

(1989) 08 KL CK 0028
In the High Court Of Kerala
Case No : T.R.C. No. 87 of 1989

Braemore Estates Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-08-1989

Acts Referred:

Central Sales Tax Act, 1956 — Section 2

Citation : (1990) 78 STC 263

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : M. Joseph Vellapally, for the Appellant; N.N.D. Pillai, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The revision petitioner is a public limited company. It is carrying on its business, inter alia, of planting and growing rubber in its estates in Kerala. The respondent is the Revenue. We are concerned with the assessment year 1978-79. The Sales Tax Officer, III Circle, Trivandrum, by order dated December 31, 1980, held that the company had effected inter-State sale of rubber from June 1, 1978 to March 31, 1979, for Rs. 1,83,732. No C form was filed. So the turnover was taxable at 10 per cent. In the appeal, the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, by order dated April 2, 1982, affirmed the said decision. The appellate decision was rendered ex-parte. The appellate authority held that the assessee was a limited company doing business in rubber and had admitted that they were dealers. Though they requested for time for production of C forms, they were never produced which resulted in the assessment made by the Sales Tax Officer at 10 per cent. Before the Sales Tax Appellate Tribunal, the revision petitioner-assessee contended that it was not a dealer in rubber under the Central Sales Tax Act, and that the rubber actually sold by it inter-State was produced in its estate and so no tax under the Central Sales Tax Act was exigible. The plea raised was that the assessee-

company was a mere agriculturist in rubber and not a dealer in it. The Sales Tax Appellate Tribunal referred to the definition of the word "dealer" in Section 2(b) of the Central Sales Tax Act, 1956, as amended by Act 103 of 1976, and held that the revision petitioner was a dealer under the Central Sales Tax Act. The Appellate Tribunal held that the definition of the word "dealer" after the amendment would take within its ambit estate owners who sell inter-State the rubber produced in their own estates. It was further observed that the assessee-company sold rubber inter-State and conceded the turnover and the quantum. In the absence of C forms, the Appellate Tribunal held that the turnover was rightly subjected to higher rate of tax u/s 8(2)(b) of the Central Sales Tax Act, 1956. The decision of the authorities below was confirmed. The assessee has come up in revision.

3. We heard counsel. The plea that the revision petitioner-assessee is only an agriculturist and not a dealer when it sold rubber inter-State was raised before us. We are of the view that the said plea is without substance. A Bench of this Court in T.R.C. No. 124 of 1984 by judgment dated June 24, 1987, had occasion to review the decisions on the subject before the amendment of the definition "dealer" in the Central Sales Tax Act as also after the amendment effected by Act 103 of 1976. It was stated therein that in view of the extended inclusive definition of the word "business" in Section 2(aa) of the Act, it would take within its fold a vast number of persons who would not otherwise be dealers in the restricted sense, as stated by the Supreme Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* [1967] 19 STC 1. It was also observed therein that the decision of the Bombay High Court in *Girdharilal Jiwanlal v. Assistant Commissioner of Sales Tax* [1957] 8 STC 732, and the decision of the Supreme Court in *Konduri Buchirajalingam v. State of Hyderabad* [1958] 9 STC 397, indicated or visualised that an agriculturist may also be a dealer even before the amendment of the Central Sales Tax Act by Act 103 of 1976.

4. We are concerned with the following definitions under the Central Sales Tax Act :

"Section 2(aa) "business" includes--

(i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern ; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern."

"Section 2(b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes--

..."

Both the definitions are inclusive ones. Even in the absence of inclusive definition, the word "business" came up for consideration in innumerable decisions. It is not necessary for the purpose of this case to deal with all of them. In *Town Investments v. Department of Environment* [1977] 1 All ER 813 at 819, Lord Diplock stated as follows :

"..... The word "business" is an etymological chameleon ; it suits its meaning to the context in which it is found. It is not a term of legal art and its dictionary meanings as Lindley, L.J. pointed out in *Rolls v. Miller* [1884] 27 Ch. D. 71, at 88 ; [1881] All ER Rep 915 at 920, embrace "almost anything which is an occupation, as distinguished from a pleasure--anything which is an occupation or a duty which requires attention is a business....""

Here admittedly the revision petitioner-assessee is a public limited company incorporated in India and is carrying on the business of planting and growing rubber in its estate in Kerala. The company formed for the said purpose or with the said intention can only produce rubber and market it in a profitable manner. The company is engaged in a regular systematic activity and it cannot at all be stated that such an activity or occupation is pursued for pleasure. The said activity also requires attention. In the light of the inclusive definitions of the words "business" and "dealer" in the Central Sales Tax Act, we have no doubt that the revision petitioner-assessee company is carrying on the business when it sold inter-State the rubber produced in its estate. The Sales Tax Appellate Tribunal was justified in holding that the estate owners who sell inter-State the rubber produced in their own estate will be dealers for the purpose of the Central Sales Tax Act. The revision is without merit. It is dismissed.