

(1994) 02 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 8662 of 1993-F

Unique Thread Mills

APPELLANT

Vs

Sales Tax Officer and Others

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10

Citation : (1994) 95 STC 269

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : K.C. Balagangadharan, S. Somen, V. Baby George, M.V. Thampan and Renu D.P, for the Appellant; S. Vijayan Nair, Senior Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer, J.—The petitioner is a small-scale industrial unit engaged in the manufacture of sewing thread, out of cotton yarn purchased by it. It has been registered as a small-scale industrial unit by proceedings, exhibit P1, dated January 3, 1992 of the second respondent, the General Manager of the District Industries Centre, Palakkad. It is stated that the unit was actually set up on November 30, 1990. It is claimed to be an industrial unit set up. by women, the entrepreneurs as well as the workers, permanent as well as casual, being only women. It has been recognised as such, and given the benefit of certain subsidy schemes and others, by proceedings, exhibits P2 and P3, of the second respondent.

2. The petitioner made an application to the second respondent for the issue of eligibility certificate, to get exemption from payment of sales tax as per the Notification S.R.O. No. 969/80 dated September 29, 1980, issued by the Government u/s 10 of the Kerala General Sales Tax Act, 1963. Under this notification, women's industrial units, mini industries and small-scale industrial units of Harijans, set up on or after April 1, 1979, are entitled to exemption from

payment of tax on the turnover of sale of the goods produced by them, for a period of six years from the date of commencement of the sale of the goods, subject to the conditions mentioned therein. One of these conditions is that the unit should produce the proceedings of the General Manager, District Industries Centre, declaring its eligibility for exemption from payment of sales tax. The petitioner claimed the benefit of this notification as a women's industrial unit and applied to the second respondent for issue of the eligibility certificate. But it was informed by the proceedings, exhibit P5, dated April 19, 1993 that the "District Level Committee for granting sales tax exemption" had rejected its case, at the meeting held on March 6, 1993. Petitioner has challenged the proceedings, exhibit P5, in this writ petition, mainly on two grounds. Firstly it is stated that its application should have been dealt with by the second respondent---General Manager of the District Industries Centre--and not by the District Level Committee of which the second respondent is only a member. Secondly it is stated that exhibit P5 was passed, without affording the petitioner an opportunity of being heard and that it does not disclose the reason why the petitioner's application was rejected. The power has therefore been exercised arbitrarily. I find force in both the contentions. So far as the second aspect is concerned, admittedly no opportunity was afforded to the petitioner to be heard. Exhibit P5 does not also inform the petitioner the reason why its unit is held not entitled to the exemption. The reason has not been explained even by a counter-affidavit in this Court. This is not proper.

3. Coming to the first contention, the claim of the petitioner for exemption is under the statutory Notification S.R.O. No. 969/80 dated September 29, 1980, as at women's industrial unit. This notification requires production of eligibility certificate from the second respondent as a condition for availing the exemption. This notification has not been superseded, and remains in force, conferring benefits on the three categories of units mentioned therein, viz., mini industries, women's industrial units and small-scale industrial units set up by Harijans. So long as this notification is in force, the petitioner is entitled to avail the benefits thereof, and to claim exemption, if it satisfies the conditions specified therein. A claim for exemption under this notification should be dealt with only with reference to the terms and conditions contained therein and not otherwise. One of these conditions as stated earlier is production of eligibility certificate from the General Manager of the District Industries Centre. As such the petitioner's application for the eligibility certificate was liable to be dealt with only by the second respondent, and not by the District Level Committee, which, it appears sprung into existence for purposes of another Notification S.R.O. No. 499/90. When the notification requires that the eligibility certificate should be issued by a particular authority, the obligation is that of that authority to consider the matter and of none else. He alone shall deal with the application and no other. Therefore, the consideration of the petitioner's claim for exemption by the District Level Committee, which is differently constituted from the second respondent, though he is also one of its members, but which is a stranger to

S.R.O. No. 969/80, is illegal. When the matter was to be dealt with by the second respondent alone, it was improper to have it considered by any committee of which second respondent is only a member. The decision should be one taken by the second respondent, uninfluenced by the committee and based strictly on the terms and conditions of S.R.O. No. 969/80. The decision taken by the District Level Committee, namely, exhibit P5, has therefore to be quashed.

4. The learned Government Pleader sought to salvage the decision of the District Level Committee with reference to the exemption Notification S.R.O. No. 499/90 dated March 31, 1990 already alluded to by me, which, according to him, holds the field in supersession of S.R.O. No. 969/80. I am unable to accept this contention. It is true that S.R.O. No. 499/90 is a comprehensive notification relating to new small-scale industrial units, which are given exemption subject to their satisfying the conditions mentioned in Clauses 1 to 8 of the said notification. But this has not superseded the more liberal benefits given to mini industries, women's industrial units or small-scale industrial units set up by Harijans, granted by S.R.O. No. 969/80. It is significant that while S.R.O. No. 499/90 expressly supersedes another notification issued on September 29, 1980, viz., S.R.O. No. 968/80, it is silent about S.R.O. No. 969/80. Evidently the intention was that the benefit conferred by S.R.O. No. 969/80 which was targeted to the weaker sections of society should continue to be available to them despite S.R.O. No. 499/90 which contains more rigorous conditions for availing exemption. The benefit of the Notification S.R.O. No. 969/80 is available, on more liberal terms than those under S.R.O. No. 499/90 which is hedged in by various conditions including a special definition of "manufacture". That S.R.O. No. 969/80 continues to be operative and is still available is evident from a later Notification S.R.O. No. 440/91 which was issued by the Government on March 30, 1991, modifying the exemption granted to oil mills by S.R.O. No. 969/80 among others. It is therefore clear that while issuing S.R.O. No. 499/90, it was not the intention of Government to withdraw the benefits conferred by S.R.O. No. 969/80 or to supersede it. The contention of the learned Government Pleader based on S.R.O. No. 499/90 is therefore without any force.

5. The second respondent is, therefore bound to consider the petitioner's claim only in the light of S.R.O. No. 969/80 uninfluenced by anything stated in S.R.O. No. 499/90.

6. Since the claim for exemption under S.R.O. No. 969/80 has not been considered by the authority specified therein to issue the eligibility certificate, viz., the second respondent, but by an extraneous body, viz., the District Level Committee, the second respondent has to be directed to consider the application afresh in the light of the terms and conditions specified in the notification, without being influenced by the decision taken by the District Level Committee.

7. Exhibit P5 is therefore quashed. The original petition is allowed. The second respondent is directed to reconsider the petitioner's application for exemption in the light of the observations contained in this judgment with opportunity to the

petitioner to be heard. He shall pass fresh orders in the matter within a period of three months from the date of receipt of a copy of this judgment. There will be no order as to costs.