

(1998) 07 KL CK 0050
In the High Court Of Kerala
Case No : T.R.C. No. 15 of 1997

Kaderia Coir Mart and Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 02-07-1998

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2

Citation : (2003) 133 STC 284

Hon'ble Judges : Om Prakash, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : C. Sankunni and V.R.K. Kaimal, for the Appellant; V.V. Asokan, Special Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

Om Prakash, C.J.—The only question for consideration in this revision before us is whether the revision-petitioner (hereinafter referred to as "the assessee") is entitled to exemption in view of the Notification (S.R.O. No. 319 of 1984) on the purchases of coir yarn, admittedly made during the assessment year 1983-84.

2. The facts as gleaned from the materials placed on record, are that the assessee purchased coir yarn during the year 1983-84 and his books of account reflected closing stock of coir purchases at Rs. 5,28,500. By virtue of explanation to Clause (xxvi) of Section 2 of the Kerala General Sales Tax Act, 1963 (briefly, "the Act"), the closing stock of the year 1983-84 appeared as opening stock of the year 1984-85. It was not disputed before the assessing authority that such goods acquired the character of last purchase during the year 1984-85. Under entry 49 of the First Schedule, appended to the Act, coir yarn is taxable at the point of last purchase at the rate of 2 per cent. As the goods acquired the character of last purchase within the meaning of the explanation to Section 2(xxvi), they were brought to tax in the year 1984-85.

3. The Notification (S.R.O. No. 319 of 1984) exempted the purchases of coir yarn

with effect from April 1, 1984, meaning thereby that the purchases of coir yarn made during 1984-85, were exempted. Learned counsel for the assessee urged before us that when, by virtue of the fiction created by the explanation to Section 2(xxvi), closing stock of 1983-84 was deemed to be a part of the assessee's total turnover for 1984-85, a further fiction should be raised that such turnover represented the purchases of coir yarn of the year 1984-85 and that being so, such purchases would be exempt under the Notification (S.R.O. No. 319 of 1984). The notification exempted the purchases of coir yarn effected with effect from April 1, 1984. The question is whether, by virtue of the explanation to Section 2(xxvi), the opening stock of coir yarn of the year 1984-85 can be deemed to be the purchases of that year. The law is that whosoever claims exemption, he has to prove the same to the hilt. Exemption has to be construed strictly. Exemption is available on the purchases, made during the year 1984-85. Admittedly, the purchases of coir-yarn, which were reflected in the closing stock of 1983-84, were made during that year. The effect of the explanation to Section 2(xxvi) is that the closing stock of purchases liable to tax at the point of last purchase, will be deemed to be the part of the assessee's total turnover for the subsequent year. The fiction is limited only to the extent that the closing stock of the earlier year shall be deemed to be the part of the assessee's total turnover of the subsequent year. There is no presumption under the explanation to Section 2(xxvi) that the closing stock of the earlier year, which is deemed to be a part of the assessee's total turnover of the subsequent year, shall be treated to be the purchases of subsequent year. Exemption under the notification is available in regard to the purchases made, in fact, during the year 1984-85 and not in regard to the purchases, which can be deemed so by fiction.

4. The question is as to why the explanation to Section 2(xxvi) was inserted by Act 21 of 1978. The explanation states that in the case of every dealer liable to tax u/s 5 regarding the goods which are taxable at the point of last purchase in the State and which are held as closing stock on the last day of any financial year, the amount for which such goods were purchased by the dealer shall be deemed also to be a part of his total turnover for the subsequent year or each of the subsequent years, until such goods are either sold by him in the State or such purchase acquires the character of last purchase in the State in the hands of such dealer and in case such purchase acquires the character of last purchase in the State in the hands of such dealer, the turnover in respect of such purchase shall be liable to tax in the year in which the purchase acquires the character of last purchase. That only shows that the goods which are liable to tax at the last purchase point and formed the closing stock of an year shall be shown in the subsequent years as part of the total turnover, until they are sold and the goods acquire the character of last purchase, exigible to tax. It is self-evident that this provision was inserted in order to see that the matter does not escape the attention of the Revenue for the subsequent years and such goods held as closing stock in one year, shall continue to be the part of the total turnover for

the subsequent years, until they are brought to tax. There was no other purpose of the exemption being introduced. The explanation does not raise a presumption that the purchases which were not made, in fact, during the year 1984-85, could be deemed to have been made during that year.

5. For these reasons, we hold that the assessee cannot claim exemption under the aforesaid notification in regard to the purchases, admittedly made during the year 1983-84, which were reflected in the closing stock of that year and which formed part of the assessee's total turnover by virtue of the explanation to Section 2(xxvi). No other submission was made by counsel for the assessee before us. In the result, the revision petition fails and is dismissed.