
(1987) 06 KL CK 0051
In the High Court Of Kerala
Case No : T.R.C. No. 14 of 1985

General Sea Foods

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-06-1987

Acts Referred:

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

Citation : (1988) 71 STC 130

Hon'ble Judges : K.S. Paripoornan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The revision petitioner is an assessee under the Kerala General Sales Tax Act. It is a company doing business in sea foods. We are concerned with the assessment year 1977-78. Amongst others, the turnover relating to the sale proceeds of two motor boats and a motor jeep were brought to tax. The petitioner stated that they are not dealers in these items. The said plea was rejected. The appeal filed before the Deputy Commissioner of Agricultural Income Tax and Sales Tax was dismissed. So also the second appeal filed before the Appellate Tribunal was dismissed by order dated 28th August, 1984. The assessee has come up in revision.

2. The main question canvassed before us is that the sale proceeds of two motor boats for Rs. 1,50,000 and the sale proceeds of a motor jeep for Rs. 25,000 cannot be assessed to tax. It was contended that the assessee cannot be said to be a dealer in these items. He was not carrying on any business in these commodities. So the sale proceeds of the aforesaid items cannot be assessed to tax.

3. We see no force in the said plea. In T. R. C. No. 30 of 1981 (Parthas Textiles v.

State of Kerala) an assessee, who was carrying on textile business, sold two motor cars. The assessing authority treated the sale proceeds of one of the cars as forming the taxable turnover of the assessee. It was contended that the assessee in that case is not a dealer in cars, and so the sale proceeds cannot be said to be a part of the taxable turnover. Relying on the decision of the Supreme Court in *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* [1973] 31 STC 426 a Division Bench of this Court by judgment dated 18th November, 1985 held that the sale proceeds of one car is connected with or ancillary to, the main business and hence the turnover of such sale, is exigible to tax at the hands of the assessee. This decision was cited with approval in *T. R. C. No. 137 of 1981* by judgment dated 29th January, 1986 [*Deputy Commissioner of Sales Tax v. Ruby Rubber Works Ltd.* [1981] 71 STC 125 (Ker)]. In *T. R. C. Nos. 49, 50 and 51 of 1981* dated 18th November, 1985 (*Kerala State Road Transport Corporation v. State of Kerala*) a Division Bench of this Court held that the turnover resulted by the sale of unserviceable vehicles and scrap materials obtained by the Kerala State Road Transport Corporation was exigible to sales tax. The Appellate Tribunal has referred to the decision of the Supreme Court in *Burmah Shell Oil Co.'s case* [1973] 31 STC 426 besides the decision in *Commissioner of Sales Tax Vs. Ratlam Strawboard Mills Private Ltd.*, and the unreported decision of this Court in *T. R. C. Nos. 95 and 96 of 1979* and held that the turnover relating to the two items in question is exigible to tax. It found that the petitioner is not a dealer in motor vehicles or cars. But, it was found that the fishing boats were integral parts of the petitioner's machinery to exploit the marine wealth. It was further found that the assets were used in connection with the petitioner's business. In such circumstances, a conclusion was reached that the sale of these items was in connection with or incidental or ancillary to the business carried on by the assessee. The Appellate Tribunal concluded that if an assessee engaged in the business of processing and sale of sea foods, sells his vehicles or vessels used in such business, it is definitely a transaction in connection with or incidental or ancillary to such business. It was so held in view of the wide definition of the word "business" contained in Section 2(vi) of the Kerala General Sales Tax Act.

4. We are of the view that the decision of the Appellate Tribunal dated 28th August, 1984 does not suffer from any infirmity. It is in accordance with the decisions of courts referred to above. No interference is called for with the said decision. There is no merit in this tax revision case.

The tax revision case is dismissed in limine.