
(2002) 09 KL CK 0098

In the High Court Of Kerala

Case No : T.R.C. No's. 274, 294 and 296 of 2000

E.V. Mathai and Sons

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(2A)

Citation : (2003) 129 STC 503

Hon'ble Judges : G. Sivarajan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.K. Devi and Deepsur D. Jayan, for the Appellant; Georgekutty Mathew, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The same assessee is the revision petitioner in these three cases. The assessment years concerned are 1989-90, 1990-91 and 1991-92. The assessee is a dealer in rubber which is an item liable to tax only at the last purchase point u/s 5(1) of the Kerala General Sales Tax Act, 1963 read with the entry in the First Schedule. The question, raised for consideration in these cases is as to whether the petitioner is liable to pay turnover tax levied u/s 5(2A) of the said Act. According to the assessee it is entitled to the benefit of Notification S.R.O. No. 716/88 under which exemption is granted on the turnover of rubber at all points except at the last purchase point subject to the production of prescribed declaration from the dealer who had paid the turnover tax. The assessee in the assessment years under consideration, has collected declarations contemplated under the notification and claimed exemption from turnover tax for the entire turnover by producing the declarations before the assessing authority. The assessing authority accepted certain declarations and granted exemption in respect of the turnover covered by such declarations. However, rejected the remaining declarations as defective/invalid. The assessment orders were confirmed by both the appellate authorities.

2. Smt. S.K. Devi, the learned counsel appearing for the assessee, submits that this is a case where the assessee had produced form No. 25 declarations in all the cases, which would clearly show that the assessee is not the last purchaser. The counsel also relied on the decision of this Court in *P.I. Varghese and Sons v. State of Kerala* [2002] 126 STC 217 ; (2002) 10 KTR 157 (Ker), in support of the above. The counsel further submits that the assessee had produced declarations as contemplated under the Notification S.R.O. No. 717/88 and the authorities have erroneously rejected certain declarations as defective/invalid. It is further contended that the authorities ought to have afforded an opportunity to the assessee to correct the deficiencies, if any, in the declarations or to produce fresh declarations covering the turnover on which the defects are noted.

3. We have also heard the learned Government Pleader appearing for the respondent. He submits that dealer is liable to pay turnover tax u/s 5(2A) on all points of sale and that the dealer gets exemption only on satisfaction of the condition provided in the Notification S.R.O. No. 716/1988. He further pointed out that though the assessee has produced declaration forms in many of said forms the details regarding the payment of tax is absent and, therefore, the authorities have validly rejected the said declaration forms.

4. The fact that the turnover tax is exigible at all points of sale u/s 5(2A) of the Act during the relevant period is in dispute. The assessee is only claiming the benefit of S.R.O. No. 716/1988. This Court has considered the very same question whether the declarations insisted in the said notification is mandatory in *K.V. Gangadharan v. Additional Sales Tax Officer* [1993] 91 STC 80 (Ker); 1993 KLJ 432 wherein it was held that if any dealer wants to avail the benefit of the said notification, he must also comply with the directions regarding production of the declaration specified therein. In fact, it would appear from the pleadings in these cases that the assessee himself accepted the said position and obtained declarations as contemplated under the Notification S.R.O. No. 716/1988 and produced the same before the assessing authority. As contended by the Government Pleader the reason for rejecting certain declarations submitted by the assessee is that the details regarding payment of tax are not contained in the said declarations. If that was the sole reason for rejecting the declarations, according to us, the assessing authority ought to have afforded an opportunity to the assessee to rectify the said mistakes in the declaration and/or to produce fresh declarations as contemplated under the notification within a reasonable time. It was also open to the assessing authority to verify as to whether the payments alleged to have been made by the purchasers had been received. None of these courses have been adopted by the assessing authority. The appellate authorities also should have taken note of the above circumstances and should have remanded the matter for the said purpose. However, they have not chosen to do so. In the above circumstances, we are of the view that an opportunity must be given to the assessee to cure the defects in the declarations and/or to produce fresh declarations. Thereafter it is for the assessing authority to verify as to whether the particulars of payments specified in the declarations are correct.

We accordingly set aside the orders of the authorities including the Tribunal on this point and remit the matter to the assessing authority for the said purpose. If the assessee does not produce the corrected declarations or fresh declarations within one month from the date of receipt of notice from the assessing authority, the assessment order will stand confirmed.

These tax revision cases are allowed and remanded to the assessing authority solely for the said purpose.

Order on C.M.P. No. 4189 of 2000 in T.R.C. No. 296 of 2000 dismissed.