(2007) 12 KL CK 0030

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 498, 499 and 500 of 2004

C.T. Kochouseph APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-12-2007

Acts Referred:

Constitution of India, 1950 — Article 133, 134A
Kerala General Sales Tax Act, 1963 — Section 10, 5, 5A, 5A(1)

Citation : (2007) 12 KL CK 0030

Hon'ble Judges : H.L. Dattu, C.J;K.M. Joseph, J

Bench : Division Bench

Advocate : Chacko George, for the Appellant; Government Pleader, for the Respondent

Judgement

H.L. Dattu, C.J.—Since the questions of law involved in all these revision petitions are identical, these petitions are clubbed, heard and disposed of by this common order.

2. Incidently, petitioner is also common in all these revision petitions.

3. These revision petitions pertain to the assessment years 1992-1993, 1993-1994 and 1994-1995.

4. The assessee, being aggrieved by the orders passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A. Nos. 1026 of 2000, 531 of 1999 and 669 of 2000, is before us in these revision petitions.

5. In all these revision petition, the petitioner has raised the following questions of law for our consideration and decision. They are as under:

(1) Whether single point goods purchased by the assessee, from the tax-exempted registered dealers and sent out of State, for consignment sales (otherwise than in the course of inter-state trade or commerce) are liable to levy of purchase tax u/s 5-A(1)(c) of the KGST Act?

(2) Whether the Appellate Tribunal erred, in not directing the assessing authority, to segregate the goods sent out of State, between goods purchased from tax-exempted registered dealers and goods purchased from tax-paying registered dealers and to confine the levy of purchase-tax u/s 5-A(1)(c), to goods purchased from tax-exempted dealers?

6. In so far as the second question is concerned, the said question was never agitated before the Tribunal. What is not urged and argued before the Tribunal cannot be urged and argued before this court in these revision petitions. This position is well settled by several decisions of this court. Therefore, we decline to answer the said question of law framed by the assessee.

7. In so far as the first question of law is concerned, in our opinion, the same is also no more debatable in view of the decision rendered by a Division Bench of this court in the case of Deputy Commissioner of Sales Tax, (Law), Board of Revenue (Taxes) v. C.T. Kochouseph 136 STC 545. In the said decision the court has stated as under:

The purchase of the goods manufactured by a small-scale industrial unit which is exempted from tax and their subsequent disposal either within the State or outside the State by the dealer attracts Section 5A provided the conditions specified in Clauses (a) to (c) are satisfied. In this view of the matter there is no discrimination between goods sold in the State or despatched outside the State either by way of stock transfer or for consignment sales.

The court further held,

The respondent-dealer purchased voltage stabilisers from charitable institutions and small-scale industrial units which were exempted from payment of sales tax under notifications issued u/s 10 of the Kerala General Sales Tax Act, 1963. The dealer sold a substantial portion of such purchases locally but also despatched a portion of such purchases outside the State as stock transfers to branches. The question was whether the turnover of voltage stabilisers, a single point commodity taxable at the point of first sale in the State by a dealer liable to tax u/s 5, purchased by the dealer from registered dealers who were exempted from payment of sales tax by notification issued u/s 10 of the Act, was liable to tax u/s 5A of the Act when it was despatched outside the State either by way of stock transfer or for consignment sales:

Held, that the circumstance that small-scale industrial units were exempted from payment of sales tax in respect of their sale was a circumstance falling u/s 5A of the Act and consequently the levy of purchase tax u/s 5A in respect of the purchases effected by the dealer from the small-scale industrial units exempted from payment of sales tax and despatched outside State by way of transfer or for consignment sales was in order.

The court further held

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Boards, followed The decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Supreme Boards, does not require reconsideration. Held also, that the contentions of the dealer that (1) the assessing authority while completing the assessment had adopted the transfer value of the goods shown in the F forms accompanying the despatch of goods outside the State instead of taking the actual purchase value of the goods obtained from both unregistered dealers and registered dealers in the State for levy of tax u/s 5A; and (2) since the dealer had purchased rubber both from registered dealers and from unregistered dealers; the purchase turnover which could be subjected to tax u/s 5A of the Act was only the turnover which had not been brought to tax in the circumstances stated in the said section which distinction had not been kept by the assessing authority while assessing the entire purchase turnover of goods despatched outside the State by way of stock transfer/branch transfer, could not be considered because the dealer did not have any such case either before the assessing authority or before the appellate authorities. Further these aspects were not borne out from the records of these revisions. In these circumstances, the court would not be justified in issuing the directions sought for by the dealer.

8. Learned Counsel appearing for the revision petitioner would submit that this court while rendering the judgment in C.T. Kochouseph''s Case has granted certificate for appeal to the Supreme Court as contemplated under Article 133 read with Article 134A of the Constitution of India. In our opinion, the same treatment also requires to be granted by us while disposing of these revision petitions. Accordingly, we pass the following:

Order

i) The first question of law framed by the assessee is answered against the assessee and in favour of the revenue. We accord a certificate for appeal to the Supreme Court against the orders by us as contemplated under Articles 133 read with 134A of the Constitution of India.

ii) In so far as the second question is concerned, we decline to answer the question, since it was not urged and argued before the Tribunal.

Consequently, the stay petitions in all the revisions are dismissed.

Ordered accordingly.

