IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.4091 of 2013
Date of decision: 12.02.2015

TUV SUD South Asia Private Limited ... Petitioner

versus

State of Haryana and others .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Arun Singal, Advocate, for the petitioner.

Mr. Keshav Gupta, Assistant Advocate General, Haryana.

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1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J.

1. The petitioner-Company which is said to be engaged in certifying quality of goods submitted for inspection challenges the inspection report issued by the Assistant Director of Industrial Safety and Health, arrayed as 3rd respondent and the show cause notice issued on 24.01.2013 under the provisions of the Factories Act why legal action should not be taken.

2. The notice has been issued by the Chief Inspector of Factories-the 2nd respondent and the short point which was

canvassed before the court is that the petitioner is a mere test lab seeking of accreditation from the National Accreditation Board for Testing and Calibration Laboratories (NABC) by the Department of Science and Technology. The petitioner contends that the definition of "Factory" under the Factories Act under Section 2(m) requires the activity of a manufacturing process which is again defined under the Action under Section 2 (k) that means making, alters, repairs ornamenting etc. with a view to creating a substance for use, sale, transport, delivering or disposal. The counsel would say that the activity of the petitioner involves no sale or disposal nor does it take up any activity altering or changing the substance of what is produced for such a purpose. The samples undertaken by the petitioner are for lab testing for efficacy of products brought up by its customers and the authority involve manufacturing process.

3. The issue of what is a manufacturing process has already been considered by the Supreme Court in ***Collector of Central Excise, Madras Versus Kutty Flush Doors and Furniture Co. (P) Ltd.-AIR 1998 SC 1164*** and ***Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) Ernakulam Versus Coko Fibers-AIR 1991 Supreme Court 338*** where the Supreme Court had held that even a transformation or change of one product to another would not amount to a manufacture. The change must be such as to bringing out a new and different article having a distinct name and

character. Such change must be in itself a commercial commodity capable of being sold. There is no attempt on the part of the respondents to show that the activity of the petitioner could qualify as a manufacturing process or that the petitioner is a factory. The show cause notice was incompetent by invoking the provisions of the Factories Act. The impugned orders are quashed and the writ petition is allowed.

(K.KANNAN)
JUDGE

12.02.2015
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