
(2009) 06 KL CK 0041
In the High Court Of Kerala
Case No : S.T. Rev. No. 268 of 2008

Empees Modern Rice Mills

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-06-2009

Acts Referred:

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

Citation : (2009) 4 KLT 433 : (2011) 43 VST 195

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : George Kuruvilla Alappuzha, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the revision filed by the assessee is whether the Tribunal was justified in confirming disallowance of exemption claimed on the purchase tax payable u/s 5A of the K.G.S.T. Act on paddy under S.R.O. No. 1729/93. The petitioner started a rice mill in 1998 and being anew small scale industrial unit, petitioner is entitled to sales tax exemption on the rice and other products manufactured and sold under notification S.R.O. No. 1729/93 for a period of seven years. Besides the exemption available to manufactured goods sold by the new small scale industrial units, such units are also granted exemption under the same notification in respect of tax payable on goods taxable at the point of last purchase in the State. Admittedly, petitioner is granted sales tax exemption on products namely, rice, bran etc. The petitioner purchased paddy from unregistered dealers who are not liable to pay sales tax on their sales turnover of paddy by virtue of being agriculturists. Since goods purchased namely, paddy, is taxable under Entry 9 of the Second Schedule to the K.G.S.T. Act and since the commodity has not suffered tax at the point of sale in the State, the Assessing Officer demanded purchase tax u/s 5A for the reason that paddy is consumed in

the manufacture of rice. The petitioner's claim for exemption under S.R.O. No. 1729/93 on the purchase turnover of paddy was rejected for the reason that paddy is not covered by the second limb of the notification which entitles a small scale industrial unit for exemption only on purchase turnover of goods which are taxable at the point of last purchase in the State. The petitioner carried the assessment in appeal unsuccessfully and hence this revision is filed against the Tribunal's order. We have heard Counsel appearing for the petitioner and Government Pleader appearing for the respondent.

2. The first contention raised by Counsel for the petitioner is that when Section 5A is applied in the hands of any dealer, such commodity becomes taxable at the point of last purchase in the State as it is consumed in the manufacture of the final product. However, Government Pleader submitted that goods taxable at the point of last purchase in the State as contained in the notification are only goods which are specifically made taxable at the point of last purchase in the First Schedule to the K.G.S.T. Act. If petitioner's contention is accepted, then every commodity when assessed u/s 5A will become taxable at the point of last purchase and so much so, benefit of notification will be available. This is obviously not intended by the Government while issuing the notification because applying this logic, every commodity when purchased and consumed in manufacture by an S.S.I. unit becomes taxable at the point of last purchase in the State and will be entitled to exemption. On the other hand, notification has to be read consistent with the other provisions of the Act. The charging section namely, Section 5(1) says that sales tax in respect of commodities is payable at the point of sale or purchase and at the rates specified in the Schedules to the Act. Goods taxable at last purchase point are specifically mentioned in the First Schedule to the Act. Therefore, whenever the notification refers to goods taxable at last purchase point or first sale point, the goods so referred should be identified with the items mentioned in the Schedules to the Act. All cereals including paddy and rice are specifically covered by Entry 9 of the Second Schedule to the K.G.S.T. Act which are taxable at the point of first sale in the State. Therefore, petitioner's contention that paddy assumes the character of goods taxable at last purchase point when it is assessed u/s 5A is untenable and we, therefore, reject the contention. Since the item is taxable at sale point, petitioner is liable to pay tax u/s 5A as no tax is borne on the commodity at sale point. Even though petitioner's claim for exemption under the Notification is rejected, it is seen that by virtue of operation of the charging Section, the petitioner is entitled to rebate of tax paid on paddy against demand of tax on sale of rice. In other words, Explanation to Entry 9 of the Second Schedule to the Act which is extracted hereunder, specifically entitles a dealer in rice to get the rebate if he pays tax on the purchase of paddy.

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Description	of	goods	Point	of	levy	Rate	of	Tax-%
-----							9.	Cereals,
that is to say paddy, At the point of first							1	rice, jower or milo, bajra, maize, sale

in the State by a ragi, kodon, kutki and barli. dealer who is liable to tax u/s 5.

Explanation: Where a tax has been levied in respect of paddy, the tax leviable on rice produced out of such paddy shall be reduced by the amount of tax levied on such paddy.

The rebate available apply not only to sales tax paid at first sale point, but the tax leviable u/s 5A on the very same dealer. So much so, sales tax payable on the sale of rice is reduced by the tax borne on the purchase turnover of paddy. In view of the provision for rebate contained in the charging entry, the petitioner cannot have any grievance because the tax liability set off from the total amount of exemption certified will be only the net liability for sales tax payable on rice as reduced by the tax paid on paddy. We, therefore, dismiss the S.T. Revision case as devoid of any merit.