

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 11TH DAY OF AUGUST 2015/20TH SRAVANA, 1937

WP(C).No. 32632 of 2005 (I)

PETITIONER(S):

ALLIANCE GRAIN PRODUCTS PVT. LTD.
PALATHARA, THATTAMALA, KOLLAM
REPRESENTED BY ITS GENERAL MANAGER, M.AMEENUDDIN.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)

RESPONDENT(S):

1. DIRECTOR OF INDUSTRIES & COMMERCE
OFFICE OF THE DIRECTOR OF INDUSTRIES & COMMERCE
THIRUVANANTHAPURAM.
2. STATE LEVEL COMMITTEE,
STATE INDUSTRIES DEPARTMENT, THIRUVANANTHAPURAM.
3. GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, KOLLAM.

R1 TO 3 BY ADV.S.SUDHEESH KUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS

- P1 - True copy of the certificate of registration dated 26.10.91
- P2 - True copy of the SRO 499/90
- P3 - True copy of the SRO 1729/93
- P4 - True copy of the order dated 2.10.94 issued by the 3rd respondent
- P5 - True copy of the letter dated 22.9.97 claiming exemption
- P6 - True copy of the order dated 5.3.99 issued by the 3rd respondent
- P7 - True copy of the order dated 4.2.2002 No.K9/8306/98/STE
- P8 - True copy of the memorandum of appeal filed before the 2nd respondent.
- P9 - True copy of the order dated 18.10.2004 numbered as K9 2257/02/STE issued by the 3rd respondent.
- P10 - True copy of the order dated 2.6.2003 issued by the 1st respondent numbered as No.FC3/4800/02 Kdis.
- P11 - True copy of the common judgment of this Hon'ble Court in W.P(C) 32325/04. and W.P(C) 16654/03 dated 20.12.2004.
- P12- True copy of the letter dated 29.3.2004 issued by the 3rd respondent
- P13 - True copy of the order of the State Level Committee numbered as FC3/11779/04 dated 21.10.2005.
- P14 - True copy of the chartered accountants certificate dated 19.9.1997 with the year wise addition of investments.
- P15 - True copy of the petitioner's original application for sales tax exemption along with the covering letter.
- P16 - True copy of the petitioners claim under the head Electrical installation.
- P16 (a) - True copy of the invoice No.0203 dated 16.10.92.
- P16(b) - True copy of the receipt dated 28.11.92 relating to the diesel generator set.
- P16(c) - True copy of the bill dated 16.7.93.
- P17 - True copy of the details of the claim under the head plant and machinery
- P17(a) - True copy of the invoice dated 9.2.93 issued to the petitioner.
- P17(b) - True copy of the bill dated 17.8.93 relating to quick sealing machine
- P17 © - True copy of the bill dated 14.8.93 relating to bag closing machine.
- P17(d) - True copy of the bill dated 24.11.93.

P17(e) - True copy of the bill dated 3.6.93 and 24.9.93
P17(f) - True copy of the bill dated 7.4.92 and receipt dated 29.9.92.
P18 - True copy of the item wise details under the head lab equipments
P18(a) - True copy of the invoice dated 11.1.95.
P18 (b)-True copy of the purchase of lab equipments by bill dated 14.2.94.
P18(c)- True copy of the bill dated nil
P18(d)- True copy of the bill dated nil
P18(e)- True copy of the bill dated nil
P18(f)- True copy of the bill dated nil
P19-True copy of the details of the claim under the head of tube well
P19(a)-True copy of the quotation for the tube well
P19(b)-True copy of the bill dated 16.12.995 being accessories to the tube well
P19(c)-True copy of the bill dated 8.2.96.
P20-True copy of the covering letter dated 11.11.2003 producing the documents in support of the petitioner's claim as regard lorries.
P20(a)-True copy of the invoice dated 10.3.95
P20(b)-True copy of the invoice dated 14.3.95
P20(c)-True copy of the invoice dated 31.10.95
P20(d)-True copy of the invoice dated 31.10.95
P20(e)-True copy of the invoice dated 22.09.96
P20(f)-True copy of the invoice dated 27.09.96
P20(g)-True copy of the invoice dated 05.05.2000
P20(h)-True copy of the invoice dated 08.05.2000
P20(i)-True copy of the Insurance Certificate for the vehicle KL-2C-3420 for the period 27.2.2000 to 26.2.2001
P20(j)-True copy of the Insurance Certificate for the vehicle KL-2C-3461 for the period 27.2.2000 to 26.2.2001
P20(k)-True copy of the tax period receipt of the Mahindra Jeep bearing No.KL-2 E103.
P20(l)-True copy of the Form 23 certificate of registration of the jeep
P21-true copy of the exemption certificate issued to a similar company by the name of M/s.Sabari Roller Mills dated 24.3.98.
P22 - True copy of the order dated 15.3.2006 and No.K9 22576/02/STE.

Respondents' Exhibits

R1(a) -True copy of the minutes of the meeting of the State Level Committee of sales tax exemption held on 5.4.2005.

R1(b)- True copy of the notification No.G.O(MS) 149/93/ID dated 26.11.1993.

True copy

sks/-

P.A to Judge

ANIL K.NARENDRA , J.

W.P.(C)No.32632 OF 2005

Dated this the 11th day of August, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P13 order dated 21.10.2005 and seeking a declaration that the additional investments made by the petitioner to the extent of ₹34,99,723/- are eligible for sales tax exemption in its entirety.

2. Going by the averments in the writ petition, the petitioner is a Small Scale Industrial unit engaged in the business of roller flour mill. The unit was inaugurated on 13.9.1991 and commercial production commenced on 26.9.1991. Ext.P1 is the certificate of permanent registration dated 26.10.1991 issued by the General Manager, District Industries Centre, Kollam, the 3rd respondent herein. The petitioner was initially granted sales tax exemption under Ext.P2 SRO 499/90. In the year 1993, Ext.P2 SRO was superseded by Ext.P3 SRO 1729/93. Initially, the petitioner was granted exemption from payment of sales tax for the period from 13.9.1991 till 12.9.1996, (except for the period 1.4.1993 to 31.3.1994 during which tax assessment was not

there for wheat products) to the extent of ₹66,87,920/-, vide Ext.P4 order dated 2.10.1994 of the 3rd respondent.

3. On the basis that the petitioner has carried out expansion of the unit by investing an additional sum of ₹61,64,539.40 since 1.4.1992, exemption was claimed for the said additional investment vide Ext.P5 request dated 22.9.1997 addressed to the 3rd respondent. The 3rd respondent by Ext.P6 order dated 5.3.1999 granted sales tax exemption only for an amount of ₹9,16,100/-. On receipt of Ext.P6, the petitioner represented before the 3rd respondent claiming exemption for the entire additional investment of ₹61,64,539.40. Pursuant to the said request, the 3rd respondent by Ext.P7 order dated 4.2.2002 granted a further exemption of ₹17,48,716/-. Since the claim for exemption in its entirety was not granted in Ext.P7 order passed by the 3rd respondent, the petitioner preferred Ext.P8 appeal before the State Level Committee in the District Industries Department, the 2nd respondent. During the pendency of Ext.P8 appeal, revenue recovery proceedings were initiated against the petitioner, which was under challenge in WP(C)No.16654 of 2003 filed before this Court. In the meantime, the 2nd respondent by

Ext.P9 order dated 18.10.2004 rejected the exemption claimed by the petitioner on its goods vehicles, on the ground that the petitioner failed to produce evidence showing that the said vehicles were actually required and fully utilised for transporting raw materials/ products.

4. On receipt of Ext.P9 order, the petitioner approached this Court by filing WP(C)No.32325 of 2004, on the ground that the said order was passed during the pendency of Ext.P8 appeal pending before the 2nd respondent. While admitting the aforesaid writ petition, this Court directed the respondents to file counter affidavit and also to produce the appellate order. Along with the counter affidavit filed on 10.11.2004, the respondents produced Ext.P10 proceedings dated 2.6.2003 of the Director of Industries and Commerce, Thiruvananthapuram, the 1st respondent herein. Challenging the aforesaid order, the petitioner filed WP(C) No.33707 of 2004 before this Court, mainly contending that the said order is non-est as the 1st respondent has passed it unilaterally without the quorum of the 2nd respondent committee being present. All the three writ petitions referred to above were heard together and disposed of by Ext.P11 common judgment

dated 20.12.2004. This Court found that the orders under challenge were liable to be set aside and the matter was remanded back to the 2nd respondent for fresh disposal keeping intact the stay originally granted in W.P.(C)16654 of 2003. The remanded appeal was renumbered as Appeal No.F.C.3/4725/05 and notice was also issued to the petitioner. On the date of hearing, the petitioner submitted Ext.P12 argument notes before the 2nd respondent Committee. The said appeal ended in dismissal by Ext.P13 order dated 21.10.2005. It is aggrieved by Ext.P13 order passed by the 2nd respondent, the petitioner has approached this Court in this writ petition seeking various reliefs.

5. A counter affidavit has been filed on behalf of the 1st respondent, contending that the reasoning in Ext.P13 order is perfectly legal and the petitioner is not entitled for any of the reliefs prayed for. The 1st respondent would contend that, the claim for exemption for the additional investments made by the petitioner was rejected by the 2nd respondent committee based on valid reasons. The investments in second hand equipments or spares are not eligible for sales tax exemption. The investments in office furniture and computers are not eligible for exemption as

they do not come under plant and machinery. Similarly the investment in passenger vehicles are also not eligible for sales tax exemption. The 1st respondent would also contend that, the buildings involved in the expansion are also not eligible for expansion. Investments in lorries, if they are utilised as goods vehicle and if actually required and fully utilised for the activity of the unit can be admitted for sanctioning sales tax exemption treating them as additional investments within the five years period. Therefore, the specific stand taken by the 1st respondent is that, a part of the exemption claimed, which the petitioner is legally entitled, has already been granted and rejection of exemption for the remaining items is perfectly legal.

6. The petitioner has also filed reply affidavit pointing out that, during the pendency of this writ petition, the 3rd respondent by Ext.P22 proceedings dated 15.3.2006 allowed the claim for exemption made by the petitioner for an amount of ₹1,08,358/- under the heads Lab Equipments and tube well. Therefore, the learned counsel for the petitioner would submit that, the question now remains for consideration in this writ petition is as to whether the additional investments made by the petitioner,

namely, ₹4,52,748.95 towards factory shed and industrial building; ₹2,68,406.75 towards cost of plant and machinery; ₹1,35,470/- towards industrial electrification; ₹8,50,287.50 towards value of lorries; ₹3,00,560/- towards purchase of jeep; ₹11,62,179/- towards purchase of passenger cars; ₹21,500/- towards purchase of scooter; ₹1,20,000/- towards purchase of computer; and ₹70,091.25 towards purchase of furniture and fittings are eligible for exemption.

7. In view of the contention raised by the petitioner that the State Level Committee while considering the sales tax exemption in its meeting held on 5.4.2005 was not having the requisite quorum, the 1st respondent has filed an additional counter affidavit, producing therewith as Ext.R1(a) a copy of the minutes of the meeting held on 5.4.2005. The 1st respondent would also contend that since the petitioner's unit was in existence while Ext.P3 SRO came into force, the limit of exemption has to be determined under clause 10(a)(ii) of the said notification, which specifically provides that, exemption shall not exceed the amount equal to the value of the new plant and machinery owned by the unit, which are used for diversification,

expansion or modernisation. Therefore, as per the restrictions imposed by the aforesaid clause, the sales tax exemption has to be considered taking into account the value of the new plant and machinery. Therefore, the second hand machinery purchased by the petitioner was not accounted for granting exemption. Furthermore, the first owner of the said machinery might have enjoyed sales tax exemption previously and therefore enjoyment of sales tax exemption by the subsequent owner will be unlawful enrichment, which is not intended by the Government. The intention of the legislature is clear and the second hand machinery used for diversification, expansion or modernisation are not eligible to claim sales tax exemption as per the notification. The 1st respondent would also contend that, the Government is having ample power to allow sales tax exemption taking into account public interest and it has also the power to withdraw or reduce such exemption. The 1st respondent has also stated that though by Ext.R1(b) Government order dated 26.11.1993 roller flour mills were included in the negative list, as per the clarification issued by way of a Government letter dated 27.1.1999 the petitioner is eligible to get sales tax exemption,

since it has enjoyed sales tax exemption before the making of negative list.

8. Heard arguments of the learned counsel for the petitioner and also the learned Senior Government Pleader appearing for the respondents.

9. The claim made by the petitioner for exemption is governed by the provisions contained in Ext.P3 SRO 1729/93 dated 3.11.1993, which deals with tax exemptions to industrial units and/or reduction in the rate of tax payable on the sale or purchase, as the case may be, of goods by such industrial units subject to the conditions and restrictions specified therein. Going by clause 2 of the said SRO, in the case of existing industrial units under Small Scale Industry, which effect diversification, expansion or modernisation on or after 1.4.1993 there shall be an exemption for a period of three years from the date of completion, as certified by the General Manager, District Industries Centre, of such diversification, expansion or modernisation, in respect of the tax/surcharge payable by such units as enumerated in clause 2(a) and (b).

10. Clause 10 of Ext.P3 SRO deals with conditions and

restrictions. Clause 10(a)(i) provides that, in the case of new industrial units under Small Scale Industry, the aggregate exemption in respect of sales tax, purchase tax, surcharge and central sales tax payable together shall not exceed 100% of the fixed capital investment of the unit. Clause 10(a)(ii) provides further that, in the case of existing industrial units under Small Scale Industry, which effect diversification, expansion or modernisation, the aggregate exemption in respect of sales tax, purchase tax, surcharge and central sales tax payable together shall not exceed the amount equal to the value of the new plant and machinery owned by the unit which are used for diversification, expansion or modernisation. Clause 11 is the 'explanatory' clause for the purpose of the notification. As per clause 11(ii) 'expansion' shall mean a total additional investment in fixed assets of not less than 25% of the 'Gross Block' as on the last day of the financial year immediately preceding the year in which the expansion was started and a minimum 25% increase in installed capacity compared to that the year immediately preceding the year in which the expansion was started. As per clause 11(vii) 'fixed capital investment of a unit' shall mean the

total investment of land including land development cost, building, plant and machinery, power generating system, facilities and equipments for research and development and quality control, standby equipments like standby generator standby steam boiler, pollution control system, delivery vehicles and the like required for the industrial purpose. Clause 11(viii) provides that, in computing the cumulative gross fixed capital investment of the Sick Small Scale Industrial units, second hand machinery and equipments procured within the State shall not be considered.

11. Relying on the Judgment of this Court in **Victory Paper & Board (India) Ltd. v. State of Kerala [2012 (20) KTR 481 : 2012 (2) KLT 236]**, the learned counsel for the petitioner would contend that, even if second hand machinery are used for expansion of an existing Small Scale Industrial unit, exemption for such additional investments can be claimed in terms of the provisions under Ext.P3 SRO. In the above judgment, this Court was dealing with a case in which a Medium Scale Industrial unit falling under clause 4 of the said SRO claimed exemption for the second hand machinery imported from

abroad. After referring to clause 11(viii) of the SRO, which provides that 'in computing the cumulative gross fixed capital investment of Sick Small Scale Industrial units, second hand machinery and equipments procured within the State shall not be considered', this Court held that second hand machinery imported from abroad is entitled to exemption and clause 10 of the Manual in G.O.(Ms.)No.169/95/ID dated 1.11.1995 cannot override statutory notification. Para.10 of the Judgment reads thus;

"10. Clause 11 of SRO 1729/93 deals with 'Explanations' and sub-clause (vii) thereunder defines the 'Fixed Capital Investment of a Unit' which reads as follows:

'(vii) 'Fixed Capital Investment of a Unit' shall mean the total investment of land including land development cost, building, plant and machinery, power generating system, facilities and equipments for Research and development and quality control, standby equipments like standby generator, standby steam boiler, pollution control system delivery vehicles and the like required for the industrial purpose.'

On the other hand, the only stipulation wherein exemption is stated as not available in respect of 'second hand machinery', is in the case of 'Sick Small Scale Industrial Units', as given under sub-clause (viii) of Clause 11, which reads as follows:

'In computing the cumulative gross fixed capital

investment of Sick Small Scale Industrial Units, second hand machinery and equipments procured within the State shall not be considered.'

From the above, it is clear that incorporation of the clause excluding the 'second hand' machinery in respect of Sick Small Scale Industrial Units was pursuant to a conscious exercise pursued by the Government, who did not think it fit, proper or necessary to have incorporated any such clause in respect of 'Medium and Large Scale' industries. It has also to be borne in mind that the above notification was issued as a matter of policy, with an intent to promote more and more industries and to bring in more and more investments in the industrial sector. Since no such exclusion clause was there in respect of 'Medium and Large Scale' industries and if beneficiaries like the petitioner have invested amounts for setting up such industries, availing the benefit of tax exemption for the stipulated term of seven years as per the notification, it is not correct or proper for the respondents to contend that no such benefit of exemption will be given to persons like petitioner for want of any specific provision in the notification enabling to reckon second hand machinery as well. The question to be considered is whether the 'statutory notification' debars the value in respect of 'second hand machinery' from being reckoned. It can be answered only in the negative."

12. In Victory paper & Board's case (supra), the industry in question was a new Medium Scale Industrial unit, which was set up while Ext.P3 SRO was in force and commercial production

was commenced on 18.5.1999. The eligibility for exemption of new industrial units falling under the category Medium and Large Scale Industrial unit is governed by clause 10(a)(iii), which provides that, in the case of new industrial units other than Public Sector Undertakings, under Medium and Large Scale Industries, the aggregate exemption in respect of sales tax, purchase tax, surcharge and Central sales tax together shall not exceed 100% of the 'fixed capital investment of the unit'. Similarly, the eligibility for exemption of a Sick Small Scale Industrial unit, is governed by clause 10(a)(vii), which provides that, in respect of the Sick Small Scale Industrial units, the cumulative sales tax exemption granted to a unit at any point of time within the period of eligibility shall not exceed 90% of the 'cumulative gross fixed capital investment of the unit'.

13. Going by clause 11(vii), 'fixed capital investment of a unit' shall mean the total investment of land including land development cost, building, plant and machinery, power generating system, facilities and equipments for research and development and quality control, standby equipments like standby generator standby steam boiler, pollution control system,

delivery vehicles and the like required for the industrial purpose. However, clause 11(viii) provides that, in computing the 'cumulative gross fixed capital investment' of the Sick Small Scale Industrial units, second hand machinery and equipments procured within the State shall not be considered. It was in that context this Court observed in Victory paper & Board's case (supra) that, incorporation of the clause excluding 'second hand' machinery in respect of Sick Small Scale Industrial units was pursuant to a conscious exercise pursued by the Government, as the Government did not think it fit, proper or necessary to have incorporated any such clause in respect of Medium and Large Scale Industries. This Court observed further that, since no such exclusion clause was there in respect of Medium and Large Scale Industries and if beneficiaries have invested amounts for setting up such industries, to avail the benefit of tax exemption for the stipulated term of seven years as per the notification, it is not correct or proper for the Government to contend that no such benefit of exemption will be given to them for want of any specific provision in the notification enabling to reckon second hand machinery as well.

14. Clause 10(a)(i) of Ext.P3 SRO provides that, in the case of new industrial units under Small Scale Industry, the aggregate exemption in respect of sales tax, purchase tax, surcharge and central sales tax payable together shall not exceed 100% of the fixed capital investment of the unit. However, in the case of existing industrial units under Small Scale Industry, which effect diversification, expansion or modernisation, clause 10(a)(ii) of Ext.P3 SRO provides that, the aggregate exemption in respect of sales tax, purchase tax, surcharge and central sales tax payable together shall not exceed the amount equal to the 'value of the new plant and machinery owned by the unit' which are used for diversification, expansion or modernisation. Therefore, in the case of diversification, expansion or modernisation of an existing Small Scale Industrial unit the exemption is with reference to the 'value of the new plant and machinery owned by the unit' which are used for such diversification, expansion or modernisation and not with reference to 'fixed capital investment of the unit' or 'cumulative gross fixed capital investment of the unit', as in the case of new Small Scale Industries or new Medium and Large Scale Industries or Sick Small Scale Industrial units.

When exemption for additional investment in the case of an existing Small Scale Industrial unit is with reference to the 'value of the new plant and machinery owned by the unit' which are used for diversification, expansion or modernisation and not with reference to 'fixed capital investment of the unit', the petitioner cannot contend that, second hand machinery used for expansion of an existing Small Scale Industrial unit is also entitled for exemption in terms of Ext.P3 SRO.

15. In **Tata Iron and Steel Co. Ltd. v. State of Jharkhand and others [2005 (140) STC 284 : 2005 (4) SCC 272]** the Apex Court held that, eligibility clause in relation to exemption notification must be given a strict meaning. In order to avail the benefit of such a notification the assessee must comply with all the conditions of that notification. The Apex Court held further that, the principle that, in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, as in such a case it is for the assessee to show that he comes within the purview of exemption.

16. In **Commissioner of Central Excise v. Hira Cement**

[2006 (145) STC 264 : 2006 (2) SCC 439] the Apex Court reiterated that, the criteria for determining the eligibility of an entrepreneur for becoming entitled to have the benefit of exemption notification must be construed strictly. When the purport and object of grant of exemption to an SSI Unit is clear and unambiguous, it can be availed of, provided that they satisfy the conditions precedent therefor.

17. Therefore, when exemption for additional investment in the case of an existing Small Scale Industrial unit is with reference to the 'value of the new plant and machinery owned by the unit' which are used for diversification, expansion or modernisation, the reasoning in Ext.P13 that, the petitioner is not entitled for exemption of ₹2,68,406.75 towards the cost of second hand plant and machinery used for expansion of its existing Small Scale Industrial unit is perfectly legal and no interference of this Court is warranted.

18. Now the remaining issue is regarding the exemption claimed for the additional investments made by the petitioner, for ₹11,62,179/- towards purchase of passenger cars; ₹3,00,560/- towards purchase of jeep; ₹21,500/- towards purchase of

scooter; ₹1,20,000/- towards purchase of computer; ₹70,091.25 towards purchase of furniture and fittings; ₹8,50,287.50 towards value of lorries; ₹4,52,748.95 towards factory shed and industrial building; and ₹1,35,470/- towards industrial electrification.

19. As far as the exemption claimed by the petitioner towards purchase of jeep is concerned, there is absolutely no material to show that it was used as a delivery vehicle and as such exemption was rightly rejected by the State Level Committee. Similarly, passenger cars and scooter are not eligible for exemption in terms of the notification in question and as such exemption in this regard was also rightly rejected by the State Level Committee. The further claim for exemption made by the petitioner towards purchase of computers and its accessories and also furniture and fittings are not admissible for exemption in terms of the notification as the investment in this regard is for office purpose and not for industrial purpose. Therefore, the exemption claimed in this regard was also rightly rejected by the State Level Committee.

20. The petitioner claimed exemption for ₹8,50,287.50 towards value of two lorries used as delivery vehicles. But, the

said claim was rejected on the ground that the said vehicles were not available for physical verification at the time of inspection. But, the materials on record indicate that aforesaid lorries purchased by the petitioner were used as delivery vehicles. The petitioner would contend that, by the time the District Level Committee conducted inspection one lorry was destroyed in accident and the other was damaged in floods. If the said lorries were actually used as delivery vehicles immediately after their purchase, the claim made for exemption could not have been denied merely for the reason that the said vehicles were not available for physical verification in the inspection conducted by the District Level Committee, much after its date of purchase. Therefore, the claim for exemption made by the petitioner in this regard requires reconsideration by the District Level Committee and it is for the petitioner to establish before the said Committee with supporting materials that the said lorries were actually used as delivery vehicles immediately after its purchase.

21. The petitioner claimed exemption for ₹4,52,748.95 towards factory shed and industrial building and ₹1,35,470/- towards industrial electrification. The said claim was rejected by

the State Level Committee on the ground that roller flour mills are in the negative list from 31.12.1993 and hence, investments on land, land development and building made by the units after the cut-off date of 31.12.1993 will not be eligible for sales tax exemption. But, in the additional counter affidavit filed on 19.6.2015, the 1st respondent has stated that, though by Ext.R1 (b) Government order dated 26.11.1993, roller flour mills were included in the negative list, as per a clarification issued by way of Government letter dated 27.1.1999 the petitioner is eligible to get sales tax exemption, since it had enjoyed such exemption before the making of negative list. Therefore, the claim for exemption made by the petitioner in this regard also requires reconsideration by the District Level Committee and it is for the petitioner to establish the said claim before the said Committee with supporting materials.

In such circumstances, this writ petition is disposed of setting aside Ext.P13 order passed by the 2nd respondent to the extent indicated above and remitting the matter to the District Level Committee to reconsider the claim for exemption made by the petitioner for ₹8,50,287.50 towards value of two lorries used

as delivery vehicles, ₹4,52,748.95 towards factory shed and industrial building and ₹1,35,470/- towards industrial electrification, strictly in accordance with the provisions under Ext.P3 SRO 1729/93, with notice to the petitioner and after giving it an opportunity of being heard. It would be open to the petitioner to produce before the District Level Committee any additional materials in support of its claim for exemption under the above heads. The 1st respondent shall take necessary steps to constitute the District Level Committee, within a period of one month from the date of receipt of a certified copy of this Judgment. The District Level Committee so constituted shall reconsider the claim for exemption made by the petitioner under the above heads and pass a reasoned order, as expeditiously as possible, at any rate within a period of five months from the date on which it is constituted.

No order as to costs.

Sd/-
ANIL.K.NARENDRA
JUDGE

sks/