(2006) 08 KL CK 0083

In the High Court Of Kerala

Case No : S.T.Rev. No. 91 of 2004

Highlands Tea Factory APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(3)
Kerala General Sales Tax Act, 1963 — Section 5A

Citation : (2007) 1 KLT 194 : (2009) 20 VST 321

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mathew John and Sujesh Menon V.B, for the Appellant; V.V. Asokan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Sales Tax Appellate Tribunal was justified in confirming levy of tax u/s 5A of the KGST Act on purchase of green tea leaves by the petitioner used in the production of manufactured tea for export. We have heard counsel for the petitioner and Government Pleader.

2. It is seen from the Tribunal''s order that petitioner being a SSI unit is enjoying sales tax exemption. It is also entitled to the benefit of Explanation to charging entry 150(i) of the First Schedule to the Act, which is as follows:

Where a tax has been levied in respect of manufactured tea, the tax, if any, levied and collected in respect of green tea leaves from which such manufactured tea is produced shall be refunded.

Since tax was payable on local sales in auction and inter-State sale of manufactured tea, petitioner was granted exemption from purchase tax u/s 5A. Purchases are admittedly from unregistered dealers, namely, small growers and dealers and so much so, tax is payable u/s 5A when green tea leaves are consumed in the production of manufactured tea. Since export turnover of manufactured tea does not attract sales tax, the Tribunal upheld the levy of tax u/s 5A on purchase of green tea leaves.

3. Counsel for the petitioner relied on the decision of this Court in Cottanad Plantation Ltd. v. State of Kerala 85 STC 40 and contended that green tea leaves and manufactured tea are one and the same and so much so when purchased green tea leaves are exported, though after manufacture, the same qualifies for exemption u/s 5(3) of the CST Act. We are unable to accept this contention for the reason that item purchased is entirely different from item exported because green tea leaves as such is a perishable commodity and it is not the same as manufactured tea. Tea manufacture is a complicated process done in a factory and both the items are commercially different. This position is recognised in the charging entry which provides for refund of tax in respect sales tax paid whether at sale point or purchase point on green tea leaves, when tax is levied on the sale of manufactured tea produced out of the same. Section 5(3) provides for exemption on sale or purchase of goods made against prior orders for export. Petitioner has no case, and cannot have a case, that they have purchase order for export of green tea leaves, which is a perishable commodity with no consumer-use. So long as green tea leaves are not exported, and what is exported is manufactured tea, petitioner is liable to pay tax u/s 5A on the purchase turnover of green tea leaves consumed in the production of manufactured tea exported. The decision relied on by the petitioner does not lay down that green tea leaves and manufactured tea are one and the same. All what is stated is that green tea leaves also attract tax under the Act as the same falls within the meaning of "tea". In fact, the liability for sales tax for green tea leaves and manufactured tea are synchronized in entry 150(i) to prevent spiralling tax effect on the ultimate product, namely, manufactured tea.

In view of the above findings, we dismiss the Tax Revision by affirming the order of the Tribunal.