

**IN THE HIGH COURT OF KARNATAKA
AT BANGALORE**

Dated this the 25th day of November, 2005

BEFORE:

THE HON'BLE MR JUSTICE D V SHYLENDRA KUMAR

Writ Petition No 24354 of 2005 (T-KST)

&

Writ Petition No 24355 of 2005 (T-KST)

&

Writ Petition No 24356 of 2005 (T-KST)

Between:

In WP No 24354 of 2005

M/S HIGH RANGE COFFEE CURING PVT LTD
ABBUR, PERIYAPATNA
MYSORE 571 107
REPT BY ITS ACCOUNTANT
C K SOMAN, AGED ABOUT 43 YRS
S/O K CHAKRAPANI

... PETITIONER

[By Sri G Sarangan, Senior Counsel
for M/s G Rabhinathan & M Thirumalesh, Adv]

And:

- 1 STATE OF KARNATAKA
REPTD BY PRINCIPAL SECRETARY
TO GOVERNMENT, FINANCE DEPT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE - 560 001
- 2 THE COMMISIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE 9

- 2 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(TRANSITION 2), SESHADRI
BHAVAN, DEWANS ROAD, MYSORE
- 4 COMMERCIAL TAX OFFICER RACOVERY
MYSORE DIVISION
SESHADRI BHAVAN, DEWANS ROAD
MYSORE ... RESPONDENTS

{Ms Niloufer Akbar, AGA}

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the endorsement issued by the finance department, government of Karnataka dated 22-2-2005 vide Annexure-K and etc.

Between:

In WP No 24355 of 2005

M/S COFFEE CURING & EXPORT
COMPANY (KOPPA) LTD
KOPPA VILLAGE, PERIYAPATNA TQ
MYSORE DISTRICT
REPT BY ITS CHAIRMAN
PRATAP CHITTAPPA, AGED ABOUT 58 YRS
S/O LATE M N CHITTAPPA ... PETITIONER

{By Sri G Sarangan, Senior Counsel
for M/s G Rabhinathan & M Thirumalesh, Adv}

And:

1. STATE OF KARNATAKA
REPTD BY PRINCIPAL SECRETARY
TO GOVERNMENT, FINANCE DEPT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE - 560 001
- 2 THE COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE 9

- 3 THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(TRANSITION 2), SESHADRI
BHAVAN, DEWANS ROAD, MYSORE
- 4 COMMERCIAL TAX OFFICER RACOVERY
MYSORE DIVISION
SESHADRI BHAVAN, DEWANS ROAD
MYSORE ... RESPONDENTS

[Ms Niloufer Akbar, AGA]

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the endorsement issued by the finance department, government of Karnataka dated 22-2-2005 vide Annexure-L and etc.

Between:

In WP No 24356 of 2005

M/S SARATHY COFFEE CURING WORKS
TAPCMS COMPLEX, K M ROAD
CHIKMAGALUR - 577 101
REPT BY ITS PROPRIETOR
A N DEVARAJ, AGED ABOUT 39 YRS
S/O NAGAPPA GOWDA ... PETITIONER

[By Sri G Sarangan, Senior Counsel
for M/s G Rabhinathan & M Thirumalesh, Adv)

And:

1. STATE OF KARNATAKA
REPTD BY PRINCIPAL SECRETARY
TO GOVERNMENT, FINANCE DEPT
GOVERNMENT OF KARNATAKA
VIDHANA SOUDHA
BANGALORE - 560 001
2. THE COMMISSIONER OF COMMERCIAL
TAXES KARNATAKA
VANIJYA THERIGE KARYALAYA
GANDHINAGAR, BANGALORE 9

3. THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(AUDIT & APPEALS)
AMCOS BUILDING, KOTE
SHIMOGA
- 4 THE ASST COMMISDSIONER
OF COMMERCIAL TAXES
CHIKMAGALUR
- ... RESPONDENTS

[Ms Niloufer Akbar, AGA]

This writ petition is filed under Articles 226 and 227 of the Constitution of India praying to quash the endorsement issued by the finance department, government of Karnataka dated 22-2-205 vide Annexure-K and etc.

These petitions coming on preliminary hearing, this day, the Court made the following:-

ORDER

In all these writ petitions, the petitioners are dealers under the provisions of the Karnataka Sales Tax Act, 1957 [for short, the Act] and claim to be carrying on the activities which can be described as 'coffee curing industry' within the meaning of this phrase as it occurs in Government Order No CI 30 SPC 96 dated 14-5-1999, in which notification, coffee curing industries figure at Sl No 7 of the category of non-manufacturing service sector industries included in the Appendix-IV of Government Order No CI 30 SPC 96 dated 1-4-1996.



2. The said Government Order dated 1-4-1996 in itself is a notification indicating the State Industrial Policy - incentive package vide Government Order No CI 30 SPC 96 dated 15-3-1996.

3. Petitioners have approached this court time and again for the tax benefits that they can avail for claiming as exemption or avoiding payment or the tax liability, which in the understanding of the petitioners, is a benefit to which they are entitled to under the notification dated 14-5-1999, but which has been denied to them in the respective assessment orders passed for the years 1999-20, 200-01, 2001-02 and 2002-03.

4. It appears the State government had issued the industrial policy offering certain incentives to entrepreneurs to set up new industries in notified areas to increase the capital investment in such existing industries and the kind of incentives and industries notified for such benefit had already been indicated in the notification and more over such industrial policy notification was followed by a corresponding exemption notification issued under Section 19-C of the Act.



5. It appears, the Government of Karnataka had also issued another notification in No FD 216 CSL 99 dated 31-7-2001, a copy of which is produced at Annexure-C to WP No 24354 of 2005, wherein it was indicated that such non-manufacturing units notified by the government from time to time by modifying the earlier government order dated 1-4-1996 were also entitled to be included for the benefit of 19-C notification that had been initially issued in No FD 32 CSL 96(1) dated 15-11-1996.

6. It appears the petitioners who are, amongst other persons, missed the bus in the initial notification dated 1-4-1996 and that is how they also joined the other exempted industries notified for such concessions under the Government Order dated 14-5-1999 and followed up by the subsequent Government Order dated 31-7-2001 for the purpose of Section 19-C of the Act.


7. It is in the context of these notifications, that the petitioners are claiming certain benefits which as of now had been denied by the Assessing Authorities and the petitioners had, it appears, pursued the matter by filing further appeals



before the First Appellate Authority and Second Appellate Authority, as the case may be.


8. In the interregnum, the petitioners had approached this court by filing WP Nos 38367, 38687 and 35926 of 2001, praying for issue of a declaration that they are entitled to certain tax benefits in respect of the activities of purchase of coffee, which the petitioners purchase from the growers and used in their industrial activities and in respect of which they claim benefits under the Government Order dated 15-3-1996 and 14-5-1999. These petitions were disposed by this court by order dated 24-7-2003, *inter alia*, observing thus:

10. Admittedly, the State Government is interested in the growth of industries. The State Government has granted various incentives and concessions for a period of 5 years in terms of the Industrial Policy of 1996. The policy provides for various incentives and concessions for betterment of the economy in the State. Sales Tax concessions were also provided. However, no such concessions were made available to the Coffee Curing Industry resulting in coffee industry approaching the Government seeking for concessions and incentives on par with the other industries. The Government considered this request sympathetically and thereafter it has revised the very policy providing for commercial tax incentives and concessions for the manufacturing units in terms of the Karnataka Sales Tax Act. The Government also included various industries including coffee curing industry in Appendix-IV of the Government Order dated 1.4.1996. It was passed on 14.5.1999.



It is to be seen at this stage that though the policy has come into force on 14.5.1999, the Government has not chosen to issue any specific notification providing for incentive to coffee curing industry. They have issued subsequent notifications in terms of Annexures 'E' and 'F'. There is no reference to coffee curing industry. In these circumstances, it is not possible for this Court to issue any specific direction to include coffee curing industry in terms of Annexures 'E' and 'F'. Sri.Anand, learned Government Advocate is right in his submission that this Court cannot introduce what has not been included in Annexures 'E' and 'F'. In these circumstances, his submission is accepted. But at the same time, I must see policy of the Government at Annexure 'B'. It categorically provides for considering coffee industry. It has to be given its full meaning for the purpose of encouragement of these industries as well. In these circumstances, without quashing Annexures 'E' and 'F', I deem it proper to issue a direction to the Government to take appropriate action in terms of the policy/law as applicable in the matter of tax concession to the Coffee Curing Industries and issue appropriate notification in accordance with law. Time for compliance to the Government is three months from the date of receipt of a copy of this order.

12. The petitioner is challenging several assessment orders. I do not want to go into the merits of the assessment order. They are appealable. In these circumstances, the petitioner is directed to file appeals within four weeks from the date of receipt of a copy of this order. If any such appeals are filed in terms of this order, the appellate authority is to accept the appeals without insisting on limitations. The appellate authority is to dispose of the appeals in accordance with law and in the light of the notification to be issued by the Government in terms of this order and pass orders in accordance with law.



9. It appears, thereafter, the petitioners have also availed appellate remedy and their appeals are also, it is submitted, are pending and in the meanwhile, the petitioners had approached the respondents by giving repeated representations, which has only evoked response in the form of endorsement dated 22-2-2005, a copy of which is produced at Annexure-K to WP No 24354 of 2005, issued by the Desk Officer, Finance Department.

10. This endorsement, *inter alia*, indicates that the petitioner's request for exemption in respect of purchase tax on the purchase of inputs for coffee curing industry in terms of certain government orders that had been issued earlier cannot be acceded to, as the benefit under the notification was being confined to the sale tax liability at the sales point. It is aggrieved by this endorsement, the present writ petitions are filed.

11. It is the submission of Sri G Sarangan, learned Senior Counsel appearing for the petitioners, that the endorsement is clearly in the teeth of the directions issued by this court in WP



Nos 38367, 38687 and 35926 of 2001, which in fact had been the subject matter of appeals before a Division Bench and which had been dismissed. Learned Senior Counsel submits that the respondent-State Government instead of complying with the directions and issuing a notification clarifying the position and extending the benefit to persons like the petitioners, has issued such an endorsement, which is in clear disregard of the directions and in contravention of the directions and therefore the endorsement is required to be quashed.

12. Submission of Sri Sarangan is that even while the petitioners could have worked out their rights before the Appellate Authority even as available under the existing notifications and could have possibly pursued for better benefits or incentive by approaching the government, the endorsement has become a stumbling block in their way, inasmuch as the appellate tribunal before whom their appeals are now pending may take note of this endorsement and may take such view which may not be very favorable or one which the petitioners would like to urge before the Tribunal. The apprehension of the learned counsel is that the endorsement



may preempt the petitioner from canvassing such contentions before the Tribunal.

13. The endorsement is one which the petitioners invited themselves by giving representations or seeking for extension of certain benefits even to their own understanding a benefit over and above what was available under the existing notification.

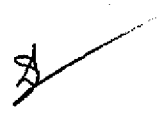
14. One another submission of Sri Sarangan, learned Senior Counsel for the petitioners, seeking invalidation of the endorsement, is that the authority which issued the endorsement is not competent to issue such endorsement, as any interpretation in respect of the exemption notification is a subject which is within the competence of the State Level Coordination Committee and not by any other authority.

15. While the submission may be right, it is the folly of the petitioners to approach this court seeking for any clarification than to seek such say in the matter by the committee concerned. Even to the understanding of the petitioners, the endorsement has no consequence and it is only the say of the State Level Committee which matters, it is equally necessary

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for this court to examine the contention and the validity of this notice in these writ petitions.

16. It is really not necessary for this court to examine the correctness or otherwise of such endorsement, more particularly for making the endorsement subject matter for issuing a writ of certiorari. The endorsement if at all can be in the nature of an opinion expressed on a particular application filed by the petitioners. What benefits the petitioners derives under the existing exemption notification can be a matter for determination by the authorities and even if it involves interpretation of such notification which, I am of the view, can definitely be looked into by the tribunal also and if the interpretation of any such statutory provision can always be made subject matter of decision before this court, it may be not necessary to examine the effect of the endorsement on the pending proceedings, pending before the statutory authorities, by this court. The main matter which is in the form of an appeal being pending before the Tribunal, it is not proper or appropriate for this court to express any view on the merits of the very matter, particularly in respect of matters not before this court at all.



17. In the circumstance, while it is not necessary for this court to entertain these writ petitions for the purpose of pronouncing the validity or otherwise of the endorsement, it is always open to the petitioners to urge all such contentions that they want to urge before this court in these petitions, even before the Tribunal and pursue the matter in the hierarchy of appellate/revisional authorities under the provisions of the Act itself. It is equally open to the petitioners to seek additional benefits from the government by approaching the respondents in such capacity to enable them to issue further notification. While such liberty is reserved to the petitioners to pursue their remedies elsewhere, these writ petitions are declined as one not warranting either interference or any expression of opinion at this stage by this court.

18. In the result, these writ petitions are dismissed, as one not warranting interference in exercise of writ jurisdiction.

Sd/-
Judge

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