
(2003) 05 KL CK 0004
In the High Court Of Kerala
Case No : T.R.C. No. 312 of 2001

Alwaye Sugar Agency

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-05-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A(4)

Citation : (2004) 138 STC 487

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai and T.K. Shaij Raj, for the Appellant; Sojan James, Special Government Pleader, for the Respondent

Judgement

G. Sivarajan, J.—The matter arises under the Kerala General Sales Tax Act, 1963 (for short, "the Act")- Assessee is the revision petitioner. State is the respondent. Assessment year is 1993-94.

2. Petitioner is a dealer in Rasna products, furniture and rubber seal. The assessment of the petitioner for the year 1993-94 was completed as per order dated December 28, 1995 (annexure I). In the said assessment the assessing authority had made an addition of 5 per cent of the turnover of furniture for certain defects. The assessing authority had also denied exemption in respect of the sales turnover of furniture sold to Cochin Export Processing Zone. The assessing authority had also denied deduction of the turnover relating to sales return,. Being aggrieved by the assessment, the petitioner filed appeal before the Additional Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax I, Ernakulam, who by its order dated February 3, 1997 (annexure II), dismissed the appeal. In the Second Appeal filed by the assessee, the Tribunal reduced the addition from Rs. 61,715 to Rs. 31,200. However, the claim for exemption, based on a Notification S.R.O. No. 1177/87 and in respect of sales return, were rejected.

3. Sri. C.K. Thanu Pillai, learned counsel appearing for the petitioner submitted

before us that the addition of Rs. 31,200 sustained by the Tribunal towards alleged irregularities is unsustainable, in that the assessee did not purchase ten bundles of steel furniture valued Rs. 15,600 transported in a passenger bus from Bangalore to Ernakulam and detained by the Intelligence Officer, Agricultural Income Tax and Sales Tax, Palghat on September 13, 1993 at Chandranagar, Palghat as alleged. The counsel submitted that when the assessee had denied the said transaction, it was for the officers of the Department to proceed against the consignor and to make the assessment on him. The counsel in support of the said contention, has relied on section 30-B(4) of the Act and rule 57 of the Kerala General Sales Tax Rules, 1963, and circular No. 19/88 (7) (iv). He has also relied on a decision of this Court in *M.T. James v. Agricultural Income Tax and Sales Tax Officer* reported in [2003] 129 STC 338 . The counsel also submitted that the authorities under the Act were not justified in denying the exemption claimed under the Notification S.R.O. No. 1177/87 (S.R.O. No. 1727/93 Schedule VI, Sl. No. 4). Counsel submitted as per Sl. No. 4 of Schedule VI to the said notification, exemption in respect of tax payable under the Act is available to the dealers on their turnover of sale of goods mentioned in column (2) of Schedule VI to Industrial Undertakings/Manufacturers mentioned therein and that column No. 2 specifies industrial inputs, plant and machinery in relation thereto to industrial undertakings in Cochin Export Processing Zone. Counsel submits that the assessee had obtained and produced a certificate in the form in the Annexure II from the purchaser also. The counsel also submits that though furniture will not fall under "industrial inputs", it falls under "plant" and therefore the exemption claimed should have been allowed. The counsel also brought to our notice a decision in *Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh*, which, according to him gives wide meaning to the expression "plant". Counsel further submitted that though the Notification S.R.O. No. 1727/93 was brought into force only from January 1, 1994, the Notification S.R.O. No. 1177/1987 under which the exemption was confined to industrial outputs only was modified by S.R.O. No. 1515/ 1998, which also used the expression in terms of items No. 4 of Schedule VI to Notification S.R.O. No. 1727/1993. However, the counsel has not placed before us the said notification. The counsel also submitted that the authorities and the Tribunal did not consider the case for deduction of the sales return in respect of the sale returns.

4. We also heard the learned Government pleader appearing for the respondent. He submitted that the authorities and the Tribunal considered all the relevant matters with reference to the factual situation and the relevant provisions of the Act and the notification and had rightly denied the exemption claimed under the notification as also the claim for deduction of the sales return. The Government pleader also submitted that the assessee did not have a case either before the assessing authority or before the first appellate authority that the assessee is eligible for exemption under S.R.O. No. 1515/1998 or under S.R.O. No. 1727/1993. He submitted that the assessee is eligible for exemption solely on the basis of S.R.O. No. 1177/1987, which provided for exemption from payment

of tax only in respect of the sale of industrial inputs to industrial units in the Cochin Export Processing Zone. The Government pleader also pointed out that with regard to the addition, the Tribunal had granted substantial relief to the assessee.

5. We have considered the rival submissions. So far as the addition of 5 per cent under furniture for the defects, admittedly, the assessee had placed an order with the Bangalore party for purchase of ten bundles of steel furniture valued at Rs. 15,600 while the goods were under transport in a passenger bus from Bangalore to Ernakulam, it was detained by the Intelligence Inspector, Agricultural Income Tax and Sales Tax, Palghat on September 13, 1993 at Chandra Nagar, Palghat. The goods also got released on furnishing cash security. The case of the petitioner is that it did not receive the said goods. In fact, the proceedings u/s 29-A(4) of the Act for adjudication of the dispute was initiated and a notice was issued to the petitioner. It is stated in the assessment order that though the notice issued by the Intelligence Officer, Agricultural Income Tax and Sales Tax, Palghat, was acknowledged by the petitioner, he did not turn up nor did he seek for any time. On that basis, the assessing authority had concluded that the assessee had virtually admitted the offences alleged. It is on the basis of the said proceedings, the assessing authority had made an addition of 5 per cent for the defects in respect of the turnover of furniture. Though the first appellate authority has rejected the appeal filed by the petitioner, the Tribunal had reduced the addition from Rs. 61,715 to Rs. 31,200. The contention of the counsel for the petitioner as already noted that the assessee had denied the transaction, has not been accepted by both the appellate authorities. In the absence of any material to show that the assessee had prosecuted the penalty proceedings initiated u/s 29-A(4) of the Act, we do find any reason to interfere with the findings entered by the two appellate authorities. Of course, the counsel for the assessee had contended that when the assessee had rejected the transaction, there is an obligation on the authorities under the Act to proceed against the consignor u/s 30-B of the Act read with under rule 57 of the Rules, particularly with reference to the circular issued by the Commissioner. On the facts of the present case, we do not think it necessary to consider the legal aspects in this proceedings.

6. Coming to the question of exemption claimed on the sales turnover of furniture supplied by the assessee to the Cochin Exports Processing Zone, it is seen that the assessee had claimed exemption on the basis of the Notification S.R.O. No. 1177/87. We have perused the said notification. As per the said notification, there is an exemption in respect of the tax payable under the Act on the sale of industrial inputs to industrial undertakings in the Cochin Exports Processing Zone, subject to the production of a declaration prescribed under the said notification obtained from the purchasing unit. In the instant case, the assessee had obtained the declaration and produced it before the assessing authority. However, the exemption was denied on the ground that the furniture is not an industrial input. The present case of the petitioner is that the exemption is

available under S.R.O. No 1727/1993. In item No. 4 of Schedule VI in the said notification, the expression used is "industrial inputs, plant and machinery including components, spares, tools and consumables in relation thereto to industrial undertakings in the Kochi Export Processing Zone." It is the contention of the assessee that the furniture falls under the expression "plant". This notification has come into effect only with effect from January 1, 1994. Thus even if the item furniture falls under plant, it will apply only for the period from January 1, 1994 to March 31, 1994. The counsel then submits that this was the position even for the prior period in view of the amendment of the Notification S.R.O. No. 1177/87 by S.R.O. No. 1515/98. Since neither the assessing authority nor the two appellate authorities had considered the claim of the assessee based on the Notification S.R.O. No. 1515/98 and S.R.O. No. 1727/93, we are of the view that the matter requires fresh consideration. We accordingly set aside the findings on this issue by all the authorities including the Tribunal and remit the matter to the assessing authority to consider this claim for exemption in the light of the Notification S.R.O. Nos. 1515/98 and 1727/93.

7. The next issue is regarding the rejection of the claim for deduction of the turnover of sales return. The Tribunal has entered a clear finding that the assessee had not furnished any material or evidence in regard to the said claim. We also perused the order of the first appellate authority. It is not seen that the assessee had seriously contested the said matter before the first appellate authority. In these circumstances, we do not find any reason to interfere with the said finding of the Tribunal on this point.

8. The resultant position is that the contentions regarding the addition and the sales return are rejected and the question of exemption based on the notifications S.R.O, Nos. 1515/98 and 1727/ 93 is remanded to the assessing authority for fresh consideration in accordance with law.

9. The tax revision case is disposed of in the manner as indicated above.