
(2011) 07 KL CK 0176

In the High Court Of Kerala

Case No : S.T. Rev. No's. 247 and 248 of 2005

Cadbury India Limited

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2012) 49 VST 98 : (2012) 49 VST 134

Hon'ble Judges : P. S. Gopinathan, J;C. N. Ramachandran Nair, J

Bench : Division Bench

Advocate : A. M. Shaffique, E. K. Nandakumar, A. K. Jayasankar Nambiar and Smt Priya Mahesh, for the Appellant; Mohammed Rafeeq, Government Pleader, for the Respondent

Judgement

C. N. Ramachandran Nair, J.—The connected revision cases are filed by the petitioner challenging the common order of the Tribunal sustaining sales tax assessment on the purchase of coco by the petitioner-company for the assessment years 1997-98 and 1998-99. We have heard counsel appearing for the petitioner and Government Pleader for the respondents. The petitioner is a leading manufacturer of coco based chocolates and allied products. Raw coco beans are purchased by the petitioner directly and also through agents appointed by them. The agents purchase coco from farmers as well as from small traders and under agreement between them and the company, agents deliver coco at the godowns of the company located at various centres. There is written agreement between the company and the agents providing for reimbursement of price paid to farmers/dealers, all the cost incurred by the agents and also commission payable to them at the agreed rate. Coco beans is admittedly an item taxable at the point of last purchase in the State as provided in the First Schedule to the Kerala General Sales Tax Act. Even though the petitioner claimed that the purchase is made through agents to whom commission only was paid, the assessing officer noticed that the petitioner's claim is contrary to facts because all the agents are registered dealers who account the transactions as their purchases and sales, In order to claim exemption from tax on purchase of coco

made by the agents for sale to the petitioner, the petitioner issued form No. 25 to the agents who in turn issued form No. 25 to the dealers from whom they purchased coco. Further, the agreement between the company and the agents establishes that the company is liable to pay the agent the entire cost incurred by them until delivery of the goods at the stockyard of the company in the various centres and besides reimbursement of the cost, the company also pays certain amount which is termed as commission in the agreement. The assessing officer found that the transaction the company has with the agents is outright purchase and the bifurcation of the price is only an arrangement between the parties to avoid payment of tax on the actual purchase cost incurred by the company. The assessing officer, first appellate authority as well as the Tribunal after examining the terms of the agreement and the accounts came to the conclusion that the agency agreement is only a device to avoid payment of tax on the taxable turnover which is the cost incurred by the company until goods reach their stockyard where delivery is given by the agents at the cost of the company.. What we notice is that though the entire cost reimbursed to the agent by the company may come within the description of "purchase turnover", the assessing officer has added only 15 per cent of other reimbursements to purchase price reimbursed by the company to the agents for payment to farmers, and dealers. Since the assessment confirmed in first appeal is reconfirmed by the Tribunal in second appeal, the company has come up with, these revision cases.

2. The contention raised by the counsel for the petitioner is that the transaction between the company and the agents is an agency agreement whereunder company reimburses purchase cost and expenses and the agents are paid commission. However, the Government Pleader referring to the Tribunal's findings contended that the transaction is a pure arrangement of purchase and sale between the parties and issuance of form No. 25 by the company to the agents will clearly establish this position. We are in complete agreement with this argument because form 25 prescribed under rule 32(14) of the KGST Rules is to help chain dealers to avail of exemption on their purchases leaving the last dealer to pay tax in terms of the taxable entry in the Schedule which is last purchase. In fact, admittedly all the agents of the petitioner are registered dealers who on purchase of coco beans issue form No. 25 to the dealers from whom they purchased and after making sales to the company, they obtained form 25 issued by the company and on production of the same, the agents got sales tax exemption. Rule 32(14) is as follows :

Every dealer in goods taxable at the point of last purchase in the State shall, if he is not liable to tax on such goods by reason of his not being the last purchaser in the State, obtain a declaration in form 25 from the person to whom he has sold the goods. A blank book of declaration of form 25, shall be obtained from the assessing authority, on payment of a fee at the rate of seventy rupees per book of 50 forms. Every purchaser shall issue such a declaration to the seller. The declaration so obtained shall be submitted in duplicate to the assessing

authority on or before the fifteenth of the month succeeding that to which the sales relate along with a statement of such declarations showing the name and addresses of the dealers to whom the goods were sold with the particulars of sale bill, quantity, and value, and the total turnover covered by such declarations.

3. What is clear from the above is that statutory form 25 is issued only when a dealer purchases goods from another dealer and the declaration is to the effect that the selling dealer is not the last purchaser liable to pay tax. Under the scheme of the Act and Rules, unless the purchaser who issued form 25 resells the goods to another dealer in Kerala and obtain form 25 issued by such dealer, he will be liable to pay tax as the last purchaser. In our view, the petitioner after issuing form 25 prescribed under rule 32(14) could not even be allowed to raise the contention that it is issued for administrative purposes. Which was the argument rendered by the petitioner before the lower authorities and before us. When a form prescribed under the statutory rule is issued, the contents therein binds the dealer who issues it and so much so, the petitioner does not have a right to contend that the transactions against which the form 25 were issued to the agents do not represent actual purchases. Further, the Tribunal after examining the terms of the agreement found that the purchase is at the cost and risk of the agent and the company takes over the responsibility over the goods only on delivery at the stockyard of the company. So much so, whatever is the arrangement made between the company and their agents for bifurcation of price, such as purchase cost paid to farmers/ dealers, freight and cost incurred and margin paid by way of commission, the whole transaction is purchase by the company and the entire cost reimbursed by the petitioner to the agents, in our view, happens to be the purchase cost which is nothing but purchase turnover of the goods. In our view, the assessing officer was lenient in favour of the petitioner because he has only estimated 15 per cent of the reimbursements over and above purchase cost reimbursed as part of taxable turnover to be added to purchase cost. In spite of the factual position and the issuance of statutory declaration by the petitioner to their procuring agents stating that the petitioner purchased the goods from them, counsel for the petitioner submitted that the test of sale provided under Explanation 5 to section 2(xxi) of the KGST Act is not satisfied. Explanation 5 to section 2(xxi) of the Act sets out the circumstances under which transaction between agent and principal is treated as sale. The said Explanation reads as follows : Explanation 5.--Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, two independent sales or purchases shall, for the purposes of this Act, be deemed to have taken place.

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser; or

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found in either of the cases aforesaid,--

- (i) to have sold the goods at one rate and to have passed on the sale proceeds to his principal, at another rate; or
- (ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate; or
- (iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him on behalf of his principal; or
- (iv) to have acted for the fictitious or non-existent principal."

We do not think the above statutory provision is in conflict with contract of agency covered by the Indian Contract Act. The fundamental condition of agency arrangement is that the principal will take the loss and consequences for bona fide acts done by the agent in the course of purchase or sale made by the agent on behalf of the principal. In this case admittedly the agent purchased the goods with his funds and at his own cost and risk and transports it to the godown of the petitioner and only after the petitioner accepts the goods and takes over possession, the goods become the petitioner's property. We do not know how the petitioner can contend that the purchase made from farmers and dealers by the agent with his funds and at his own cost and risk can be treated as purchase on behalf of the petitioner. The goods procured by the agents are only sold to the petitioner against form 25 issued by the petitioner. Though the arrangement is apparently stated as agency, the transactions prove otherwise. The agency arrangement appears to be only a scheme for splitting up of price between purchase cost, transport cost, commission, etc., to avoid tax on part of the turnover. In our view, this is a clear attempt to reduce incidence of tax on the actual turnover. We, therefore, cannot accept the contention of the petitioner that the conditions provided in Explanation 5 to section 2(xxi) are not satisfied. In view of the findings above, we dismiss the S. T. Revision cases.