

(2005) 02 KL CK 0011

In the High Court Of Kerala

Case No : W.A. No"s. 2122, 2134, 2135 and 2153 of 2004

Ashish Kapur

APPELLANT

Vs

Forest Officer and Others

RESPONDENT

Date of Decision : 24-02-2005

Acts Referred:

Citation : (2005) 141 STC 333

Hon'ble Judges : B. Subhashan Reddy, C.J;Kurian Joseph, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai, for the Appellant; Raju Joseph, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—These writ appeals raise a common point regarding the exigibility of sales tax under the Kerala General Sales Tax Act. The facts need not separately be stated as all the matters relate to levy of sales tax under the Kerala General Sales Tax Act, 1963 (hereinafter referred to as "the State Act"). The appellants filed the writ appeals aggrieved by the judgments rendered by the learned single Judge repelling their contention that they are not liable to pay the sales tax under the State Act, but are liable to pay tax only under the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). All the appellants are said to be traders in sandalwood and having sale outlets in other States than Kerala, be it in Uttar Pradesh, Delhi or Haryana and had participated in the sandalwood auction conducted by the Kerala Forest Department in which they were the highest bidders. They were not permitted to take their bid properties unless the sales tax under State Act is remitted. Their contention is that they participated in the auction not to sell the sandalwood timber within the State of Kerala and their sole intention was to transport sandalwood to the respective destinations outside the State of Kerala and the said transactions attract only the provisions of the Central Act and not the State Act. Concisely speaking, their contention is that the transactions have to be treated as inter-

State trade and not an intra-State within Kerala.

2. The learned single Judge went into the matter very comprehensively and did not agree with the contentions raised by the appellants that the transactions are inter-State. Learned counsel appearing for the appellants heavily relied upon the judgments rendered by the Supreme Court in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, , Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu, and State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, . Mr. Raju Joseph, learned Special Government Pleader (Taxes), counters the arguments of the learned counsel for the appellants stating that the situs of the sale is within the State of Kerala and the sale was complete the moment bids of the appellants were accepted and the appellants' intention to carry the auction properties beyond the State of Kerala is immaterial and as the sale was completed within the State of Kerala, the State Act is applicable and that merely because the appellants wanted to carry the timber to their business places outside the State of Kerala cannot be a factor for treating the sale as inter-State.

3. Mr. Raju Joseph, the learned Government Pleader, has cited a Constitutional Bench decision of the Supreme Court in Kil Kotagiri Tea and Coffee Estates Co. Ltd. v. State of Kerala [1965] 16 STC 467 Sc, which held that sale of goods in auctions is complete by the fall of the hammer under the Sale of Goods Act. In the said case, the question was whether the sale was completed within the area of Fort Cochin, which was hitherto in the State of Madras or Willington Island which was in the State of Travancore. Dealing with the question very comprehensively, it was ruled by the Supreme Court authoritatively that since the sale took place within the territorial jurisdiction of Fort Cochin, tax which is leviable by the State of Madras was payable. Learned counsel for the appellants seek to distinguish the ratio laid in the said judgment by relying upon the judgments cited in Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, , Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu, and State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, .

4(a). In Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, , the transaction was sale of coffee. It was in the nature of auction conducted in consonance with auction conditions framed by the Coffee Board as empowered under Coffee Act, 1942. Coffee Board is the body created under the said statute and it exercises powers and discharges functions assigned to it under the Coffee Act and the Coffee Rules framed thereunder. The Act mandates registration of all owners of coffee estates and licensing of dealers and it also imposes control on the sale, export and re-export of coffee into India. There is also price control, and the same has to be fixed by the Coffee Board. The Coffee Board has framed permit conditions for the registered exporters and also the terms and conditions for sale of coffee in the course of export and for participation of the registered exporters in the auction. The registered exporters, who had participated in the auction and after coming out successful in the auction, has to export coffee and

compliance thereof has to be reported to the Coffee Board.

4(b). In *Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu*, it was the sugarcane sale. Co-operative Sugar (Chittur) Ltd., is a sugar factory in Kerala. Because of the paucity of supply of sugar cane from the areas within Kerala, the above sugar factory pleaded with the Kerala Government seeking permission to purchase from adjoining areas in Tamil Nadu. The Kerala Government responded and addressed to Tamil Nadu Government to which the latter had responded and, consequently, issued a Governmental order permitting such sale. In the Government Order issued, there is a clause that, sales tax as levied under the Tamil Nadu General Sales Tax Act, should be paid by the above factory. But, later on, the above sugar factory resiled from the promise of paying sales tax after the sale transaction was completed which led to a dispute. The Madras High Court ruled in favour of Tamil Nadu Government and, ultimately, the matter landed in Supreme Court. The Supreme Court has elaborately considered the matter in the perspective of inter-State trade and held that, in spite of the condition in the Government order obligating the sugar factory to pay sales tax under the Tamil Nadu General Sales Tax Act, such obligation was contrary to the constitutional provisions and, thus, inoperative, even though the sale was within the territory of Tamil Nadu. It was held by the Supreme Court that the purchases made by the sugar factory were inter-State purchase and the sugar factory was permitted to purchase sugarcane from the areas in Tamil Nadu only with a view to and exclusively for the purpose of transporting it to its factory in Kerala and that the movement of the sugarcane from Tamil Nadu to Kerala was an incident and was inextricably connected with the purchase of sugarcane by the factory and that the purchase and transport of sugarcane by the factory were parts of same transaction and that could not be disassociated.

4(c). In *State of A.P. Vs. National Thermal Power Corporation Ltd. and Others*, the Andhra Pradesh Government sought to levy sales tax under the Andhra Pradesh General Sales Tax Act for sale of electricity generated at thermal power station in Ramagundam of Andhra Pradesh to the Electricity Boards of Karnataka, Kerala, Tamil Nadu and Goa. On a challenge made against the said levy in the High Court of Andhra Pradesh, the High Court had set aside the levy. State of Andhra Pradesh had filed appeals before the Supreme Court, but, the Supreme Court upheld the judgment of the High Court on the ground that sale of electricity was inter-State and fell outside the purview of the Andhra Pradesh General Sales Tax Act. It was held by the Supreme Court that no State legislation, nor any stipulation in any contract, can fix the situs of sale within the State or artificially define the completion of sale in such a way as to convert an inter-State sale into an intra-State sale or create a territorial nexus to tax an inter-State sale unless permitted by an appropriate Central legislation.

5. The above three decisions relied upon by the learned counsel for the appellants lay down a legal principle that there should have been a pre-existing and binding obligation on the part of the purchaser of goods in any State to claim

exemption from the State sales tax on the ground of inter-State movement. It is not enough if there is a wish or intention on the part of the purchaser to carry the purchased goods to his place of destination from the State where he had purchased such goods. But, it should be an imposition that should have been in existence even at the time of bidding in any auction or purchasing otherwise, so as to claim the sale as inter-State. It may not be necessary that such an imposition should be in express terms and it is suffice if it is implicit.

6. We have perused the auction conditions in the instant cases. The auction conditions are simple and plain and that of an ordinary offer of sale like public auction on the terms set therein and the acceptance of the same by the bidders. There is no obligation or otherwise for the Forest Department to sell the timber and the appellants to purchase. The appellants were not bound by any statute or contract while bidding in the auction and they were like any other. The appellants knew the tender conditions fully while participating in the auction. They submitted tenders along with security deposit as per Clause 2 of the auction conditions contained in the notification issued in that regard. The said amount is refundable to the unsuccessful bidders after the auction proceedings, but, for successful bidders, it is not refundable and, in fact, it would be forfeited to the Government, in case of default by the successful bidders to comply the conditions of auction. After the auction, the successful bidder shall affix his signature in the auction register so that he shall not go back from the auction terms and that indicates that the sale is complete in so far as the auction purchaser is concerned. Confirmation is the discretion of the officer, subject to the terms of the auction and upon confirmation of sale of the lots, the successful bidder has to remit the full amount and sales tax in the office of the Forest Department and then transit permits will be issued to whatever destination the auction purchaser seeks for. Thus, it is clear that auction conditions do not involve any statutory or other obligations for movement of the sandalwood timber after purchase by the appellants, and the legal principles enunciated by the Supreme Court in the judgments referred to Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore, , Cooperative Sugars (Chittur) Ltd. Vs. State of Tamil Nadu, and State of A.P. Vs. National Thermal Power Corporation Ltd. and Others, , are not at all applicable and it cannot be said that the sandalwood purchased by the appellants is an inter-State sale. We, accordingly, affirm the judgment of the learned single Judge and dismiss the writ appeals. No costs.