

(2005) 05 KL CK 0018

In the High Court Of Kerala

Case No : S.T.R. No's. 143, 151 and 395 of 2004

Ganapathy Iyer

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-05-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 5(1), 5(3), 6(1)

Constitution of India, 1950 — Article 141

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

Citation : (2005) 2 ILR (Ker) 649 : (2005) 3 KLT 122 : (2007) 8 VST 41

Hon'ble Judges : K.S. Radhakrishnan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.G. Anil Babu, for the Appellant; Raju Joseph, Spl. Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—These three tax revision cases filed by the assessee arise out of the orders of the Sales Tax Appellate Tribunal for the assessment years 1995-96, 1996-97 and 1997-98. Even though the assessee has raised three common questions for all the assessment years, we feel in substance there is only one issue to be decided and therefore we consolidate and redraft the question to be decided as follows:

Whether on the facts and circumstances of the case the Sales Tax Appellate Tribunal was justified in sustaining assessment of purchase tax u/s 5A of the K.G.S.T. Act on the turnover of local purchase of cashew kernels by the assessee from unregistered dealers which were sold to exporters within and outside Kerala for export to foreign buyers?

2. We have heard counsel appearing for the petitioner and Government Pleader appearing for the respondents. On going through the orders of the Tribunal we find that the second appeals filed by the assessee on the above question were rejected by the Tribunal following the decision of the Supreme Court in State of Karnataka Vs. B.M. Ashraf and Co., . However, the assessee's counsel submitted

that the decision relied on by the Tribunal was with reference to Section 6 of the Karnataka Sales Tax Act and the transactions with reference to which the decision was rendered by the Supreme Court were local purchase and local sales in Karnataka itself, while sales effected by the assessee after purchase from unregistered dealers were to exporters outside Kerala which are interstate sales. He has also relied on the decision of this Court in Deputy Commissioner v. Smt. Alekutty Pappali 1993 (1) KTR 509, and the unreported decision in K.P. Nishad v. Sales Tax Officer and Ors. in TRC 386/2004 dated 24.11.2004 whereunder this Court held that dealers who purchased goods from unregistered dealers and sold to exporters are not liable to pay purchase tax u/s 5A of the KGST Act. Government Pleader on the other hand contended that Section 6 of the Karnataka Sales Tax Act and Section 5A of the KGST Act are *pari materia* same and the decision of the Supreme Court is squarely applicable to the facts of this case and the Tribunal rightly followed the same and rejected the petitioner's appeals. According to him, the first decision of this Court referred to by the assessee is much before the decision of the Supreme Court rendered in 1997 and therefore, the decision of this Court is no longer good law. So far as the unreported decision relied on by the petitioner is concerned, the Government Pleader pointed out that the said decision is rendered without referring to the Supreme Court decision and in view of the binding nature of the decision of the Supreme Court under Art. 141 of the Constitution of India, this Court has to follow the same and reject the revisions filed by the assessee. If the decisions of this Court are not consistent with the law declared by the Supreme Court, then we cannot follow such decisions of this Court for the sake of inconsistency as we are bound by law laid down by the Supreme Court.

2. On going through Section 6 of the Karnataka Sales Tax Act we find the provisions are same as that of Section 5A of the KGST Act. Therefore, if the facts based on which Supreme Court has rendered the above decision are the same as the facts in petitioner's case, then we are bound to follow the decision of the Supreme Court and dismiss the revision petitions. On comparing the facts of the case in the case decided by the Supreme Court and that of the petitioner's, we find there is only one distinction in as much as the assessee in the Karnataka case purchased goods locally from unregistered dealers and sold to exporters in Karnataka itself, while in the petitioner's case, petitioner after purchasing goods from unregistered dealers in Kerala sold the same not only to exporters in Kerala against Form 18A but sold substantial quantity of goods to exporters outside Kerala against Form H issued by them. Therefore, the only question to be examined is whether the sale of goods by the petitioner after purchase from unregistered dealers to exporters stationed outside the State, will make such a difference as to deviate from the law declared by the Supreme Court in B.M. Ashraff's case referred above.

3. The contention of the assessee's counsel is that when goods purchased from unregistered dealers are sold locally or interstate, then such purchases will not attract purchase tax by virtue of Section 5A(1)(b) and (c). In order to appreciate

the position, we have to refer to Section 5A which is extracted hereunder:

"Section 5A-- Levy of purchase tax.-- (1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale of purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under [Sub-sections (1), (3), (4) or (5) of Section 5] and either,--

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) [uses or] disposes of such goods in any manner other than by way of sale in the State; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of interstate trade or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5".

On the face of it, the argument of the petitioner is impressive because after purchase of the goods namely, cashew kernels from unregistered dealers in Kerala, the petitioner made sales to exporters located in Kerala as well as in places outside the State which are exempted u/s 5(3) of the K.G.S.T.Act. The exemption on sales made to exporters was also granted by the Assessing Officer u/s 5(3) of the K.G.S.T.Act based on Form 18A issued by the Kerala exporters and Form H issued by the outside State exporters. However, the question is whether the local sale and interstate sale contemplated under Clauses (b) and (c) respectively of Section 5A(1) of the KGST Act are "deemed export sales" falling u/s 5(3) of the CST Act. The provisions of Section 5A(1)(b) and (c) are obviously the same as the provisions of Section 6(i) and (ii) respectively of the Karnataka Sales Tax Act. When the Supreme Court has held that a deemed export sale within the State to an exporter falling u/s 5(3) of the CST Act cannot be said to be a "sale in the State" falling u/s 6(i) of the Karnataka Act, we do not propose to consider the eligibility for exemption u/s 5A(1)(b) on the purchase of goods from unregistered dealers which are sold to local exporters who exported the same. Therefore, going by the decision of the Supreme Court, the local purchase of goods from unregistered dealers sold to exporters within the State are not entitled to any exemption u/s 5A(1)(b) of the Act. The next aspect of the question is whether the purchase of goods from unregistered dealers which are sold to exporters located outside the State are exempted by virtue of Section 5(1) (c) of the CST Act. While the petitioner's contention is that the Supreme Court has not considered the scope of purchase tax liability on local purchase of goods from unregistered dealers which are sold to exporters outside the State, the Government Pleader argued that the decision in B.M. Ashraff's case above referred applies to interstate sales also because according to him, if Section 5(3) sale made locally to an exporter is not a "sale in the State" as held by the

Supreme Court, then there is no justification to hold that Section 5(3) sale to an exporter outside State can be treated as an "interstate sale" covered by Section 5A(1)(c) of the KGST Act. We also feel there is substance in this argument of the Government Pleader because if purchases made from unregistered dealers for sale to exporters in the same State attract purchase tax, then we see no reason why the purchase made from unregistered dealers for sale to exporters outside the State should not be taxed. On the face of the decision of the Supreme Court above referred, purchase from unregistered dealers attract purchase tax, whether it be u/s 6 of the Karnataka Sales Tax Act or Section 5A of the KGST Act, if subsequent sale of such goods after purchase are deemed export sales u/s 5(3) of the KGST Act whether local or interstate. In any case since this issue is not decided by the two decisions of this Court referred to above nor by the Supreme Court decision in B.M. Ashraff's case, we should examine it exhaustively.

4. A sale falling u/s 3(a) or (b) of the CST Act will be an interstate sale, no matter whether such sale is a deemed export sale u/s 5(3) of the CST Act or not. In fact this is clear from proviso to Section 6(1) of the CST Act, which is the charging section on interstate sale, which provides for exemption on deemed export sales u/s 5(3) of the CST Act. In other words, interstate sales to exporters covered by Section 5(3) also would have been taxable u/s 6(1) of the CST Act but for the exemption provided under the proviso to the Section. However, the question is whether the interstate sales which are deemed export sales u/s 5(3) of the CST Act, are intended to be covered by Clause (c) of Section 5A(1) of the KGST Act. We feel the exception provided to interstate sales u/s 5A(1)(c) does not take in deemed export sales falling u/s 5(3) of the CST Act. This is because Section 5A is a charging section under not an exemption provision. Clauses (a) and (b) of Section 5A(1) are only exceptions to the charging section. The object of Section 5A is to bring to tax transactions in goods on which tax would not be levied under the main charging Section namely, Section 5. The scheme of Section 5A is to levy purchase tax when sales tax cannot be levied u/s 5. The objective of Section 5A can be achieved only if exceptions under Clauses (b) and (c) are applied to taxable local sales and interstate sales. In other words, exception Clauses under Clause (b) and (c) of Section 5A(1) are not applicable in respect of local sales and interstate sale of goods which are not taxable by virtue of Section 5(3) of the CST Act. In other words, exemption under these two sub-clauses are available only when the goods purchased are sold locally or interstate on which the dealer pays tax. Further, it is to be noted that the scheme of exemption u/s 5(3) is only on the penultimate sale or purchase which is the last sale or purchase prior to the export sale which is the direct export from the Indian exporter to the Foreign Buyer falling u/s 5(1) of the CST Act. If the petitioner's argument is accepted that the purchase proceeding the penultimate sale to the exporter is also entitled to exemption u/s 5A(1)(c), then the same will be extending exemption to one more point of sale or purchase in addition to the exemption on penultimate sale or purchase provided u/s 5(3) of the CST Act. The

Parliament by introducing Section 5(3) to the CST Act did not contemplate total sales tax exemption on a commodity which ultimately reaches a foreign destination. All what is intended by the introduction of Section 5(3) is to grant exemption only to the last sale or purchase preceding the actual export i.e., the export sale falling u/s 5(1) of the CST Act. An exception clause to the charging section u/s 5A(1)(c) has to be interpreted with reference to the scheme of exemption provided u/s 5(3) of the CST Act and a harmonious construction of the two provisions go to establish beyond doubt that the exception provided u/s 5A(1)(c) of the KGST Act is not intended to enlarge the scope of Section 5(3) and so much so, exemption from purchase tax u/s 5A(1)(c) applies only if the interstate sale made subsequent to the purchase is taxable. In other words, the interstate sale referred to in Section 5A(1)(c) do not cover such sales falling u/s 5(3) of the CST Act. We, therefore, hold that the decision of the Supreme Court in B.M. Ashraff's case applies to Section 5A(1)(c) of the KGST Act also and therefore, petitioner is liable to pay tax on purchase of cashew kernels from unregistered dealers in Kerala which are sold to exporters in and out of Kerala on which no tax is payable u/s 5(3) of the CST Act. The question above referred is therefore answered in favour of the revenue and against the assessee.

5. The only other question which arises in T.R.C. 151/2004 pertains to the addition of turnover of Rs. 2 lakhs sustained by the Tribunal. We find the accounts are rejected for valid reasons and the addition by the officer is reduced at two levels by the first Appellate Authority and the Tribunal. Having regard to the volume of business, the addition sustained by the Tribunal cannot be said to be arbitrary or unreasonable. We, therefore, decide the question raised on addition also against the assessee.

In the result, the Sales Tax Revision Cases filed by the assessee are dismissed.