

M/S. PADINJAREKARA AGENCIES LIMITED

v.

STATE OF KERALA

(Civil Appeal Nos. 5700-5712 of 2007)

FEBRUARY 8, 2008

(S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.)

Kerala General Sales Tax Act, 1963; Exemption Notification No. SRO 1003/91 as replaced by Notification SRO No.1727/93:

Exemption Notification – Centrifuged latex and field latex – Exigibility to Sales Tax and applicability of Notification – Held: Exigibility to tax is different from concept of concession/exemption – Rules of interpretation applicable to classification of items in a taxing statute differ in appropriate cases from terms and conditions of an Exemption Notification – Exemption Notification has to be interpreted on its own terms – In the instant case, High Court while denying exemption on the ground of classification failed to notice that the issue was not classification of goods but interpretation of the Notification – Circulars/orders denying the exemption not binding on assessee – Hence, de-hors the instructions in the Circular, assessee could claim exemption on the basis of the Notification if it satisfies terms and conditions thereof – Matter remitted to High Court for de novo consideration in accordance with law – Interpretation of Statutes – Notifications – Central Sales Tax Act, 1956.

Appellant-assessee, a registered dealer under the Kerala General Sales Tax Act and the Central Sales Tax Act, was engaged in the production of centrifuged latex. Assessee claimed the benefit of Exemption Notification, SRO No. 1003/91 which was subsequently replaced by another Notification SRO No. 1727/93. Under the Notification, the conditions for availing exemptions were

A that rubber should be used for manufacture of "goods"
and that tax was leviable on the products manufactured
by using such rubber. The Assessing Authority relying
on a Circular No./6/98 dated 18/05/1998, did not allow the
benefit of exemption to the assessee on the ground that
B centrifuged latex and field latex were one and the same
commodity. Appeal filed thereagainst was allowed by the
appellate authority holding that the centrifuged latex
satisfied the definition of "goods" in terms of the
Notification and, therefore, concessional rate was
C admissible to the assessee. However, in the connected
matter the first appellate authority held that the field latex
is not a rubber product and, therefore, the assessee was
not entitled to exemption under the Notification. Appeal
filed against the order of the first Appellate Authority was
D rejected by the Tribunal on the ground that field latex and
centrifuged latex were two separate and distinct
commodities. Revision Petitions were preferred by the
assessee before the High Court. The High Court held that
since raw-rubber and centrifuged latex are one and the
E same commodity, the assessee was not entitled to claim
concessional rate of duty under the Notification. Hence
the present appeals.

Allowing the appeals, the Court

F HELD: 1.1 In the earlier case of Kurian Abraham Pvt.
Ltd. 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
G 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. (Para – 7) [646-A, B]

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State of Kerala & Ors. v. M/s. Kurian Abraham Pvt. Ltd. & A
Anr. 2008 (2) SCALE 341 – relied on.

1.2 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 the Notification. 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. (Para – 12) [647-E-H, 648-A-C]

1.3 In this case, this Court is not concerned with classification but concerned with the words and expressions used in the Notification(s). This point has been missed by the High Court in its impugned judgment. (Para -13) [648-E]

1.4 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 the earlier judgment in the case of

- A Kurian Abraham Pvt. Ltd., 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. (Para – 13) [648-F, G]

- 1.5 If the assessee satisfies the terms and conditions mentioned in the Exemption Notification, the assessee would be entitled to the benefit under the Notifications notwithstanding the circular issued by the Board/ Commissioner. This is based on the principle that the Circular does not bind the assessee if the assessee demonstrates that it fulfils the conditions mentioned in the Exemption Notification. Hence, the impugned judgments of the High Court in Sales Tax Revision Nos. 177-189/07, 192/2007, 117/07 and 126-138/07 are set aside and the matters are remitted 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. (Paras – 13 & 14) [649-A, B, C, D] :

- F CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5700-5712 of 2007.

From the Judgment and Order dated 08.06.2007 of the High Court of Kerala at Ernakulam in S.T. Rev. Nos. 177-189 of 2007.

- G WITH

Civil Appeal Nos. 5699 and 5713-5726 of 2007.

R.F. Nariman, E.M.S. Anam, Fazlin Anam and Ramesh Babu M.R. for the Appellant.

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G. Prakash and Beena Prakash for the Respondent. A

The Judgment of the Court was delivered by

KAPADIA, J. 1. 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. B
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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). D

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. E

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. F
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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 H

A 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
B 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.

C 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.
D (see page 96 of the Paper Book in Civil Appeal Nos. 5700-5712/07).

E 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
F 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).

G 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
H reliance on the judgment of the Kerala High Court in the case of

Padinjarekara Agencies Ltd. v. Asst. Commissioner A
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. B
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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 E
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A 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
B 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
C 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
D 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
E 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
F 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
G 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
H 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.

S.K.S.

Appeals allowed.