(1996) 10 KL CK 0058

In the High Court Of Kerala

Case No : T.R.C. No. 179 of 1994

Kerala Produce and Export Company — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 01-10-1996

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

Citation : (1998) 111 STC 357

Hon'ble Judges : V.V. Kamat, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : K.C. Balagangadharan and S. Soman, for the Appellant; V.C. James, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.V. Kamat, J.—The revision petitioner--Kerala Produce and Export Company--as stated in the petition is a dealer in pepper and dry ginger and acts as a selling agent on behalf of the growers and producers of these commodities. It is also averred in the petition that on a small-scale, these goods are also purchased and sold. It is urged that in this situation, the assessee would have no turnover as defined under the provisions of the Kerala General Sales Tax Act, 1963, as it is only a selling agency in respect of goods taxable on the purchase point. It is urged that being the agent directly of the growers, there could not be any liability because the assessee could not be the last purchaser in the State.

2. For the assessment year 1987-88, the petitioner-assessee declared a turnover of Rs. 87,81,017.17. The accounts were scrutinised by the Assistant Commissioner (Assessment), Sales Tax Office, Special Circle-II, Kozhikode, and it was found out that the correct turnover would be Rs. 88,40,519.32. The Sales Tax Officer took the view that the entire amount is exempted as covered by form 25 declaration under Rule 32(14) of the Kerala General Sales Tax Rules, 1963. This was with regard to the sales tax exemption.

3. However, the Sales Tax Officer proposed to levy turnover tax u/s 5(2A) of the Act on a turnover of Rs. 65,09,408.88 covering the period commencing from July 1, 1987 up to March 31, 1988. This was in view of the fact that this charging provision came on the statute book with effect from July 1, 1987.

4. The petitioner-assessee contended that this could not be turnover in view of Rule 8(2) of the Kerala General Sales Tax Rules, as it related to selling agency transactions on behalf of the growers/producers. It was contended that if the above amount relating to the transaction with the growers/producers gets excluded, then there would not be any liability for purchase turnover tax as the amount would be far below Rs. 50,00,000. The assessee contended that the transactions arising out of the relationship of agency directly with the growers would not attract turnover tax by itself, and also in view of the remuneration of 1.5 per cent.

5. The Sales Tax Officer rejected the contentions relying on the decision of this Court in State of Kerala v. Cardamom Planters'' Association 1987 67 STC 294 where the definitions of "dealer" and "turnover" were examined to rule that the agent was a dealer and his entire turnover was exigible to tax, there being no dispute as regards the liability to pay sales tax with regard to the transactions in question.

6. The appellate authority--the Deputy Commissioner (Appeals), Kozhikode--considered the matter in the light of the position of the assessee and the impact of the earlier decision of this Court. It was argued before the first appellate authority that the assessee in then relation to the principals displayed a peculiarity of the situation. The principals are growers and could not be understood as dealers. Obviously, this submission was rejected by the first appellate authority resulting into the dismissal of the appeal.

7. The further travel of the proceedings before the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kozhikode, received endorsement to the view. In fact, in paragraph 4 of its order, the Tribunal has ad verbum quoted the discussion in the Cardamom Planters'' Association''s case [1987] 67 STC 294 and it is observed that even if the agent has not purchased the goods and they were purchased by the principal, the agent is to be assessed for the purchases effected by his principal as the agent also would have to be understood as a dealer and his turnover would be exigible to tax under the Kerala General Sales Tax Act.

8. There would not be any difficulty to endorse the view of the three authorities below, moment we see Section 2(viii) of the Kerala General Sales Tax Act, 1963 defining the term "dealer". The common sense view of the term "dealer" would refer to any person who carries on the business of buying and selling of the goods. However, the statutory definition of the term "dealer" includes such person if he carried on business of supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission,

remuneration or other valuable consideration also. Apart therefrom, Clause (c) of Section 2(viii) specifically includes a commission agent to he understood as a "dealer".

9. In addition thereto, reference to the statutory provisions of Section 5A relating to levy of purchase tax would make the situation more abundantly clear. The above statutory provision refers to every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act and this liability, by virtue of Section 5(2A) comes under the clutches of the liability in the event of total turnover exceeding Rs. 50,00,000 during the assessment year in question.

10. In other words, the statutory provisions govern taxability of the assessee before us, basically by virtue of the statutory provision that even any person concerned with supply or distribution would have to be understood as a dealer with reference to the liability under the tax. The position is already settled by Cardamom Planters Association''s case [1987] 67 STC 294 .

For all the above reasons, the revision case stands dismissed.