

Pan Polymers Vs. State of Kerala

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Court : Kerala

Decided On : Dec-19-2005

Reported in : 2006(2)KLT329

Judge : C.N. Ramachandran Nair, J.

Acts : Kerala Finance Act, 2005; Kerala Surcharge on Tax Act, 1957; Kerala General Sales Tax Act, 1963 - Sections 10, 10(1) and 10(3); Kerala Value Added Tax (Amendment) Act, 2005 - Sections 3, 11, 32, 32(1) and 98

Appeal No. : W.P.(C) Nos. 15242, 15221 and 24807 of 2005

Appellant : Pan Polymers

Respondent : State of Kerala

Advocate for Def. : Raju Joseph, Spl. Government Pleader (Taxes)

Advocate for Pet/Ap. : S.K. Devi,; Santosh P. Abraham,; Deepsur D. Jayan,;

Disposition : Petition dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. As the issue raised in these three connected cases is the same, the W.Ps. are heard together and disposed of by this common judgment. I heard counsel

appearing for the petitioners and the Special Government Pleader appearing for the respondents.

2. All the three petitioners started their industry in the year 2001 and are granted sales tax exemption on the sale of their products for a period of seven years under Notification SRO 1729/1993 issued under, Section 10 of the Kerala General Sales Tax Act (hereinafter called ('the KGST Act')). The petitioners have been enjoying sales tax exemption ever since the commencement of commercial production based on certificate of exemption obtained and produced as Ext. P1 in all W.Ps. which were issued in terms of the above referred notification. While the petitioner in W.P. 15242/2005 is engaged in production of tread rubber, the petitioner in W.P. 15221/2005 is engaged in production of coir mattresses and the petitioner in W.P. 24807/2005 is engaged in production of ice blocks. The grievance of the petitioners is that before expiry of the period of exemption granted to them under the notification referred above the Kerala Value Added Tax Act, 2005 (hereinafter called the 'VAT Act') came into force with effect from 1.4.2005. By virtue of Section 32 read with Section 98 of the VAT Act, the benefit of exemption granted to the petitioners and similar industries are modified whereunder petitioners and similar industries are entitled to avail only balance sales tax exemption in the form of a deferred loan to be repaid in five years in instalments with interest after the exemption period. According to the petitioners, the provisions of VAT Act, modifying exemption as loan is in violation of principle of promissory estoppel and therefore, petitioners in W.P. Nos. 15242 and 15221/2005 are challenging the provisions of Section 32 as illegal and in violation of Rule of promissory estoppel. Even though the petitioner in W.P. 24807/2005 has not challenged the validity of Section 32 of the VAT Act, counsel sought permission to amend the W.P. However, since the said W.P. is grouped along with the other two connected cases, the petitioner in that W.P. was also allowed to challenge the statute by raising oral arguments without the requirement of any amendment of the W.P. Accordingly, challenge against Section 32 of the VAT Act was entertained in all the three cases.

3. Before proceeding to consider the contentions raised by the petitioners, the scope of Section under challenge of the VAT Act has to be gone into and for easy

reference Section 32 of the said Act which now stands amended by the Kerala Finance Act, 2005 is extracted hereunder:

32. Deferment of tax payable by Industrial Units: - (1) Where the Government had granted any exemption in respect of the tax payable by any industrial unit under the Kerala Sales Tax Act, 1963(15 of 1963) or, the Kerala Surcharge on Tax Act, 1957 (11 of 1957)for any specified period under any notification issued under Section 10 of the KGST Act, 1963 (15 of 1963) under the Industrial policy of the State, or where any application or other proceedings is pending on the date of commencement of this Act, such exemption granted or due to be granted shall have operation only till the day preceding the date of commencement of this Act:

Provided that the Government may, by notification, which may be subject to such conditions and restrictions as may be specified therein, order to defer the payment of the whole, or any part of the tax payable by such industrial units under this Act, which shall not be more than the unavailed portion of the exemption to which such unit would have been eligible had the notification issued under the KGST Act, 1963 (15 of 1963) been in force on the date of commencement of this Act, and that the tax or taxes so deferred shall be repaid, after the expiry of the period for which such deferment is granted, in such instalments over a period of five years, in such manner as may be specified..

It is clear from Sub-clause (1) of Section 32 that exemption granted under Section 10 of the KGST Act will be in force till the day preceding the date of commencement of this Act. Even though under this provision exemption is taken away, the Government is given authority under proviso to Section 32(1) to issue notification providing for deferment of the payment of whole or part of the tax payable by any such industrial unit for the remaining unavailed portion of exemption with provision to repay the tax after the period of exemption in instalments in the five years following thereafter. In exercise of powers conferred under proviso to Section 32(1), the Government has issued notification produced as Ext. P2 in W.P. 15242/2005 which provides for collection of tax for the unavailed portion of exemption by industries and retention of the same until full period of exemption and thereafter to pay the same with interest in equal monthly

instalments in the course of five years following thereafter. Of course conditions provided in the notification provide for furnishing of bond with security to ensure recovery of collected tax. Pursuant to the impugned amendment, the petitioners can collect the tax from the purchasers, retain the same with them until full period of exemption without any interest liability and thereafter either remit the whole collected tax or still avail facility for repayment in monthly instalments in five years on payment of interest which is at the rate of 12% per annum. The only ground of challenge against Section 32 and Ext. P2 notification produced in W.P. 15242/2005 is on ground of promissory estoppel. The petitioners have relied on the decisions of the Supreme Court in Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and Ors. : [1979]118ITR326(SC) and in Pournami Oil Mills v. State of Kerala 1987 (1) KLT 283 : (1987) 65 STC 1. They have also referred to the VAT Act introduced in States like Karnataka, Maharashtra etc., whereunder, existing industries are all enjoying exemption already granted. The Special Government Pleader on the other hand contended that rule of promissory estoppel does not apply to legislation and therefore, challenge according to him, is not maintainable. In support of his contention he has relied on the decision of the Supreme Court in State of Kerala v. Gwalior Silk . : [1974]1SCR671 . On the facts he contended that petitioners cannot have any grievance as the relief provided by way of collection and deferment of tax is another mode of exemption alternately granted to industries under the original notification SRO 1729/ 2003 issued under Section 10 of the KGST Act. The Special Government Pleader also relied on the decision of the Supreme Court in Bannari Amman Sugars Ltd. v. Commercial Officer 2005(1) KLT 601 (SC) wherein the Supreme Court has held that if there is a supervening public equity, a Government will be allowed to change it's stand and has power to withdraw from representations made by it which induced persons to take certain steps, which have gone adverse to the interest of such persons on account of such a withdrawal. In view of this decision of the Supreme Court which is probably the latest view expressed by the Supreme Court on promissory estoppel, the introduction of VAT Act simultaneously in several States which is generally acclaimed as for the benefit of public at large should not be interfered with to protect the interest of a few persons. The Special Government Pleader also brought to the notice of the court that even though large number of industries who

are enjoying sales tax exemption may be affected, only four cases have come to this Court and in none of the cases this Court has granted stay. In other words, according to him, there is general acceptability of the amendment as not adverse to the industries which are enjoying sales tax exemption because of the protection provided under the proviso to Section 32 and the provisions of Ext. P2 notification produced in W.P. 15242/2005.

4. After hearing the argument of counsel for the petitioners and after considering the facts and the decisions relied on, I am unable to grant the prayer of the petitioners i.e. to declare Section 32 of the amended VAT Act as illegal or arbitrary or violative of the principle of rule of promissory estoppel for more than one reason. In the first place, the promissory estoppel claimed by the petitioners is based, on SRO 1729/1993 issued under Section 10(1) of the KGST Act. This notification provides for tax exemption to new industries for a limited period and as an alternative, a deferment scheme for payment of tax is provided whereunder industries are entitled to collect sales tax to be paid after the period of exemptions in instalments. Even though exemption granted to the petitioners is taken away before the expiry of the exemption period, it is seen from proviso to Section 32(1) and Ext. P2 notification (produced in W.P. 15242/2005) issued thereunder that petitioners can avail deferment scheme which enables them to collect tax and retain without incurring any interest burden until full period of exemption and, thereafter to remit it to the Government in monthly instalments in the course of five years following thereafter on payment of interest at the rate of 12% per annum. In other words, the scheme of exemption retained even after introduction of Section 32(1) is an alternative exemption provided under the original notification i.e. SRO 1729/1993 issued under Section 10(1) of the KGST Act, based on which promissory estoppel is claimed by the petitioners. Therefore, the allegation of withdrawal of benefit of SRO 1729/93 is factually incorrect and all what is done is that between the two incentives provided under the said notification only one is retained. Secondly, a notification issued under Section 10(1) is not an invariable notification and is always liable for modification or even reversal because Sub-section (3) of Section 10 specifically gives power to the Government to modify or cancel any exemption notification issued under Section 10(1) in public interest. Therefore, the petitioners and other industries enjoying sales tax exemption under

the notification issued under Section 10(1) are aware that Government in public interest can withdraw sales tax exemption. In fact, the Government instead of withdrawing sales tax exemption under Sub-section (3) of Section 10, included the matter in the new legislation which got approval of the legislature and so much so withdrawal of exemption in effect is carried out by the legislature and the petitioners have no case and cannot contend that the new legislation i.e. the VAT Act, 2005 is not in public interest. It is a widely acclaimed and modern scheme of taxation introduced in various States in India which has been working successfully in very many countries for the last several decades. No one can contend that a progressive legislation serving the interests of all concerned including industries, traders and consumers is not in public interest. The petitioners' grievance has also to be looked into with reference to the other provisions of the VAT Act such as the charging section and Section 11 which provides for input tax credit. The petitioners will get the benefit of input tax credit i.e., to avail credit of tax on raw material purchased only if petitioner collects and remits tax on the output. Therefore, the application of VAT Act is beneficial to the petitioners in as much as petitioners are entitled to claim input tax credit under Section 3 for raw materials and capital goods purchased. Moreover the collection of tax by the petitioners will enable the purchasers to claim credit of input tax when they pay tax on their sales turnover. Therefore, the retention of sales tax exemption as such without modification will lead to deprivation of VAT benefits to the petitioners and cause difficulties for purchasing dealers of petitioners' products. In this context it has to be held that the decision of the Supreme Court in Bannari Amman Sugars Ltd. case referred above squarely applies to the case in hand because the supervening public interest i.e. the introduction of VAT Act will justify the modification of the scheme of sales tax exemption by the impugned provision as explained, and petitioners cannot challenge the VAT Act as not enacted in public interest. As rightly pointed out by the Special Government Pleader, it is the settled position in the decisions aboveresferred that there is no estoppel against legislation and petitioners cannot therefore successfully challenge validity of Section 32(i) of the VAT Act. Even though the petitioners contended that the decision of the Supreme Court in Motilal Padampat Sugar Mills case referred above will justify interference with legislation if it is found to be enacted fraudulently or has caused manifest injustice, I feel it is

scandalous to allege that the VAT Act is a fraud on public or is intended to bring out manifest injustice to any section of the public or dealers. On the other hand, it is a well conceived legislation intended to achieve the larger objective of proper collection of tax in a transparent manner and to ensure fair price of goods to the consumers. Above all, the contention of the Special Government Pleader that there is general acceptability of the provisions of the Act including the impugned provision in as much as the challenge is only by three or four affected persons, go to show that the impugned provisions are not arbitrary or lead to any injustice to the industries which are enjoying sales tax exemption as they are entitled to enjoy the benefit of the other provisions of the VAT Act and simultaneously exemption under the modified scheme. In the circumstances, I find the impugned statutory provisions and notification issued thereunder which is only modification and not a total withdrawal of sales tax exemption is made in public, interest and therefore, the challenge is without any bona fides. The Writ Petitions are therefore devoid of any merit and are dismissed.

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