
(1992) 02 KL CK 0054
In the High Court Of Kerala
Case No : T.R.C. 135 and 136 of 1991

A. Anthony Swamy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-02-1992

Acts Referred:

Constitution of India, 1950 — Article 366(29A)
Kerala General Sales Tax Act, 1963 — Section 2
Kerala General Sales Tax Rules, 1963 — Rule 8(4)

Citation : (1992) 02 KL CK 0054

Hon'ble Judges : K.T. Thomas, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : Ramachandran Nambiar and S. Rajeev, for the Appellant; V.C. James, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Paripoornan, J.—The same Assessee is the Petitioner in both the cases The Revenue is the common Respondent in the revisions. We are concerned with the assessment years 1985-86 and 1986-87. These revisions are filed against the common order passed by the Kerala Sales Tax Appellate Tribunal, Thiruvananthapuram (in short, the Tribunal) in Tribunal Appeal Nos. 90, 96 and 442 of 1988 and Cross Objection Nos. 23 and 56 of 1988. The common order is dated 25th February 1991.

2. The only question that is canvassed in these revisions is about the interpretation placed by, the Tribunal on S.R.O. No. 968/80-G.O. (Ms) 74/80/TD, dated 29th September 1980. The question is whether the Assessee, Who is the owner of a small scale industry, is entitled to the tax exemption as provided in the above Government Notification. The Tribunal negatived the plea of the Assessee and held that the Assessee's unit is not eligible for exemption as envisaged in the Government notification, S.R.O. No. 968/80. The question is, whether the said interpretation, placed by the Tribunal, on S.R.O. No. 968/80, is

justified in law.

3. We heard Counsel for the Assessee (revision Petitioner) Mr. O. Ramachandran Nambiar, and Counsel for the Respondent (Revenue) Senior Government Pleader Mr. V.C. James. The few facts necessary for resolving the controversy raised herein are as follows: The Assessee is the proprietor of a tyre retreading business. It was registered as a small scale industrial unit. He received Rs. 36,01,127.55 and Rs. 54,47,724.15 as retreading charges for the years 1985-86, and 1986-87, respectively. He claimed 50 per cent of the said charges as labour charges as per Rule 8(4) of the Kerala General Sales Tax Rules (in short, K.G.S.T. Rules), "the balance of 50 per cent was offered as taxable turnover. He claimed exemption on the conceded taxable turnover as per S.R.O. No, 968 of 1980.

4. The assessing authority took the view that the Assessee will be eligible for deduction of only actual labour charges paid by him. Accordingly, a sum of Rs. 40,759.45 and Rs. 52,501.30, as against Rs. 18,00,563.77 and 22,23,862.07 claimed by the Assessee, were allowed. The claim for exemption, based on S.R.O. No. 968 of 1980, was denied. The officer took the view that there is no manufacture involved in retreading business. In appeals the Deputy Commissioner of Sales Tax (Appeals) as per orders dated 2nd November 1987 and 28th January 1988 held that there is a manufacturing process involved in retreading activity and so the Assessee is eligible for exemption as a small scale industrial unit. The assessing authority was directed to re-examine the Assessee's claim of 50 per cent deduction for labour charges. The rate of tax at 8 per cent adopted by the assessing officer was confirmed. The state took up the above matter by filing two appeals before the Tribunal as T.A. Nos. 96 and 442 of 1988. The Assessee filed cross objections in the said appeals as G.O. Nos. 23 and 56 of 1988. The Assessee filed Anr. appeal, T.A. No. 90/1988 for additional reliefs. We are not concerned with the said appeal herein.

5. Counsel for the Assessee Mr. Nambiar stressed the plea that after explanation (3A) to Section 2(xxi) of the Kerala General Sales Tax Act (in short, the Act), a transfer of property in goods (whether as goods or as in some other form) involved in the execution of a works contract shall be deemed to be a sale and on this basis, since the State is enabled to levy sales tax on the price of goods and materials used for works contract, there is a sale of goods and materials and so the Assessee will be entitled to the exemption in respect of the entire consideration received by way of retreading charges. On the other hand, learned Government Pleader contended that after the amendment of a definition by adding explanation (3A) to Section 2(xxi) of the Act, what is taxable is only a transfer of property in goods involved in the execution of a works contract and this involved only deemed sale of the goods involved in the execution of the works contract. This is a case where, as a result of any process, there is not a sale of the goods produced, i.e. the sale of the retreaded tyres. The Assessee will not come within the letter of the notification S.R.O. No. 968/80 - and so the

Tribunal Was justified in denying the relief.

6. On hearing the rival pleas, we are satisfied that the decision of the Tribunal does not require interference in revision. For the purpose of understanding the import of S.R.O. No. 968/80, we have to bear in mind Article 366(29A)(b) of the Constitution of India, Section 2(xxi)(3A) of the Act and S.R.O. No. 968/80. They are :

Article 366(29A)(b) of the Constitution of India :

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say-

* * *

(29A) "tax on the sale or purchase of goods" includes-

* * *

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

Section 2(xxi)(3A) of the Kerala General Sales Tax Act :

2. Definitions: In this Act, unless the context otherwise requires:

* * *

(xxi) "sale" with all its grammatical variations and cognate expressions means every transfer whether in pursuance of a contract or not of the property in goods by one person to Anr. in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge :

Explanation :

* * *

(3A) A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be a sale.

S.R.O. No. 968/80 :

...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 the tax if any collected by such units by way of tax on their sales shall be paid over to Government and that 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 concession 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.-(1) For the purpose of this notification "New Industrial Units 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, but shall not include old industrial units under the small scale industries closed down and reopened under a new banner and style of business, after 1st April 1979.

Explanation.-(2) In computing the fixed capital investments, second hand machinery and equipments procured from within the State of Kerala shall not be considered for sales tax concession.

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

7. The Tribunal, relying on the decision of the Supreme Court in Builders Association of India v. Union of India 75 S.T.C. 370 held that retreading activity is a piece of works contract and it is possible for the State to levy sales tax on the price of goods and materials used in works contract as if there was a sale of such goods and materials. It was further held that tax shall be levied only on the price of goods and materials used in the retreading Activity. The taxable turnover was directed to be recomputed as also the rate of tax, by the assessing officer, after affording an opportunity to the Assessee. The Tribunal concurred with the Deputy Commissioner of Sales Tax (Appeals) and held that there is a manufacturing process, involved in the retreading work, and the retreaded tyre is a new article produced out of old tyre. Even so it was held, the basic question is, whether there is any sale involved in the retreading work. It was found that there is no sale of goods in the retreading business. It is on that basis, relief was denied to the Assessee.

8. We are of the view that even assuming that there is a manufacturing process involved in the retreading work and the retreaded tyre is a new article produced out of old tyre, the fundamental question is, whether the turnover, for which, exemption is sought, is of the goods produced and sold by the small scale industrial unit? It may be that the retreaded tyre is produced. But in the context and collocation of the words what is required is "there should be sale of the goods produced". It cannot admit of any doubt that in view of the amended provisions of the Constitution and the Act, there is a deemed sale of only the materials involved in the retreading and there is no sale of the retreaded tyre as such. In this perspective, it cannot be stated that there is a sale of the goods produced. There is no sale of the retreaded tyre. Unless there is a sale of the goods produced, the small scale industrial unit will not be entitled to the

exemption relied on. The finding of the Tribunal is that there is no sale of the goods produced, i.e., the retreaded tyre. On this basis, we have no doubt that the Assessee has not fulfilled the basic requirement of S.R.O. No. 968/80. It is impossible to say that the plea of the Assessee is for exemption of the tax payable under the Act on the turnover of the sale of the goods produced (retreaded tyre) and sold by the small scale industrial unit.

The common order of the Tribunal, dated 25th February 1991, does not merit interference in revision. The revisions are dismissed.