**(1980) 12 KL CK 0014**

**In the High Court Of Kerala**

**Case No :** T.R.C. No. 204 of 1979

C.A. Ouseph and V.J. Paul — APPELLANT

Vs

State of Kerala — RESPONDENT

**Date of Decision :** 02-12-1980

**Acts Referred:**
Kerala General Sales Tax Act, 1963 — Section 10, 5, 6

**Citation :** (1981) 48 STC 311

**Hon'ble Judges :** V. Balakrishna Eradi, C.J;K. Bhaskaran, J

**Bench :** Division Bench

**Advocate :** V.M. Kurien and K.K. Gangadharan, for the Appellant; The Government Pleader, for the Respondent

**Final Decision :** Allowed

## Judgement

V. Balakrishna Eradi, C.J.—The revision petitioner before us is a dealer in country drugs and some other commodities registered under the Kerala General Sales Tax Act, 1963 (for short, the Act). For the assessment year 1974-75 the revision petitioner''s assessment was completed by fixing the taxable turnover at Rs. 18,69,566.31, which included the turnover amounting to Rs. 37,288 relating to sales of dried ginger, pepper and kacholam effected by the petitioner to the Arya Vaidya Sala, Kottakkal, and Kakkassery Oushadhasala, Kunnamkulum. Dried ginger, pepper and kacholam are covered by items Nos. 58, 59 and 65 of the First Schedule to the Act. The taxable point in relation to transactions in this case is the point of last purchase in the State by a dealer who is liable to tax u/s 5. The revision petitioner had produced before the assessing authority declarations in form 25 obtained from the aforementioned two purchasers showing that they were the last purchasers in the State. On the basis of those declarations the revision petitioner contended that it could not be taxed in relation to the turnover relating to the sales effected to the Arya Vaidya Sala and Kakkassery Oushadhasala since the petitioner was not the last purchaser of the goods within the State. The assessing authority rejected the said contention stating that the declarations furnished in form 25 did not show that "the last purchaser has accepted the tax liability". It was on the said ground that the assessing authority treated the revision petitioner as liable to tax in respect of the disputed turnover of Rs. 37,288 relating to the purchase of dried ginger, pepper and kacholam sold to the aforementioned two pharmaceuticals.

2. Though the petitioner carried the matter in appeal before the Deputy Commissioner and later in second appeal before the Kerala Sales Tax Appellate Tribunal, those appeals were dismissed and the view taken by the assessing authority was confirmed by the first and second appellate authorities. Hence this revision petition by the assessee.

3. It is an undisputed fact that the revision petitioner is not the last purchaser within the State in respect of the goods in question. They had sold those goods to the two pharmaceutical concerns aforementioned. The Tribunal has relied on Notification S.R.O. No. 41/69 dated 16th December, 1968, published in the Kerala Government Gazette dated 28th January, 1969, for holding that the two pharmaceutical concerns aforementioned to which the revision petitioner had sold the goods in question could not be regarded as dealers liable to tax u/s 5, and hence the taxable point has to be fixed as the point of purchase of the goods by the revision petitioner. Notification S.R.O. No. 41/69 reads:

S.R.O. No. 41/69. In exercise of the powers conferred by Sub-section (1) of Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable under the said Act by pharmacies and every dealer in cooked food and including coffee, tea and like articles, served in a hotel, restaurant or any other place, in regard to their turnover relating to the purchase of pepper, green and dried ginger, sugarcane, lemongrass oil, nuxvomica, laurel oil, kacholam, prawns, lobsters, frogs and frog legs, cashew-nut with or without shells, coconut, copra and groundnut, which are liable to tax at the point of last purchase in the State subject to the condition that the goods so purchased are used by them in the manufacture or preparation of goods for sale by them." (Notification dated 16th December, 1968, in Kerala Gazette No. 4 dated 28th January, 1969, superseded in S. R. O. No. 987/76).

This is a notification issued by the State Government in exercise of the power conferred by Section 10 of the Act. Sub-section (1) of that section empowers the Government, if they consider it necessary in the public interest, to make an exemption or reduction in rate, in respect of any tax payable under the Act and the grant of such exemption is to be by the issuance of a notification in the Gazette. In accordance with the terms of the section, what the Government has actually done under the notification relied on by the Tribunal is also to "make an exemption in respect of the tax payable under the said Act by pharmacies...". It is also to be noted that the exemption granted under the notification is not absolute in character but is expressly made subject to the condition that the goods so purchased are used by the pharmacies in the manufacture or preparation of goods for sale by them. The notification, therefore, does not affect the taxability of the transaction of purchases effected by the pharmacies. On the other hand it proceeds on the basis that the tax is payable under the Act in respect of such transactions but, in the public interest, the Government has considered it necessary to grant a conditional exemption to the pharmacies from payment of the tax so due. We are therefore unable to uphold as correct the view taken by the Tribunal that the purchase of the goods effected by the pharmacies was not the last purchase of the goods in question within the State by a dealer liable to tax u/s 5 of the Act. The transactions of purchase were taxable under the Act at the time when these transactions were entered into and the effect of the notification is only to grant a conditional exemption to the pharmacies (purchasers) from payment of the tax so due by them u/s 6 of the Act. Under the terms of the notification the benefit conferred on the pharmacies was only that they could apply for the grant of exemption from payment of the tax on their proving to the satisfaction of the assessing authority that the dried ginger, pepper, kacholam, etc., purchased by them had been used by them in the manufacture or preparation of goods for sale. The view taken by the Tribunal that the purchases effected by the pharmacies were not purchases by dealers liable to tax u/s 5 cannot therefore be accepted as correct. Thus the purchases made by the two pharmacies were the last purchases within the State by dealers liable to tax u/s 5. There was therefore absolutely no warrant for treating the purchases effected by the revision petitioner as the last purchases of the goods in question and subjecting the revision petitioner to tax in respect of the disputed turnover. We accordingly allow this revision petition, set aside the orders passed by the Tribunal, the Deputy Commissioner and the Sales Tax Officer and direct the Sales Tax Officer to recompute the tax liability of the revision petitioner by excluding from liability to tax the disputed turnover of Rs. 37,288 relating to the purchases of dried ginger, pepper and kacholam which were later sold by the petitioner to the Arya Vaidya Sala, Kottakkal, and the Kakkassery Oushadhasala. The parties will bear their respective costs.

 