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POURNAMI OIL MILLS, ETC.

v.

STATE OF KERALA & ANR.

DECEMBER 19, 1986

B [P.N. BHAGWATI CJ AND RANGANATH MISRA,J.]

Kerala General Sales Tax Act, 1963: s. 10—Power of Government to grant exemption and reduction of Tax—Small Scale Industries—Purchase Tax and Sales Tax Concession—Whether could be withdrawn.

C *Promissory estoppel—Applicability of.*

Section 10 of the Kerala General Sales Tax Act, 1963 empowers the Government in public interest to make an exemption or reduction in rates either prospectively or retrospectively in respect of any tax pay-
D **able under the Act.**

The State Government with a view to boost industrialisation, by an order dated 11th April, 1979 offered incentive to Small Scale industries, to be set up thereafter, in the form of exemption from sales tax and purchase tax for a period of five years from the date of commence-
E **ment of production. By a second order dated 29th September, 1980, published in the Gazette on 21st October, 1980 purported to be made under s.10 of the Act, the Government withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified.**

F **The appellants who set up their industries after April 11, 1979, including those who did it after 21st October, 1980, claimed benefit of exemption from purchase tax and sales tax in terms of the first order. They pleaded the rule of estoppel against the State Government in making the second order. The High Court in dismissing their Writ Petitions proceeded on the footing that the first order was not made in**
G **exercise of statutory power while the second order was issued under s.10 of the Act.**

Allowing the appeals by Special Leave, the Court,

HELD: 1. Where the authority making an order has power con-
H **ferred upon it by statute to that effect, such an order if made without**

indicating the section under which it is made, it would be deemed to have been made under the enabling provision. In the instant case, therefore, both the orders are covered by s.10, though in the earlier order there was no reference to the statutory provision. [658G-H]

2. The appellants who in response to the first order dated April 11, 1979 set up their industries prior to 21st October, 1980 would be entitled to exemption extended and/or promised under that order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21st October, 1980 would not be entitled to that benefit as they had noticed of the curtailment in the exemption before they came to set up their industries. They would be entitled to exemption from sales tax only to the limit specified in the second order. [659G-600A]

3. If in response to an order made by the Government and in consideration of the concession made available therein the promoters of any small scale concern set up their industries within the State, they would certainly be entitled to plead the rule of estoppel in their favour when the State purports to act differently. In the facts of the present case, however, the plea of estoppel is unanswerable. [659B.F]

Motilal Padampat Sugar Mills Co. Ltd. **v.** *State of U.P.* **[1979] 2 SCC 409,** *Bakul Cashew Co.* **v.** *Sales Tax Officer, Quilon,* **[1986] 2 SCC 365, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 626 of 1986 etc.

From the Judgment and Order dated the 7th June, 1984 of the Kerala High Court in O.P. No. 6642 of 1982

Soli J. Sorabji, G.V. Iyer, A.S. Nambiar; S. Kumar, E.M.S. Anam and R.N. Keswani for the Appellants.

T.S.K. Iyer, V.J. Francis and N.M. Popli for the Respondents.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. All these appeals are by special leave and are directed against judgments rendered by the Kerala High Court in Writ Petitions filed before it. The High Court in each case refused to grant relief.

A Two Notifications/Orders issued by the State Government are relevant. The first one is dated 11.4.1979 and the second is dated 29.9.1980 which was published in the State Gazette on 21.10.1980. For convenience, the texts of the two Notifications/Orders are extracted below:

B "*Order dated 11.4.1979:*

The incentives now given to the industries in the State are too meagre and inadequate to attract industries to this State when compared to the incentives available for the industries in many other States. Further there are certain C inherent disincentives also peculiar to this State such as high wage rates, minimum wages for certain sections, lack of availability of raw materials, etc. The question of offering some incentives by the State to attract new industries has been under consideration of the Government.

D The question whether any additional incentive can be given to the industrial concern the State plans to consider in detail and it was felt that the question of strengthening the traditional industries which are labour-intensive, rehabilitation of sick units and the promotional activities for the growth of new industries should be examined in E depth for indentifying the problems and adoption of various measures necessary to promote industrial growth in the State. A Committee consisting of the following officers was therefore set up to study the various problems and submit report ....."

F The Committee finalised its report on 20th March, 1979. The Government has considered the recommendations and suggestions of the Committee in detail and they are pleased to approve the following package of measures for promoting industrial development in Kerala:

SMALL SCALE INDUSTRIES:

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Sales-Tax Concessions:

New industrial units under small-scale industries set up after 1.4.1979 will be exempted from the payment of sales-tax for a period of five years from the date of production .....

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The relevant portion of the second notification reads thus:

"In exercise of the power conferred by section 10 of the Kerala General Sales Tax Act (15 of 1963) the Government of Kerala have considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable under the said Act on the turnover of the sale of goods produced and sold by the new industrial units under the small-scale industries for a period of five years from the date of commencement of sale of such goods by the said units subject to the conditions that if the tax collected by any such units by way of tax on their sales shall be paid over to Government and that the sales tax, if any, already paid by such units to Government shall not be refunded.

Provided that such units shall produce proceedings of the General Manager, District Industries Centre, declaring the eligibility of the units for claiming exemption from sales-tax.

Provided further that the cumulative sales tax concessions granted to a unit at any point of time within this period shall not exceed 90 per cent of the cumulative gross fixed capital investment of the unit.

EXPLANATION:- For the purpose of this notification new industrial unit under the Small-Scale Industries shall mean undertakings set up on or after 1st April, 1979 and registered with the Department of Industries and Commerce as a small-scale industrial unit.

This notification shall be deemed to have come into force with effect from 1st April, 1979".

Section 10 of the Kerala General Sales Tax Act at the time the two orders were made ran thus:

"Power of Government to grant exemption and reduction in rate of tax:-

(1) The Government may, if they consider it necessary in the public interest, by notification in the Gazette, make an exemption or reduction in rate (either pros-

A pectively or retrospectively) in respect of any tax payable under this Act;

(i) on the sale or purchase of, any specified goods or class of goods, at all points or at a specified point or points in the series of sales or purchases by successive dealers, or

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(ii) by any specified class of persons in regard to the whole or any part of their turnover.

(2) Any exemption from tax, or reduction in the rate of tax, notified under sub-section (1):

C (a) may extend to the whole State or to any specified area or areas therein;

(b) may be subject to such restrictions and conditions as may be specified in the notification;

D (3) The Government may, by notification in the Gazette, cancel or vary any notification issued under sub-section (1)."

It may be possible to contend with plausibility that in the absence of an enabling provision in the statute the State Government would E not have the power to give up a part of the tax due to the State and there can be no estoppel against statute. But that question does not arise here because we have Section 10 empowering the State Government to grant exemption from tax.

During the hearing of the appeals it has been contended that the F notifications in question were not in exercise of the powers under section 10 of the Act. The High Court has proceeded on the footing that the first order dated 11.4.1979 was not made in exercise of statutory powers while the second order was issued in exercise of powers under section 10. Having read the two orders and the contents, we are of the view that both the orders are covered by the provisions of G section 10 of the Act though in the earlier order there is no reference to section 10. It is a well-settled principle of law that where the authority making an order has power conferred upon it by statute to make an order made by it and an order is made without indicating the provision under which it is made, the order would be deemed to have been made under the provision enabling the making of it. We accordingly H hold that both the orders are under section 10 of the Act.

Under the order dated 11.4.1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point in the case of *M.P. Sugar Mills* v. *State of U.P.*, [1979] 2 SCC 409. On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in *Bakul Cashew Co.* v. *Sales Tax Officer, Quilon,* [1986] 2 SCC 365. In *Bakul Company's* (supra) case this Court found:

> "That there was no clear material to show any definite or certain promise had been made by the Minister to the concerned persons and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel has been made out."

This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in *M.P. Sugar Mills' case* (Supra). In our view, to the facts of the present case, the ratio of M.P. Sugar Mills' case directly applies and the plea of estoppel is unanswerable.

It is not disputed that the first Order namely, the one dated 11.4.1979 gave more of tax exemption than the second one. The second notification withdrew the exemption relating to purchase tax and confined the exemption from sales tax to the limit specified in the proviso of the Notification. All parties before us who in response to the Order of April 11, 1979 set up their industries prior to 21.10.1980 within the State of Kerala would thus be entitled to the exemption

A extended and/or promised under that Order. Such exemption would continue for the full period of five years from the date they started production. New industries set up after 21.10.1980 obviously would not be entitled to that benefit as they had noticed of the curtailment in the exemption before they came to set up their industries.

B In the course of hearing and in the written submissions furnished on behalf of the State it was contended that the question as to which of the appellants are entitled to the benefit should be left to the Sales Tax Authorities to decide. We are of the view that once the law is settled, that part of the decision may be left to the Departmental authorities and they may decide the question on merits in appropriate proceeding C in accordance with the law laid down in this judgment.

Each of the appeals is allowed. Parties are directed to bear their own costs throughout.

D P.S.S. Appeal allowed.