

**SUPREME COURT OF INDIA**

Deepa Panels

Vs.

State of Kerala

C.A.No.5348-5350 of 2011

(Mukundakam Sharma and Anil R.Dave,JJ.,)

12.07.2011

**ORDER**

SLP (Civil)No.16830-16832 of 2009

1. Delay condoned.
2. Leave granted.
3. The appellant herein is an assessee manufacturing chemically treated rubberwood products. The assessee filed its annual returns claiming exemption from payment of purchase tax. In that context, the issue that arose for consideration is whether the assessee is entitled for exemption from payment of purchase tax.
4. The contention of the appellant was that the appellant is eligible for exemption from payment of tax in respect of purchase of rubberwood from unregistered dealers. For the assessment year 1998-99, 1996-97, the assessing authority completed the assessments and granted exemption even from payment of purchase tax. However, after the aforesaid assessment orders were passed, action was taken for re- opening of the assessment for the aforesaid assessment years in question and a notice to that effect was issued to the assessee who in receipt of the aforesaid notice filed its reply contending, interalia, that in view of the exemption certificate granted by the General Manager, District Industries Centre, the assessee is entitled for exemption from payment of purchase tax. The assessing authority considered the records including the objections taken by the assessee and thereafter it held and passed an order of assessment that the assessee is not entitled from exemption of levy of purchase tax under Section 5A of the Karnataka General Sales Tax Act [for short "KGST Act"].
5. Aggrieved by the orders of the assessment passed for the assessment year 2001-2002 and orders of re-assessment passed by the assessing authority for the assessment years 1998-99 and 1996-97, the assessee filed appeals before the Kerala Sales Tax Appellate Tribunal, Addl. Bench, Palakkad. The Tribunal by its orders dated 10.08.2004 and 06.08.2007 rejected

the appeals filed by the appellant against the order of re-assessment for the years 1996-97 and 1998-99 and also the order of assessment for the year 2001-2002.

6. Aggrieved by the aforesaid orders passed by the Tribunal, revision petition was filed before the Kerala High Court which was registered as Sales Tax Revision No. 6 of 2008. The High Court, after hearing the counsel appearing for the parties held that the article manufactured by the assessee is not covered by the Notification SRO No. 1729 of 1993 and, therefore, the issue that arises for consideration according to the High Court was covered by the decision of this Court in the case of *State of Kerala Vs. Vattukalam Chemicals Industries* 2001(6) SCC 764. In that view of the matter, it was held that the assessee was not entitled for exemption from payment of purchase tax. The High Court further held that the assessee at best could be entitled for exemption only on the goods manufactured and sold and no exemption could be granted from payment of purchase tax. The aforesaid findings which are recorded by the High Court are under challenge in these appeals in which we have heard learned counsel appearing for the parties.

7. Having considered the submission of the learned counsel appearing for the parties and also the decisions referred to, we are of the view that the facts of the case in hand are similar to the one which was decided by this Court in the case of *State of Kerala Vs. Vattukalam Chemicals Industries*(supra). Learned counsel appearing for the appellant, however, relied upon two decisions of this Court being *Pondicherry State Cooperative Consumer Federation Ltd. Vs. Union of Pondicherry*<sup>1</sup> and *Vadilal Chemicals Ltd. Vs. State of A.P. and others*<sup>2</sup>.

8. Having considered the ratio laid down by the aforesaid decisions in the light of the Notifications relevant for the purpose of deciding this case and referred to by the learned counsel appearing for the parties, we are of the opinion that the two decisions which are relied upon by the learned counsel appearing for the appellant are distinguishable on facts. In the aforesaid two decisions relied upon, the exemption certificates which were issued by the District Industries Department consisting of experts on the subject were sought to be interpreted by the assessing authority and thereby arriving at the conclusion for denial of the benefit of exemption to the assessee therein.

9. This Court also noted that there is a turn around by the State by taking two contradictory stands at two different points of time, which according to this Court, should not have been done, and in that view of the matter, the aforesaid two decisions were rendered. In our considered opinion, the ratio of the aforesaid two decisions are distinguishable on facts but so far as the decision of this Court in *Vattukalam Chemicals Industries*(supra) is concerned, the facts are almost similar. In that Judgment, this Court has clearly held that the assessee therein is not entitled for exemption from payment of purchase tax as the article manufactured is not included in the Notification, namely, SRO No. 499/1990. Learned counsel appearing for the appellant, however, sought to submit that SRO No. 499/1990 which was considered in the aforesaid case i.e. *Vattukalam Chemicals Industries* case(supra) was superseded by a subsequent Notification SRO No. 1729 of 1993.

10. We have perused and considered the said Notification very carefully but in the said Notification also, we find that no exemption was granted to the article manufactured by the appellant as well. The ratio of the decision in the case of Vattukalam Chemicals Industries (supra) was laid down in the context of the Notification SRO No. 499/1990. There is no change in the ground situation in the subsequent Notification also and, therefore, we see no reason as to why the ratio of the decision in Vattukalam Chemicals Industries (supra) would not be applicable to the facts and circumstances of the present case.

11. We are also of the opinion that the assessee could be said to be entitled for exemption only on goods manufactured and sold but it cannot claim any exemption from payment of purchase tax.

12. Having held thus, we find no merit in these appeals which are accordingly dismissed. No costs.

Judgment Referred.

<sup>1</sup>(2008) 1 SCC 0206

<sup>2</sup>(2005) 6 SCC 0292