

(2001) 07 KL CK 0061

High Court Of Kerala

Case No: T.R.C. No. 156 of 2001

Jojo Frozen Foods Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: July 25, 2001**Hon'ble Judges:** S. Sankarasubban, J; S. Marimuthu, J**Bench:** Division Bench**Advocate:** K.I. Mayankutty Mather and Sunil Shanker, for the Appellant; C.K. Abdul Rahim, Government Pleader, for the Respondent**Final Decision:** Allowed

Judgement

S. Sankarasubban, J.

A question of interpretation of S.R.O. 1728 of 1993 as amended by S.R.O. 429 of 1995 and S.R.O. 595 of 1996 arises in this case. The year in question is the assessment year 1995-96. The assessee is a small scale industrial unit. According to the assessee, as per S.R.O. 429 of 1995, small scale industrial unit whose turnover does not exceed Rs. 50,00,000/- were entitled to deduction of tax. Subsequently, by S.R.O. 595 of 1996, an explanation was added wherein it is stated that where the turnover of the unit exceeds the limit of Rs. 50,00,000/- during the first year in which the turnover crosses the limit higher rate will be applied only on the turnover above Rs. 50,00,000/-. This explanation shall be deemed to have come into force with effect from 1.4.1995. The assessee contended that for the year 1995-96, the assessee is entitled to the benefit of the explanation. But this was rejected by the Authorities. Hence, this revision.

2. S.R.O. 1728 of 1993 was issued by the Government on 4.11.1993. By this notification, deduction in tax was allowed for certain goods. Schedule IV of the above S.R.O. deals with certain items. Item 8 is as follows: "Small Scale Industrial Units whose total turnover does not exceed Rs. 50 lakhs is entitled to deduction on the sale of goods manufactured by them within the State and the rate of tax is 4%. Even though S.R.O. 1728 of 1993 came into force on 4.11.1993, item No. 8 was

introduced only by S.R.O. 429 of 1995 with effect from 1.4.1995. The small scale industrial units whose total turnover does not exceed Rs. 50 lakhs, the rate of tax for the goods manufactured by them within the State was reduced to 4%. An explanation was added to this S.R.O. The Explanation states that where turnover crosses the limit, higher rate will be applied only on the turnover above Rs. 50 lakhs. This Explanation shall be deemed to be come into force with effect from 1.4.1995. The argument of the learned counsel for the assessee is that increase in crossing Rs. 50 lakhs is to be taken into account with regard to the assessment year which comes after the Explanation was added, i.e., after 1.4.1995. On the other hand, learned counsel for the Revenue contended that as a matter of fact, the turnover of the assessee exceeded Rs. 50 lakhs during the previous year 1994-95 and hence, it is not entitled to the benefit of the Explanation.

3. According to us, the interpretation given by the Assessing Authority as well as the Tribunal is not correct. Even though S.R.O. 1728 of 1993 came earlier, so far the small scale units whose turnover is less than Rs. 50 lakhs are concerned, they got concession of reduction in tax only by S.R.O. 429 of 1995 with effect from 1.4.1995. Thus, as per the notification from 1.4.1995, the small scale industrial units whose turnover does not exceed Rs. 50 lakhs are entitled to reduction in goods, which are manufactured within the State. Now the amendment came by S.R.O. 585 of 1996 with effect from 29.7.1996. By that amendment came by S.R.O. 585 of 1996 with effect from 29.7.1996. By that amendment, an Explanation was added. As per this Explanation, where the turnover exceeds Rs. 50 lakhs during the first year in which the turnover crosses the limit, the higher rate will be applied only on the turnover above Rs. 50 lakhs. This Explanation shall be deemed to have come into force with effect from 1.4.1995. It is admitted that during the previous year 1994-95, the turnover of the assessee was above Rs. 50 lakhs and that it crossed Rs. 50 lakhs in 1994-95. So, if 1994-95 is taken into consideration as the first year, then the assessee will be entitled to the benefit. As the assessee rightly contended the exemption has come into force only with effect from 1.4.1995, and hence that should be treated as the starting period. The small scale industrial units whose turnover is below Rs. 50 lakhs are entitled to reduction in tax from 1.4.1995. But such units may cross sometimes Rs. 50 lakhs. It is stated that for the first year in which Rs. 50 lakhs crosses, higher rate will be applied only for the turnover in excess of Rs. 50 lakhs. Hence, the first year will be the first year with respect to S.R.O. 429 of 1995. If that is taken into account, according to us, the assessee will be entitled to the benefit of the Explanation.

4. In the above view of the matter, we set aside the order of the Tribunal and hold that the assessee will be entitled to the benefit of the Explanation for the assessment year 1995-96. Since the matter has been remanded to the Assessing Authority, the Assessing Authority will take this into account.