

CASE NO.:
Appeal (civil) 5700-5712 of 2007

PETITIONER:
M/s Padinjarekara Agencies Limited

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 08/02/2008

BENCH:
S. H. Kapadia & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 5700-5712 OF 2007
with
Civil Appeal Nos. 5699/07 and 5713-5726/07

KAPADIA, J.

For the sake of convenience we state the facts occurring in Civil Appeal Nos. 5700-5712/07.

2. This batch of civil appeals is filed by the assessee. It is directed against common judgment dated 8.6.2007 in Sales Tax Revision Nos. 177-189/07 decided by the Division Bench of the High Court of Kerala. By the impugned judgment, the High Court dismissed revisions filed by the appellant-assessee in limine at the admission stage.

3. These matters are a sequel to the lead matter in which we have delivered our judgment in the case of State of Kerala & Ors. v. M/s Kurian Abraham Pvt. Ltd. & Anr. (Civil Appeal Nos. 7965-7966/2004).

4. Assessee, M/s Padinjarekara Agencies Ltd., is engaged in production of sale of centrifuged latex. It is a registered dealer under Kerala General Sales Tax Act, 1963 ("KGST Act") and Central Sales Tax Act, 1956 ("CST Act"). The assessee's unit is registered as a SSI Unit.

5. In this batch of civil appeals we are concerned with assessment years 1982-83 to 1996-97. Assessee is the processor of centrifuged latex from field latex (raw-rubber).

6. Assessee herein claimed the benefit of exemption provided in the Government Notification SRO No. 1003/91 which was subsequently replaced by Government Notification SRO No. 1727/93. Under Government Notification SRO 1003/91, the conditions for availing exemptions were that rubber should be used for manufacture of "goods" and that tax was leviable on the products manufactured by such rubber.

7. The Assessing Authority did not allow the benefit of exemption to the assessee under the above Government Notifications on the ground that centrifuged latex and field latex were one and the same commodity. It may be noted that in the earlier case of Kurian Abraham Pvt. Ltd. (supra) the Department had taken the view that field latex and centrifuged latex were two different and distinct commodities whereas, in the present case, the Department has taken the view that they were one and the same commodity. Therefore, in the matter of exigibility to tax, the Department took the stand that field latex and centrifuged latex were different commodities and when it came to the question of exemption/concession, the same Department contended that the two commodities were same.

8. To continue the narration of events, it may be stated that, aggrieved by the decision of the AO, the matter was carried in appeal by the assessee to the first appellate authority, who took the view that the centrifuged latex satisfied the definition of "goods" in the Government Notification SRO No. 1003/91 and, therefore, concessional rate was admissible to the assessee. (see page 96 of the Paper Book in Civil Appeal Nos. 5700-5712/07).

9. The above Government Notification SRO No. 1003/91 was superseded by Government Notification SRO No. 1727/93, which came into effect w.e.f. 1.1.1994. Here, the AO once again did not allow the claim of exemption on the ground that field latex and centrifuged latex were one and the same commodity falling under Entry 110 of the First Schedule to the KGST Act. The AO relied on circular No. 16/98 dated 28.5.1998. This time, in appeal, the first appellate authority held that, field latex is not a rubber product and, therefore, the assessee was not entitled to exemption vide Notification SRO NO. 1727/93. (see page 98 of the Paper Book in Civil Appeal Nos. 5700-5712/07).

10. In the appeals relating to assessment years 1988-89 to 1993-94, the assessee contended before the Tribunal that they were entitled to concessional rate of 3%, which was rejected by the Tribunal on the ground that field latex and centrifuged latex were two separate and distinct commodities by placing reliance on the judgment of the Kerala High Court in the case of Padinjarekara Agencies Ltd. v. Asst. Commissioner reported in 1996 (2) KLT 641.

11. Aggrieved by the decision of the Tribunal, the matter was carried in revision to the High Court being Sales Tax Revision Nos. 177-189/07. The High Court took the view that it had limited revisional powers under Section 41 of the KGST Act. By the impugned judgment, it was held that there was no error committed by the Appellate Tribunal in its judgment nor had the Tribunal failed to decide any question of law. The High Court further held that the AO was right in denying the benefit of exemption/concession to the assessee in view of the clarification issued by the Board/Commissioner, which was binding on him, to the effect that there was no manufacturing activity involved in conversion of raw-rubber into centrifuged latex as both the commodities were same. According to the High Court, since raw-rubber and centrifuged latex are one and the same commodity under Entry 110 (preceded by Entry 161) the assessee was not entitled to claim concessional rate of duty under Government Notification SRO 1727/93, hence these civil appeals by the assessee.

12. Exigibility to tax is a concept which is different from the concept of exemption/concession. As stated above, when it came to exigibility, the Department contended that after 1.4.1988, field latex and centrifuged latex were two distinct and separate commodities and, at the same time, when it came to exemption, the same Department contended that field latex and centrifuged latex are one and the same commodities, hence, assessee was not entitled to claim concessional rate of duty under circular No. 16/98 dated 28.5.1998. Exigibility to tax is different from the concept of exemption/concession. The rules of interpretation which apply to classification of items in a taxing statute can differ in appropriate cases from the terms and conditions of exemption notification. Interpretation adopted in a classification dispute need not be the same as interpretation of Exemption Notification under the same Act. Every Exemption Notification has to be read on its own terms. One cannot confuse the terms used in the Notification by comparing the language of the Notification with the language of the taxing statute. In the present case, the Government Notification SRO No. 1003/91 (preceded by Government Notification SRO No. 585/80) uses the word "goods". Because of the use of the word "goods" the first appellate authority came to the conclusion that centrifuged latex can be considered as an item of "goods" for the purposes of SRO No. 1003/91. According to the first appellate authority, there was no difference of opinion on the point that centrifuged latex satisfied the definition of the word "goods" in the KGST Act. According to the first appellate authority, centrifuged latex as an item

of goods stood manufactured from field latex and, therefore, the assessee was entitled to claim the benefit of exemption.

13. In our view, the High Court has failed to consider the question of law, which arose for determination before it in Sales Tax Revision Nos. 177-189/07. As stated above, in this case, we are concerned with interpretation of various Exemption Notifications. We are not concerned with interpretation of circular No. 16/98 dated 28.5.1998. We do not wish to express our views at this stage on the interpretation of the Exemption Notification(s). Suffice it to state that, in this case, we are not concerned with classification. In this case, we are concerned with the words and expressions used in the Notification(s). This point has been missed by the High Court in its impugned judgment. It is no doubt true that, the AO is bound by the directions issued by the Commissioner even with regard to the terms used in the exemption Notification(s). However, as held in our earlier judgment in the case of Kurian Abraham Pvt. Ltd. (supra), circulars/orders issued by the Commissioner are not binding on the assessee. Therefore, de hors the directives given by the Commissioner, it is open to the assessee to claim the benefit of exemption/concession on the basis of various exemption Notification(s) issued by the Government from time to time. We express no opinion on the interpretation of those Notification(s). Suffice it to state that, the assessee was not bound by the orders/directions issued by the Commissioner to the AO, therefore, on the scope and effect of each of the above exemption Notifications, the matter needs to be remitted to the AO for fresh decision in accordance with law. In other words, if the assessee satisfies the terms and conditions mentioned in the Exemption Notification, the assessee would be entitled to the benefit thereunder notwithstanding the circular issued by the Board/Commissioner. This is on the principle mentioned hereinabove that such Circular does not bind the assessee if the assessee demonstrates that it fulfils the conditions mentioned in the Exemption Notification.

14. For the reasons given hereinabove, we set aside the impugned judgments of the High Court in Sales Tax Revision Nos. 177-189/07, 192/2007, 117/07 and 126-138/07 and remit the matters to the AO for de novo consideration in accordance with law. AO will look into the contentions of the assessee uninfluenced by the observations of the High Court and decide the claim for exemption on the basis of the words used in the Exemption Notification(s) and the terms and conditions mentioned therein.

15. Accordingly, the civil appeals filed by the assessee are allowed with no order as to costs.