(2009) 12 KL CK 0120

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 269 and 270 of 2009

Combined Foods Pvt. Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

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

Citation : (2010) 1 KLJ 80 : (2010) 30 VST 541

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.K. Asokan and K.S. Sajeev Kumar, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The main question raised in the connected revisions filed by the assessee is whether they are liable to pay tax u/s 5(3)(ii) of the Kerala General Sales Tax Act, 1963 for the differential tax on purchase of various items used in the manufacture of ice-cream which was stock transferred to outside State for sale in other States. The petitioner is a manufacturer of ice-cream under brand name and for manufacture of ice-cream, the petitioner purchased various raw materials and packing materials by availing of concessional rate u/s 5(3)(i) of the KGST Act. According to the petitioner, prior to the amendment by the Finance Act, 2000 with effect from April 1, 2000, the proviso to Section 5(3)(i) made a condition that the items manufactured or packed with the raw materials or packing materials purchased by availing of concessional rate should be sold within the State or from Kerala as inter-State sale, so that the product suffers sales tax in Kerala either under the KGST Act or under the CST Act. However, from April 1, 2000 the proviso was deleted and consequently even if the item manufactured or packed with raw materials or packing materials purchased by availing of concessional rate is stock transferred outside the State, still the differential tax on raw material or packing material cannot be demanded from the manufacturing unit which availed of the concessional rate u/s 5(3)(i) of the Act. The lower authorities, however, rejected the claim probably because the main Clause talks about sale of the finished products as a condition for eligibility for concessional rate on raw material or packing material. We have heard Counsel appearing for the assessee and the Government Pleader appearing for the respondent.

2. The relevant provision after the amendment with effect from April 1, 2000 is extracted hereunder for easy reference:

5(3)(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:

Provided that the provisions of this Clause shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form.

(ii) Where any dealer, after purchasing any goods by furnishing a declaration as mentioned in the proviso to Clause (i), fails to make use of the same he shall be liable to pay the tax that would have been payable by him, had the declaration not been furnished, less the tax, if any, paid by him and the same shall be levied and collected as if it is a tax due from him.

3. The first proviso that was there in Section 5(3)(i) up to March 31, 2000 provided that an industry availing of concessional rate for purchase of raw materials or packing materials should sell the products in Kerala or from Kerala so that tax is paid either under the local Act or under the CST Act for availing of concessional rate on raw material or packing material used for manufacture or packing of such goods. However, the said proviso was deleted and the purpose of deletion as conveyed by the Minister while presenting the Budget on March 14, 2003 is as follows :

202. In order to promote manufacturing activity within the State, the concessional rate of three per cent u/s 5(3) of the KGST Act will be made applicable to all purchases of raw materials used for manufacture of goods within the State irrespective of whether the product is liable to tax or not. Additional revenue of Rs. 2 crores is expected by preventing trade diversion.

4. It is obvious from the above that the amendment was made to take away the specific condition that existed until then, which provided that products manufactured or packed with the raw material or packing mate rial purchased at

concessional rate should suffer tax either under the KGST Act or CST Act. Therefore, in our view, after the deletion of the above proviso with effect from April 1, 2000, the industrial units purchasing raw materials or packing materials at concessional rate are not liable to pay tax u/s 5(3)(ii) even if the goods manufactured or packed with the raw material or packing material purchased at concessional rate of tax is stock transferred out of the State or exported from the State. The next question to be considered is whether the main Clause still imposes the condition that the goods produced or packed should be sold in or from Kerala for availing of concessional rate for the purchase of raw materials or packing materials for its manufacture or packing. In our view, the only condition for availing of concessional rate is manufacture or packing of goods within the State and it''s sale may take place anywhere. The production or packing of goods for sale only means that the goods are for the purpose of trade and not for own consumption. In other words, if goods are manufactured or packed for own consumption and not for sale, then still probably the industrial unit purchasing raw material or packing material for manufacture or packing of goods other than for sale will not be entitled to concessional rate. We, therefore, allow the revisions by reversing the orders of the Tribunal and that of the first appellate authority and direct the assessing officer to revise the assessment by cancelling the demand of differential tax u/s 5(3)(ii) of the Act for the raw materials or packing materials purchased at concessional rate which are used in the manufacture or packing of goods for stock transfer.

5. The next question pertains to the assessment of old freezers which is an item taxable under the Fifth Schedule. The petitioner''s case is that the freezers were purchased from SSI units by availing of concessional rate and, therefore, they are entitled to exemption on second sales. Exemption on second sales will be available on the Fifth Schedule items only if tax is paid at the rate applicable on sale by a dealer to customer or to any other dealer not for sale. Generally speaking, second sale exemption is available only when full rate of tax is paid on the purchase in the State. However, the question to be considered is whether purchase from SSI unit by availing of concessional rate will be sufficient compliance of payment in terms of column 8 of the Fifth Schedule. Since none of the authorities have considered the scope of exemption claimed by the assessee with reference to documents, we set aside the orders of the Tribunal and that of the first appellate authority on this issue and remand the matter to the assessing officer for reconsideration after giving opportunity to the assessee. The sales tax revisions are allowed to the extent indicated above.

