justified inholding that ingot moulds do not attract entry tax.

8. Learned single Judge has however, upheld the validity of the Act and provisions. A Division Bench of this Court in 1995 KLJ 376 had already upheld the validity of various provisions of the Act. We also hold that the provisions are not ultra vires. Since we have already found that ingot moulds would not fall under the exemption notification the finding of the learned single Judge otherwise cannot stand in the eye of law and the same is set aside. State appeals are accordingly allowed and the Writ Petitions would stand dismissed.