
(2001) 09 KL CK 0016

In the High Court Of Kerala

Case No : T.R.C. No"s. 401, 402, 403, 414, 426, 432 and 433 of 2001

Brothers Trading Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-09-2001

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2, 5(2A)
Kerala General Sales Tax Rules, 1963 — Rule 8, 9

Citation : (2004) 138 STC 351

Hon'ble Judges : P.K. Balasubramanyan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai and S. Shaina, for the Appellant; S. Raju Joseph, Special Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, J.—These revisions are by the assesseees. They are commission agents. They sell goods at the last purchase point in the State. Turnover tax is liable to be paid by the penultimate purchaser. According to the petitioners the penultimate purchasers are registered dealers under the Kerala General Sales Tax Act, 1963 and the petitioners are only their agents selling on their behalf and hence they cannot be assessed to turnover tax on the goods so sold. The Tribunal, after referring to the decisions of the Supreme Court in *Cardamom Planters' Association, Bodinayakannur Vs. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam*, and in *State of West Bengal v. O.P. Lodha* [1997] 105 STC 561(sc) : (1997) 5 KTR 207 and the decision of this Court in *Kerala Produce and Export Company Vs. State of Kerala*, held that the petitioners are liable to be assessed for turnover tax. It is this finding that is challenged in these revisions.

2. On going through the definition of "dealer" in section 2(viii), 1 "taxable turnover" in 2(xxv), "total turnover" in 2(xxvi), and "turnover" in 2(xxvii), of the Act, rules 8 and 9 of the Kerala General Sales Tax Rules, 1963, the decisions of

the Supreme Court in *State of Madras Vs. The Cement Allocation Co-ordinating Organisation, ; Cardamom Planters' Association, Bodinayakannur Vs. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam, and State of West Bengal v. O.P. Lodha* [1997] 105 STC 561(sc), it is clear that the petitioners, who are commission agents, are liable to be assessed under the Act since they satisfy the definition of a dealer occurring in the Act. Rule 9(k)(ii) of the Kerala General Sales Tax Rules, 1963, specifically provides that the turnover of sales or purchases made by an agent for and on behalf of any principal in respect of which tax has been paid by the principal could be excluded while taking in the taxable turnover of the agent. The Notification S.R.O. No. 717 of 1988 also provides the mode in which a dealer can claim exemption from levy of turnover tax. It has to be noted that the petitioners have not attempted to comply with either the requirements of rule 9(k)(ii) of the Rules or of the notification. The argument of learned counsel that a distinction must be kept between the goods taxable at the sale point and the goods taxable at the purchase point cannot be accepted in the light of the decisions above referred to. In fact, the very same argument was negated by a division Bench of this Court in *Kerala Produce and Export Company, Kozhikode v. State of Kerala* [1998] 111 STC 357(ker) : (1997) 5 KTR 221. With respect, we see no reason to differ from the reasoning and the conclusion of the division Bench of this Court.

In the light of this position, we are satisfied that no interference is called for with the decision of the Tribunal in these cases. The revisions are hence dismissed.