

STATE OF KERALA

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v.

M/S AKAY FLAVOURS AND AROMATICS LTD.

(Civil Appeal No(s). 7330 of 2009)

FEBRUARY 02, 2023

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**[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]**

*Circulars/Government orders/Notifications: Tax Exemption Notification SRO 1727/1993 – Exemption for period of five years from levy of sales tax on purchase of raw materials – Entitlement to exemption – Commencement of exemption, from the date of approval of the project by the Central Government or from the date of commencement of production – Assessing Authority commuted the period of five years from 16.12.1993 – Held: Letter dated 16.12.1993 on a plain reading appears to be a mere permission – Letter of permission contained standard conditions which described the commercial assent “letter of intent” – Actual approval in clear terms enabling the benefit of exemption was issued on 27.10.1994, when “Green Card” was issued by the Central government – Thus, the term “approval” was issued in the letter dated 27.10.1994 – Date of approval was 27.10.1994 and that would be the reckonable date for grant of exemption under the Notification and the assessee could have availed exemption after 27.10.1994 – Assessee’s case that it commenced production only on 10.10.94 which is the reckonable date, is not persuasive.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.7330 of 2009.

From the Judgment and Order dated 12.11.2008 of the High Court of Kerala at Ernakulam in STR No.388 of 2005.

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With

Civil Appeal Nos.7329/2009, 7328/2009 and 1383/2023.

Pallav Sisodia, Sr. Adv., M. P. Vinod, C. K. Sasi, Abdulla Naseeh V T, Ms. Meena K Poulose, Advs. for the appearing parties.

The Judgment of the Court was delivered by

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**S. RAVINDRA BHAT, J.**

1. Leave granted in SLP(C) No. 36394/2011.

2. This Court while issuing notice and admitting the appeals had observed that an important question of law with respect to interpretation

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- A of SRO 1727/1993 which is an exemption notification issued by the State of Kerala, is involved.

3. The appeals have been preferred both by the State (Revenue) as well as by the Industrial unit. The short controversy is with respect to the entitlement to exemption. The Revenue contends that the exemption limit by five years in point of time was to commence from the date of

- B approval by the Central Government, to the approval to the project. The assesses had on the other hand contended that the exemption would commence from the date of commencement of production.

4. The relevant notification, granting the exemption in question, reads as follows:

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**"SCHEDULE -VI**

Goods the sale of which to Industrial undertakings/ manufacturers/ dealers or the purchase of goods by industrial undertakings/ manufacturers is exempt under sub-clause (5) Clause I.

D	SL No.	Name of goods and the name of industrial undertakings/ manufacturers to which such goods are sold/by which such goods purchased.	Conditions
(1)	(2)	(3)	
1.	xxxxxx	xxxxxx	xxxxxx
2.	xxxxxx	xxxxxx	xxxxxx
3.	xxxxxx	xxxxxx	xxxxxx
7.	xxxxxx	xxxxxx	Xxxxxx
F	8.	Industrial raw materials, Plant and machinery (including components), spare parts, tools and consumables, other than petroleum products falling under item 97 of the First Schedule to the Kerala General Sales Tax Act, in relation thereto to 100% exports oriented units for use in the manufacture of goods.	1. The exemption shall be for a period of five years from the date of approval of such units by the Central Govt. 2. The seller shall obtain and produce a certificate in the form in Annexure-I.

5. The assessee claimed exemption from levy of tax on purchase of raw material such as pepper, ginger, turmeric, etc. to several years. The assessing authority completed assessment of those years granting exemption. Thereafter, it attempted to re-open assessment. Ultimately, G penalty was imposed in the reassessment proceedings. In the meanwhile the State had questioned the observations of the Tribunal with respect to the interpretation of the notification. The Tribunal had concluded that there was no logic in the stand of the revenue that the period of exemption from sales tax on purchase of raw materials should be commuted prior to the setting of the unit. The assessing authority had commuted the H period of five years from 16.12.1993. The Revision to the High Court

was time barred. The High Court refused to condone the delay. Consequently the Revenue is in appeals and the appeal arising out of SLP(C) No.36394 of 2011 is filed by the assessee. The Division Bench had remitted the matter for fresh consideration, even though the single Judge had granted some measure of relief by reducing the penalty.

6. It is contended on behalf of the Revenue by relying on the terms of the notification that in the present case, the Central Government had in fact, granted its approval when the permission letter was issued on 16.12.1993 to the assessee which enabled it to proceed further to import capital goods and start exporting the finished product. It was also highlighted that the assessee appears to have even purchased raw materials as well as plant and machinery after December, 1993 and in this circumstance to allow it the benefit of such exemption for the period before 1995 would be contradictory. Therefore, it was submitted by Mr. Pallav Sisodia, learned Senior Advocate that the date of commencement is an irrelevant factor in the present case. Mr. Joseph Markas, learned Senior Advocate appearing on behalf of respondent-assessee urged that the letter dated 16.12.1993 is only one of permission and was in fact, a letter of intent. Final approval had not been granted by the Central Government as is evident in its terms. Learned counsel in fact relied upon a copy of the "Green Card" dated 27.10.1994 which expressly states that the unit was approved under the special Scheme of the Govt. of India for export oriented unit. He submitted that given that this document was issued in 1994 the assessee took some time to put up its plant after which it commenced production on 01.10.1995 and that the last date is determinative for the commencement of exemption.

7. The key to deciding the controversy in this case is the meaning to be attached to the term approved by the central government which occurs in SRO 1727 of 1993. The relevant part of the exemption notification, which relieves the assessee from paying tax on raw material, plant and machinery including component parts, tools, etc. of item 97 of the First Schedule of the Kerala General Sales Tax Act in relation to 100% EO used for manufacture of goods reads as follows:

"Exemption shall be for a period of five years on the date of approval of such units by the Central Government."

8. In this case, letter dated 16.12.1993 on a plain reading appears to be a mere permission. Apart from setting out the items in respect of which the EOU or the Unit could claim exemption, other conditions included, inter alia, that the entire production had to be exported to General Currency Area/Hard Currency Area countries and that the value addition would be a minimum of 67 percent and that the unit had to maintain value addition in case external commercial borrowing is resorted to.

- A        9. Furthermore, the capital goods limit exemption was also indicated. Importantly, the letter of permission contained standard conditions which described the commercial assent “letter of intent”.
- B        10. It is evident from the overall reading of the document issued by the department of Industrial Development, Central Government on 16.12.1993 to the assessee that it was a mere permission conditioned upon fulfilment of certain specified requirements. Therefore, it was described as a letter of intent. The actual approval in clear terms enabling the benefit of exemption was issued on 27.10.1994, when “Green Card” was issued by the Central government. Therefore, this Court is of the opinion that the term “approval” in the present case was issued in the letter dated 27.10.1994.
- C        11. In these circumstances, this Court is of the opinion that the term “approval” has to relate to unambiguous approval by the Central Government which in the present case was given on 27.10.1994.
- D        12. Therefore, the assessee could have availed exemption after 27.10.1994.
- E        13. The assessee’s contention that it commenced production only on 01.10.1994 which is the reckonable date in the opinion of this Court, is not persuasive. This is because while granting approval, in all manner the assessee was made known of the requirement it has to fulfil. If in a given case the unit holder chooses not to go ahead or start production, he should not be rewarded for such inaction.
- F        14. In these circumstances, the assessee’s contention that the date of commencement should be the date when the exemption also becomes determinable cannot be accepted. Another reason why such a contention is unfeasible is that it injects subjectivity with regard to assessment of proceedings itself. In a given case, the unit holder may be vigilant and set up his or its unit early whereas in another case, the concerned unit-holder may be laid back or drags its feet resulting in the unit not commencing production. In the latter case, though it might have secured approval, the delay in the commencement of production should not be rewarded with an exemption.
- G        15. For the above-reasons, the court holds that date of approval in this case was 27.10.1994 and that would be the reckonable date for grant of exemption under the notification SRO 1727/1993.
16. The appeals are partly allowed in above terms.