(2006) 08 KL CK 0057

In the High Court Of Kerala

Case No : S.T.R. No. 65 of 2004

K.O. Khona and Company APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 03-08-2006

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

Citation : (2009) 20 VST 92

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

Bench : Division Bench

Advocate : C. Sankunny, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Tribunal was justified in confirming levy of turnover tax on petitioner on the sales turnover of tea. Petitioner''s case is that petitioner has admittedly purchased tea in Cochin auction conducted by tea auctioneers and according to petitioner, the tea auctioneers are second dealers selling tea liable to pay turnover tax and the petitioner being third seller is not liable to pay turnover tax. However, all the authorities including the Tribunal found that there was no sale between the tea planter who entrusted the tea to the auctioneer for sale and the auctioneer''s sale being first sale, the petitioner''s is the second sale and hence liable. Turnover tax on tea was payable during the relevant year at the point of second sale in the State as mandated u/s 5(2A) of the Kerala General Sales Tax Act, 1963 read with Government Notification S.R.O. No. 362 of 1992.

2. Learned Counsel appearing for the petitioner contended that the auctioneer is a dealer under the KGST Act and since the planter is also seller, the sale by second seller is liable to turnover tax. We are unable to accept this contention because turnover tax on tea is admittedly payable at the point of second sale in the State. As a matter of fact, all the authorities below found that the planters

who are also registered dealers, only entrusted the tea to the auctioneer for sale and there was no sale between the planters and the auctioneer. Auctioneers being registered dealers under the Act, collected sales tax from the petitioner treating the sales to the petitioner as first sales and so much so petitioner who has paid tax at the first sale point on purchases from the auctioneer, cannot simultaneously contend that the very same transaction is second sale to them attracting turnover tax. In such circumstances and in view of the factual position that there were no sales between the planters and the auctioneers and the auctioneers conducted sale as first sellers collecting sales tax on tea which is taxable at the point of first sale in the State under the First Schedule to the KGST Act, petitioner''s sales are obviously second sales liable to turnover tax. We, therefore, find no ground to interfere with the Tribunal''s order.

3. Accordingly, the sales tax revision case is dismissed.