

(1997) 07 KL CK 0020

In the High Court Of Kerala

Case No : T.R.C. No"s. 87 and 89 of 1996

Birla Tyres

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A, 5

Citation : (1998) 111 STC 390

Hon'ble Judges : K.K. Usha, J;K.A. Mohamed Shafi, J

Bench : Division Bench

Advocate : S.K. Devi and Deepsur D. Jayan, for the Appellant; V.V. Asokan, Government Pleader, for the Respondent

Judgement

K.K. Usha, J.—These revision petitions are at the instance of the assessee, Birla Tyres, Ernakulam. It is aggrieved by the common order passed by the Sales Tax Appellate Tribunal, Additional Bench, Palakkad dated November 3, 1995 in T.A. Nos. 44 and 45 of 1955. The questions of law raised in these revision petitions are similar and they are as follows :

(i) Whether, on the facts and circumstances of the case and the evidence on record, the finding of the Tribunal that the appellants had attempted to evade the tax due under the KGST Act on the transactions in pursuance of which the stocks of rubbers were being transported is correct or sustainable ?

(ii) Assuming without conceding that the relevant documents and records which constitute the material evidence to substantiate the genuineness of the transaction which occurs and the movement of the goods were not available at the time of checking the vehicles, has not the Tribunal committed a grave error in disregarding such documents when subsequently produced ?

(iii) Admittedly when the records available at the time of checking clearly indicated that the stocks had been despatched from places outside the State to Ettumanoor is not the possibility of the stocks originating within the State or

have been purchased within the State automatically precluded ?

(iv) Has not the Tribunal completely overlooked the fundamental postulate necessary to support the finding of evasion, namely that the situs of the transaction or transactions in pursuance of which the goods moved should be within the State ? Rubber being a commodity liable to tax at the point of last purchase within the State, at the time, can any attempt at evasion of tax take place in this case on stocks brought from outside the State ?

(v) When the vehicles were cleared at the border check posts of Tamil Nadu and Kerala without any objection how can a further checking at Chandranagar lead to any adverse inference ?

(vi) Has not the Tribunal committed a grave error of law in putting the burden of proof in the matter of imposition of penalty on the appellant ? Unless the offence is strictly proved, will be tax payer be liable for the penalty as laid down by the apex Court in [1988] 71 STC 226 (Commissioner of Sales Tax v. Mool Chand Shyam Lal) ?

(vii) In any view when the transport operators have owned the responsibility for the failure to produce the documents at the time of checking, is it just or proper to penalise the appellant ?

2. The assessee is a unit run by Kersoram Industries Limited, a company registered under the Companies Act. Its registered office is at Calcutta and is having number of branches at different places in India. It has an office at Ernakulam and is an assessee under the Kerala General Sales Tax Act, 1963 and the Central Sales Tax Act, 1956 on the files of the Assistant Commissioner (Assessment), Special Circle, Ernakulam. It is alleged that the company is engaged in the manufacture of tyres and tubes. It used to purchase imported natural rubber from State Trading Corporation of India, Madras. It entered into an agreement with Midas Rubbers Private Limited, Ettumanoor, Kerala for processing of the natural rubber with chemicals. The rubber thus processed is used for manufacturing tyres and tubes at the unit at Balasore, Orissa. According to the assessee, as per its advice State Trading Corporation, Madras despatched two truck loads of RSS III imported rubber on June 24, 1992 to Midas Rubbers Private Limited, Ettumanoor. The two trucks were intercepted by the Intelligence Squad No. II, Palakkad. Notices u/s 29A read with Rule 35A were issued. Security at the rate of Rs. 48,672 was demanded for release of each of the truck load. According to the assessee the documents which accompanied the goods would clearly show all the details of the consignor, consignee and the purpose for which it was being transported. It was accompanied by N2 forms issued by the Rubber Board and form No. XX provided under Tamil Nadu General Sales Tax Act. An enquiry was conducted by the Intelligence Officer, Squad No. II, Agricultural Income Tax and Sales Tax, Palakkad. According to the assessee, at the time of hearing on February 2, 1993 it had produced before the officer the following documents :

1. Copy of the mastication agreement entered between Midas and Birla Tyres.
2. Photo copies of the invoice of labour charges dated June 30, 1992, July 15, 1992 and July 31, 1992 from Midas with statement of transportation.
3. Invoice copy from STC to Birla tyres for 150 tonnes.
4. Advice from Birla Tyres to STC to despatch the loads to Midas, Ettumanoor, for mastication.
5. Copies of the N2 forms.
6. Photo copy of the sales tax registration certificate of Birla tyres under KGST Act and CST Act from Assistant Commissioner of Sales Tax, Special Circle, Ernakulam with the endorsement for transport of masticated rubber to Orissa.

3. It is contended by the assessee that annexure V issued by the Intelligence Officer imposing penalty was issued without appreciating the contentions raised by its representative and without looking into the documents produced. The Intelligence Officer had found that there was wilful attempt to evade the payment of tax and a penalty equal to double the amount of tax attempted to be evaded was imposed in exercise of his powers u/s 29(4) of the KGST Act. Aggrieved by the orders imposing penalty the assessee had filed appeals before the Appellate Assistant Commissioner as S.T.A. Nos. 592 and 593 of 1993, These appeals were also dismissed under a common order confirming the imposition of penalty. The second appeals filed before the Tribunal were also dismissed without referring to the documents produced by the assessee before the Intelligence Officer. The learned counsel appearing on behalf of the revision petitioner- assessee submits that there was no materials before the authorities to come to the conclusion that the purchase of the rubber transported in the two vehicles was effected in Kerala. Under these circumstances there was no question of attempt to evade tax since during the relevant period rubber which was shown as entry 110 was liable to tax only at the point of last purchase in the State by a dealer who is liable to tax u/s 5. The learned counsel further pointed out that even the two documents which were admittedly carried in the vehicles would clearly show that the purpose of the transport was only for processing. Specific reference was made by the learned counsel to N2 form issued by the Rubber Board, copy of which is produced as annexure I in the paper book. It is further submitted by the learned counsel that all the authorities have committed a grave error and injustice is meted out to the assessee by not examining the documents produced by it before the Intelligence Officer before he passed the orders imposing penalty.

4. We find merit in the contention raised on behalf of the assessee. From the file of the Intelligence Officer which was made available to us by the learned Government Pleader we find that the documents referred by the assessee in its petition had been produced before the Intelligence Officer. It is unfortunate that neither the original authority nor the appellate authority had cared to look into

those documents before passing an order imposing penalty and before affirming the order. There is also merit in the contention raised by the learned counsel that unless there is material before the authority to show that two truck loads of rubber were purchased by the assessee in Kerala, there is no question of an attempt to evade tax. In view of the fact that rubber during the relevant time was liable to be taxed at the point of last purchase in the State by a dealer who is liable to tax u/s 5 the revision-petitioner is fully justified in contending that the Intelligence Officer should not have taken security for releasing the goods unless there were materials to show that there was an attempt to evade tax.

In the light of the above discussion we set aside the orders imposing penalty in exercise of the powers u/s 29A and the orders passed by the first appellate authority as well as the Tribunal. The Tribunal is directed to examine the matter afresh with reference to the documents already produced by the assessee. An opportunity will be given to both sides to produce additional material, if necessary. The Tribunal will also grant an opportunity of being heard before orders are issued. The revision petitions stand allowed as above. The Tribunal is directed to pass final orders within a period of 3 months. The security furnished by the assessee will continue till the appeals are disposed of by the Tribunal as per the above direction.

A copy of this judgment under the seal of this Court and the signature of the registrar shall be forwarded to the Sales Tax Appellate Tribunal, Additional Bench, Palakkad.

Order on C.M.P. No. 3005 of 1996 in T.R.C. No. 89 of 1996 dismissed.