IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

WA.No. 725 of 2013 () IN WP(C).14565/2012

AGAINST THE JUDGMENT IN WP(C) 14565/2012 of HIGH COURT OF KERALA
DATED 20-03-2013

APPELLANTS/PETITIONERS:
----

1. D.RAVEENDRAN
   2ND FLOOR, PANCHARATNA APARTMENTS, TOC.H.ROAD
   VYTTILA, KOCHI-19

2. R. KUMARESAN
   2ND FLOOR, PANCHARATNA APARTMENTS, TOC.H.ROAD
   VYTTILA, KOCHI-19

   BY ADV. SRI.V.G.ARUN

RESPONDENTS/RESPONDENTS:
----

1. THE STATE LEVEL COMMITTEE ON SALES TAX
   REPRESENTED BY THE SECRETARY (TAXES), SECRETARIAT
   TRIVANDRUM-695 001.

2. THE DEPUTY COMMISSIONER (APPEALS)
   COMMERCIAL TAXES, TRIVANDRUM-695 001.

3. THE DIRECTOR OF INDUSTRIES
   AND COMMERCEDIRECTORATE OF INDUSTRIES AND COMMERCE
   TRIVANDRUM-695 001.

4. THE DISTRICT COLLECTOR,
   CIVIL STATION, KOLLAM-691 001.

5. THE REVENUE DIVISIONAL OFFICER
   KOLLAM -691 001.

6. THE TAHSILDAR (REVENUE RECOVERY)
   KOLLAM - 691 001.

7. M/S.SUN REFINERIES PRIVATE LIMITED
   THRIKKADAVOOR, KOLLAM
   REPRESENTED BY THE OFFICIAL LIQUIDATOR
   OFFICE OF THE OFFICIAL LIQUIDATOR, KAKKANAD-682 030.

   R7 BY ADV. SRI.K.MONI
   R1 TO R6 BY SR.GOVERNMENT PLEADER SRI LIJU STEPHEN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD 01.12.2014 THE COURT ON 14-01-2015, DELIVERED THE FOLLOWING:

APPENDIX

APPELLANT'S ANNEXURE:

ANNEXURE I: COPY OF LIST OF EQUIPMENTS AND PROCESS DETAISL WITH REGARD TO MANUFACTURE OF REFINED OIL.

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.S.TO JUDGE

dsn

ANTONY DOMINIC & ANIL K.NARENDRAN, JJ.

W.A.No.725 of 2013

Dated this the 14th day of January, 2015

JUDGMENT

ANIL K.NARENDRAN, J.

The appellants are the petitioners in W.P.(C) No.14565/2012. They are Ex-Directors of M/s. Sun Refineries Pvt. Ltd., a company now under liquidation. They have approached this Court in the said Writ Petition seeking a writ of certiorari to quash Ext.P16 proceedings of the Director of Industries and Commerce, the 3rd respondent, by which Ext.P8 appeal filed by the 1st appellant against Ext.P4 proceeding of the Deputy Commissioner (General), Commercial Taxes, the 2nd respondent, ended in dismissal, thereby confirming the rejection of sales tax exemption claimed by the Company as per SRO No.521/92.

2. The learned Single Judge by judgment dated 20.3.2013 repelled the challenge made against Exts.P4 and P16 orders and disposed of the Writ Petition holding that, the

revenue recovery proceedings initiated against the appellants shall stand quashed on account of the fact that they are not entitled to be proceeded under 26C of the Kerala General Sales Tax Act, 1963. But it was made clear that, the disposal of the Writ Petition shall not preclude the department from invoking the bond condition, if any, executed by the appellants. It is aggrieved by the judgment of the learned Single Judge, to the extent of repelling the challenge made against Exts.P4 and P16 and observing that the disposal of the Writ Petition shall not preclude the department from invoking the bond conditions, if any, executed by the appellants, the appellants are before us in this Writ Appeal.

3. We heard the arguments of the learned counsel for the appellants, the learned Senior Government Pleader appearing for respondents 1 to 6 and also the learned counsel for the Official Liquidator. We have considered the rival submissions made at the Bar.

4. The appellants are Ex-Directors of a defunct Company namely, M/s. Sun Refineries Pvt. Ltd. Going by the averments in the Writ Petition, the unit was engaged in the

manufacture of double refined oil, commenced commercial production on 22/12/1994. The unit became defunct from the year 1996 and the appellants resigned from the directorship of the Company with effect from 2/8/1996. In December, 1996 the unit was taken over by the Kerala State Industrial Development Corporation (KSIDC), in exercise of the powers conferred under Section 29 of the State Financial Corporations Act. While so, one of the creditors of the Company filed C.P.No.29/1998 seeking an order to windup the Company and this Court by order dated 12/1/2001 appointed the Official Liquidator as the Provisional Liquidator for the Company.

5. As per SRO No.521/92, a copy of which has been produced as Ext.P2, new, medium and large scale industrial units established in the State of Kerala, which started commercial production on or after 23/9/1991 are exempted from sales tax for a period of 7 years, subject to the condition that the aggregate exemption in respect of Sales Tax, Purchase Tax, Additional Tax, Surcharge and Turnover Tax together shall not exceed 100% of the fixed capital investment of the unit. As per Clause 3 of the said SRO, the eligibility certificate

for exemption to a medium scale industry assisted by the KSIDC has to be issued by the said Corporation on application by such unit. Sub-clause (b) of Clause 3 further clarifies that, the eligibility certificate and the order of exemption will be issued by the competent authority, if the unit is eligible for exemption or deferment of tax and satisfies the conditions for exemption or deferment of tax. The eligibility certificate shall contain the date of commercial production and monetary limit of exemption which the unit is eligible for. As per Clause 17 of the Manual of Sales Tax Exemption Scheme issued by the Government, the Secretary, Board of Revenue (Taxes), now the Dy. Commissioner (General), Commercial Taxes, shall issue the eligibility certificate if the unit is found to be eligible for exemption.

6. Based on an application for eligibility certificate, the General Manager, KSIDC, has issued Ext.P3 eligibility certificate certifying that, commercial production in the unit was commenced on 22/12/194 and that the unit is eligible for an exemption limit of ₹97,32,320/-. The said eligibility certificate was produced before the 2nd respondent for grant of

exemption. But the said request was rejected by Ext.P4 proceedings of the 2nd respondent dated 23/4/2003, on a finding that no manufacturing process of double refined oil has been done in the unit, instead the unit had effected only consignment sales of oil through some dealers at Theni in Tamil Nadu. Against Ext.P4, the 1st appellant preferred Ext.P8 appeal before the 3rd respondent, but the same ended in dismissal by Ext.P16 proceedings of the 3rd respondent dated 4/6/2012.

7. The learned counsel for the appellants would contend that, the industrial unit in question is eligible for exemption from Sales Tax as per SRO No.571/92, in view of Ext.P3 eligibility certificate issued by the General Manager of the KSIDC. In support of the said contention, the learned counsel would place reliance on Ext.P5 Shop Inspection Report dated 12/3/96, Ext.P6 judgment of this Court in TRC No.51/91, etc.

8. A perusal of Ext.P4 order passed by the 2nd respondent would show that, based on the application made by the unit for Sales Tax exemption, the then Dy. Commissioner

(General) obtained a report from the Dy. Commissioner, Commercial Taxes, Kollam, within whose jurisdiction the said unit was situated. The Dy. Commissioner, Commercial Taxes, Kollam, reported that, the unit is purchasing refined oil from other States such as Karnataka and Andhra Pradesh and marketing it in Kerala. The only activity done in the unit is refilling and no manufacturing or conversion process were done within the State of Kerala to become eligible for the Sales Tax exemption. Further, the 2nd respondent got the matter enquired through the Dy. Commissioner (Intelligence), Commercial Taxes, Ernakulam, and in the said enquiry it was revealed that, the unit had effected only consignment sales of oil through some dealers of Theni, viz., Sree Renuga Refineries Pvt. Ltd, Durgesh Nandini Oil Mills, Kavery Oil Mills, Kavery Oil Seeds Processing Company, etc., and issued F forms and sale pattials. Copies of commission sale agreements, sale pattials, etc., between the unit in question and the dealers of Theni have also been furnished. It was based on such materials, the 2nd respondent came to the conclusion that the transactions between the unit in question and the outside dealers are only commission sales and there was no purchase of raw materials for the production of double refined oil.

9. A perusal of Ext.P4 order would further show that, though the 2nd respondent proposed to conduct an inspection of the unit in dispute in order to ascertain the actual facts, that attempt failed as the unit remained closed. The 2nd respondent gave proper intimation to the appellants to intimate the re-opening of the unit or to make arrangements for its inspection, but no reply was received from them. Therefore, a notice was issued directing the appellants to prove the claim for exemption. On 14/3/2003, the 1st appellant filed a reply along with copy of a letter issued by the KSIDC. In the absence of any materials to prove the claim for Sales Tax exemption, i.e., evidence to prove that manufacturing process of double refined oil has been done in the industrial unit in question, the 2nd respondent by Ext.P4 rejected the claim for exemption sought for. Ext.P8 appeal filed by the 1st appellant against Ext.P4 ended in dismissal by Ext.P16 order of the 3rd respondent.

10. The learned Counsel for the appellants would

contend that, once eligibility certificate is issued by the financing institution, the authorities of the Commercial Taxes Department are bound to accept the same and sanction exemption. We are unable to agree. Ext.P3 eligibility certificate issued by the KSIDC by itself will not entitle the industrial unit to get exemption from sales tax as a matter of right, as contended by the appellants. It only shows that, the industrial unit had acquired and installed necessary machinery incurring capital investment and started commercial production. It is the primary duty of the 2nd respondent, who is the competent authority as per SRO No.571/92, to ascertain whether the industrial unit is eligible for Sales Tax exemption as per the criteria laid down in the said SRO, before issuing any eligibility certificate. In the present case, the enquiry conducted by the 2nd respondent through the Dy. Commissioner, Commercial Taxes, Kollam, as well as the Dy. Commissioner (Intelligence), Commercial Taxes, Ernakulam, revealed that, no manufacturing process was taking place in the industrial unit, instead the unit was purchasing products from other States and marketing the same after refilling.

11. The learned counsel for the appellant would further contend that, Ext.P5 Shop Inspection Report furnished by the officials of the Commercial Taxes Department itself is an ample evidence to prove that the industrial unit was actually functioning. It is clearly noticed in Ext.P5 Shop Inspection Report that, no sales bills were produced at the time of inspection and that van sales registration was also not available at the time of inspection. If the industrial unit was actually engaged in commercial production of double refined oil, the appellant could have produced the relevant records for verification either before the 2nd respondent or before the 3rd respondent. Further, nothing prevented the appellants from causing their industrial unit being inspected by the 2nd respondent in order to prove that the manufacturing process was going on in the said unit. In such circumstances, the 3rd respondent cannot be found fault with in concluding in Ext.P16 that, Ext.P5 Shop Inspection Report can only be treated as an attempt made by the appellants to create evidence to show that, there was some refining process going on in the industrial unit in question.

12. In Ext.P6 judgment of this Court, relied on by the learned counsel for the appellants, the District Level Committee for Sales Tax Exemption granted exemption to M/s. Surya Refineries (P) Ltd., a sister concern of M/s. Sun Refineries Pvt. Ltd., based on the eligibility certificate. But the said exemption granted was ignored by the assessing authority on the ground that the activity involved in converting inedible oil to edible on goods received on consignment basis will not amount to manufacture and also the goods have to be owned by it. In the said case the exemption claimed was one under SRO No.968/80, which situation is totally different from the one available in the case on hand. That apart, in that case the Division Bench came to the conclusion that there was manufacturing process in the industrial unit and therefore there was nothing wrong with the assessee claiming exemption. It was in such circumstances, this Court in Ext.P6 judgment held that, once the eligibility certificate is issued by the competent authority the assessing authority cannot sit in judgment over it. But in the case on hand, the competent authority as well as the appellate authority rejected the claim

for Sales Tax exemption made by the industrial unit in question on a specific finding that, no manufacturing process was taking place in the industrial unit, instead the unit was purchasing products from other States and marketing the same after refilling.

13. The learned Senior Government Pleader would point out that, the relevant notification which applies for exemption during the relevant period was SRO No.1729/1993, which came into force on 1/1/2004. Even according to the appellants, commercial production in their industrial unit was commenced on 22/12/1994. Therefore, as rightly pointed out by the learned Senior Government Pleader, the relevant notification for exemption was SRO No.1729/1993. Going by Para 4 of the said notification, in the case of new industrial units under medium and large scale industries, exemption from sales tax is on the turnover of sale of goods manufactured and sold by them within the State. As per Clause (ix) of Para. 11 of the said notification, 'manufacture' shall mean the use of raw materials and production of goods commercially different from the raw materials used, but shall not include mere packing of

goods, polishing, cleaning, grading, drying, blending or mixing of different varieties of the same goods, sawing, garbling, processing one form of goods into another form of the same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. In the case on hand, the specific finding made in Exts. P4 and P8 orders is that, no manufacturing process of double refined oil was taking place in the industrial unit of the appellants, instead the unit was purchasing products from other States and marketing the same after refilling. In such circumstances, the learned Single Judge cannot be found fault with in not interfering with Ext.P4 order of the 2nd respondent rejecting the claim for exemption and Ext.P16 order of the 3rd respondent confirming the said rejection.

14. It was taking note of the submission made by the learned Government Pleader that, the Directors have a personal liability if they have executed bond in Form 6 in favour of the department, that the learned Single Judge made it clear that, the disposal of the Writ Petition shall not

preclude the department from invoking the bond condition, if any, executed by the appellants. In the Writ Appeal the appellants have no specific case that, they have not executed any bond in Form 6 in favour of the department. In such circumstances, the aforesaid observation made by the learned Single Judge warrants no interference in this Writ Appeal.

In the result, this Writ Appeal fails and the same is dismissed. No order as to costs.

Sd/-
ANTONY DOMINIC, JUDGE

Sd/-
ANIL K.NARENDRAN, JUDGE

dsn