
(2008) 08 KL CK 0038

In the High Court Of Kerala

Case No : ST. Rev. No's. 128, 163 and 166 of 2008

K.J. James

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Central Sales Tax Act, 1956 — Section 5(1), 5(3)
Constitution of India, 1950 — Article 286(1)
Kerala General Sales Tax Act, 1963 — Section 22(1)
Kerala General Sales Tax Rules, 1963 — Rule 28A, 8, 9

Citation : (2009) 22 VST 165

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.P. Sukumar, P.U. Mathen, Bejoy Cheriyan and Jairam V. Menon, for the Appellant; Tekchand, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—During the year 2001-02, the petitioners manufactured jute products and sold the same to an exporter who exported the same to foreign buyers. However, the petitioner did not take any registration under the Kerala General Sales Tax Act, 1963 (hereinafter called "the KGST Act"). In the course of investigation, the Sales Tax Department noticed the purchase and export of goods by the exporter from the petitioners and consequently the petitioners were called upon to furnish accounts. On verification of accounts, the department noticed purchase and sale of goods by the petitioners in excess of the turnover that requires registration and payment of tax under the KGST Act. Petitioners conceded that there was violation of the provisions of the KGST Act and Rules inasmuch as they have not taken registration and filed monthly returns. The offence was compounded by remitting compounding fee and consequently no penalty was levied.

2. During assessment for the same year 2001-02, the petitioners filed returns and claimed exemption on sales turnover based on form 18A prescribed under

Rule 28A of the KGST Rules and issued by the purchasers, who are exporters. Claim of exemption by the petitioners is u/s 5(3) of the Central Sales Tax Act, 1956 (hereinafter called "the CST Act") which provides for exemption on last sale or purchase preceding export sale. The purchasers from petitioners, being exporters, issued certificates stating that purchases were made for complying with export orders and goods in fact were exported and consequently their purchases were entitled to sales tax exemption. The department has no case that petitioners were not entitled to exemption based on form 18A obtained by them from the purchasers, if they were registered under the KGST Act during the time of making sales to the exporters. However, exemption was disallowed for the reason that petitioners were not registered under the KGST Act. The assessment orders so issued were confirmed in first appeal and re-confirmed by the Tribunal in second appeal against which these revisions are filed.

3. We have heard Sri. V.P. Sukumar, appearing for the petitioners and the Government Pleader appearing for the respondents.

4. Counsel for the petitioners relied on the decision of the Supreme Court in Commissioner of Sales Tax Vs. Leather Facts Co., and contended that sales tax exemption u/s 5(3) of the CST Act cannot be denied for want of registration under the KGST Act. Government Pleader on the other hand contended that, besides want of registration, form 18A obtained is defective for the reason that sales bills covering the transactions were not furnished therein. However, it is clarified by counsel for the petitioners that since petitioners were not registered dealers, sales bills were not issued and form 18A contained details of purchase bills issued by the exporters who are registered dealers under the KGST Act.

5. We are unable to uphold the order of assessment confirmed by the Tribunal for more than one reason. In the first place, export exemption provided u/s 5(3) of the CST Act on last sales preceding export sales cannot be disallowed on technical grounds because exemption has its source in the constitutional provision contained in Article 286(1)(a) of the Constitution of India, which prohibits levy of tax within a State on export sales. Secondly, so far sales tax liability under the KGST Act is concerned there is no difference between registered dealer and unregistered dealer. Requirement of registration under the KGST Act is mandatory and for carrying on business without registration, a dealer will be subject to penal provisions such as penalty. Besides this, an unregistered dealer has a disability to collect sales tax u/s 22(1) of the KGST Act which authorises collection of tax only by registered dealers. Moreover, only registered dealers can transport goods in and across the State with the help of statutory documents like form 26. In other words, registration is a discipline introduced in the Act for the dealers to carry on business smoothly. However, if a dealer carries business without registration, he is liable to pay sales tax like a registered dealer and his only disability is from collecting tax. In fact, liability for payment of tax under the Act is the same for registered and unregistered dealers. There is no provision in the KGST Act or Rules authorising dis-allowance

of sales tax exemption on any part of the turnover of a dealer on the ground that he carried on business without registration under the Act. In fact, provision for determination of total turnover under Rule 8 and Rule 9 providing for determination of taxable turnover are the same for all dealers under the Act whether registered or otherwise. Rule 9(h) of the KGST Rules provides that while determining the taxable turnover, turnover of goods sold in the course of export should be excluded. We are of the view that Rule 9(h) applies to unregistered dealers also and therefore such dealers are entitled to exemption on export sales, whether it be covered u/s 5(1) or u/s 5(3) of the CST Act. Therefore, if documents produced are sufficient to prove export exemption u/s 5(3), then petitioners are entitled to sales tax exemption even though they were not registered dealers during the relevant year.

6. The next question to be considered is whether want of sale bill numbers in form 18A furnished by the petitioners is a ground for disallowing sales tax exemption claimed under Rule 9(h) of the KGST Rules read with Section 5(3) of the CST Act. While Government Pleader submitted that, sale bill particulars should be included in form 18A for granting sales tax exemption, counsel for the petitioner contended that details of purchase bills available in form 18A furnished are sufficient for granting exemption. In this context the above decision of the Supreme Court cited by the petitioners is relevant. The Supreme Court has clearly stated that even the filing of wrong form is not a ground for disallowing export exemption. In this case, if the petitioners had collected form H prescribed under the CST Act, the same would have been sufficient for the petitioner to claim exemption. The Supreme Court in the decision above referred held that when exemption is provided based on conditions, exemption will certainly depend on the claimant satisfying the conditions. Therefore, if the statutory form furnished which is the requirement for granting exemption is defective materially, exemption has to be necessarily disallowed. The question now to be considered is whether form 18A furnished by the petitioners are defective in material aspects warranting rejection of the claim. We feel the validity of the form has to be tested with the ingredients of exemption contained u/s 5(3) of the CST Act. The first condition for grant of export exemption u/s 5(3) is the availability of advance foreign order for export to the purchaser-exporter at the time of purchase. The next condition is that after purchasing the goods for complying with such order for export, actual export sales should have been made by the exporter. In fact along with form 18A, the exporter should furnish copies of export order and bill of lading and other shipping documents towards proof of export. The Department has no case that the exporter did not have prior order for export or that purchase is not made for complying with such export order or that goods are not in fact exported, pursuant to the export order and the purchases made from the petitioners. If the declarations, namely, form 18A produced contain material particulars and the annexures thereto such as export order and shipping bill are sufficient to prove ingredients of Section 5(3), then the forms cannot be rejected and exemption disallowed on other defects which

cannot be held to be material in nature. So far as challenge against the validity of form 28A requiring particulars of sales bills in form 18A is concerned, we feel that details of purchase bills contained in the forms are sufficient compliance of the requirement. All what is required are that the details of transaction in respect of which exemption is claimed u/s 5(3) which may be purchase or sale should be there in form 18A. In other words, sales evidenced either by sales bill or purchase bill are sufficient requirement of form 18A. So much so, we hold that form 18A obtained and produced by the petitioners are valid and are sufficient for granting sales tax exemption.

7. We therefore allow the revision petitions by vacating the order of the Tribunal pertaining to disallowance of sales exemption u/s 5(3) and directing the assessing officer to grant exemption based on form 18A produced by petitioners, if the same is supported by documents prescribed u/s 5(3) of the CST Act.