

(2002) 08 KL CK 0048
In the High Court Of Kerala
Case No : OP No. 24132 of 2002 (W)

C.M. Beevi Amma and Vykilazhikam Charitable Centre

APPELLANT

Vs

The Divisional Forest Officer, Timber Sales Division, The
Depot Officer, Government Timber Depot, Pathanapuram, The
Depot Officer, Tuet, The Additional Sales Tax Officer and The
Sales Tax Officer

RESPONDENT

Date of Decision : 29-08-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(1), 5(3)

Citation : (2002) 08 KL CK 0048

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : V.P. Sukumar, for the Appellant; Raju Joseph, Spl. Government
Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The question relates to the concessional rate of tax payable by a dealer in respect of sale of industrial raw materials u/s 5(3) of the Kerala General Sales Tax Act (for short the Act) for the period from 1.1.2000. The answer to the said question is contained in Section 5(3) itself. However the difficulty has arisen only because of the successive amendments that are being made in the form of Taxation Laws (Amendments) Ordinance, General Sales Tax (Amendment) Act, Finance Acts, etc. The result is that those engaged in the administration of sales tax laws are not sure about the rate of tax payable at a particular point of time. This is what happened in this case also.

2. u/s 5(3) of the Act as it stood prior to 1.1.2000 the tax payable by a dealer in respect of any sale of industrial raw materials, components parts, containers or packing materials which are liable to tax at a rate higher than two and a half percent but higher than 4% when sold to industrial units for use in the production of finished products inside the State for sale shall be at the rate of

only two and a half per cent and where the tax liability exceeded four per cent then only at the rate of three per cent.

3. Clause (i) of Sub-section (3) of Section 5 of the Act was amended by the Kerala Taxation Laws (Amendment) Ordinance, 1999 (Ordinance No. 7 of 1999) with effect from 1.1.2000. Clause (i) of Sub-section 5(3) except the proviso reads as follows:

"(i) Notwithstanding anything contained in Sub-section (1), the tax payable by a dealer in respect of any sale of industrial raw materials, component parts, containers or packing materials which are liable to tax at a rate higher than four per cent when sold to any industrial unit for use in the production of finished products inside the State for sale or for packing of such finished products inside the State for sale, as the case may be, shall be at the rate of four per cent on the taxable turnover relating to such industrial raw materials, component parts, containers, or packing materials as the case may be."

By the said amendment the concessional rate was made available only in cases where the tax payable by a dealer in respect of any sale of industrial raw materials, etc. which are liable to tax a rate higher than 4% when sold to industrial units and the concessional rate was 4%. This was the rate for the period from 1.1.2000. However, by the Kerala General Sales Tax (Amendment) Act, 2000 (Act 8 of 2000) Clause (i) of Sub-section (3) of Section 5 except the proviso was substituted with retrospective effect from 1.1.2000 as follows:

"(i) Notwithstanding anything contained in Sub-section (1), the tax payable by a dealer in respect of any sale of industrial raw materials, component parts, containers or packing materials which are liable to tax at a rate higher than three per cent when sold to any industrial unit for use in the production of finished products inside the State for sale or for packing of such finished products inside the State for sale, as the case may be, shall be at the rate of three per cent on the taxable turnover relating to such industrial raw materials, component parts, containers, or packing materials as the case may be."

By virtue of the above amendment the concessional rate of tax u/s 5(3) of the Act from 1.1.2000 is only at the rate of 3%.

4. There is no change in the main part of Section 5(3)(i) of the Act thereafter as on today.

5. Now the position is clear, that the concessional rate of tax payable u/s 5(3) of the Act for the period from 1.1.2000 is only 3% for those who satisfied the requirements of the said sub-section, viz., production of Form 18 declaration prescribed under Rule 28 of the Kerala General Sales Tax Rules. The amendment to Section 5(3)(i) of the Act made as per Ordinance No. 7 of 1999 enhancing the concessional rate of tax from 3% to 4% which was in force from 1.1.2000 till 21.3.2000 on which date Act 8/2000 received the assent of the Governor did not make any dent since the Amendment Act 8/2000 was made effective with

retrospective effect from 1.1.2002. Even if any tax was collected on the basis of the enhanced rate of 4% as per Ordinance No. 9 of 1999 the tax collected in excess of 3% has to be refunded in view of Act 8 of 2000 fixing the tax at 3% with effect from 1-1-2000.

6. Both the petitioners are running timber factories registered with the Kerala Khadi and Village Industries Board, Thiruvananthapuram. They are engaged in the business of manufacture and sale of wooden articles such as doors, windows, etc. They are registered dealers under the Kerala General Sales Tax Act on the files of the 4th and 5th respondents respectively.

7. For the manufacture of wooden articles mentioned above, they purchase timber in public auction from the forest depots under the 1st respondent. Petitioner had purchased certain quantities of timber in public auction after 1.1.2000. The 2nd and 3rd respondents had collected tax on such sales to the petitioners only the rate of 4% since the petitioners had produced Form 18 declarations in respect of the said purchase. The 1st respondent, after verification of the records for the period from 1.1.2001 to 30.9.2001 (receipts) issued a communication No. A7-B62/2001 dated 9.7.2002 addressed to the 2nd respondent stating that the Sales Tax Act has been amended with effect from 1.1.2000 enhancing the rate of tax u/s 5(3) of the Act from 3% to 4% with effect from 1.1.2000 and that in the auction sale of timber to the 1st petitioner the 2nd respondent had collected only 3% tax. The 2nd respondent was directed to collect the difference in tax from the 1st petitioner and to report the matter to the 1st respondent. Other directions are also issued. The 2nd respondent accordingly directed the 1st petitioner to collect the chalan and to remit the short payment. The 2nd petitioner had also received a similar communication Ext. P2 from the 3rd respondent wherein it is stated that the 2nd petitioner should remit the sales tax at the rate of 4% on the timber bid by him in the auctions held in the said depot along with the submission of Form 18 declaration.

8. It is in the above circumstances, the petitioners have filed this Original Petition seeking for a direction to respondents 1 to 3 to collect tax only at the rate of 3% on the sales of timber effected by them on production of Form 18 declaration by the petitioners. By way of amendment of the Writ Petition they also sought to quash Exts. P1 and P2 communications.

9. I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader (Taxes) appearing for the respondents. The Special Government Pleader fairly conceded that Exts. P1 and P2 communications happened to be issued by the respondents 1 to 3 on the basis of the amendment to Section 5(3)(i) of the Act made by Ordinance No. 7 of 1999 without noticing the subsequent amendment to Section 5(3)(i) made by Act 8 of 2000 with retrospective effect from 1.1.2000. He submitted that the rate of tax u/s 5(3) of the Act from 1.1.2000 in view of Act 8/2000 is only 3% on production of Form 18 declaration.

10. I have already held that the concessional rate of tax payable u/s 5(3)(i) of the Act is only at the rate of 3 percent on production of Form 18 declaration for the period from 1.1.2000. Exts. P1 and P2 communication in so far as it took the stand that for the period from 1.1.2000 the rate of tax u/s 5(3) of the Act is 4% is contrary to law which cannot be sustained. Accordingly I quash Exts. P1 and P2 communication to the said extent.

11. I am sure that the Commissioner of Commercial Taxes, Thiruvananthapuram will take note of such situations and see that appropriate steps are taken to avoid such situations in future.

The Original Petition is allowed as above.