(2001) 02 KL CK 0038

In the High Court Of Kerala

Case No : T.R.C. No. 433 to 436 of 2000

Kunnamkulam Book Company APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 06-02-2001

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2001) 2 ILR (Ker) 173

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : S.K. Devi and Deepsur D. Jayan, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Judgement

S.Sankarasubban, J.—These four T.R.Cs. are filed against the order of the Sales Tax Appellate Tribunal, Additional Bench, Palakkad in T.A.Nos.131, 132, 133 and 134 of 2000. Petitioner is the manufacturer and dealer of books, note books and other paper products. The assessment years are 1985-86, 1986-87 and 1988-89. One of the questions that was posed before the Tribunal was whether there was manufacturing process in changing the paper into books. Under Entry 136 of Schedule I of the Kerala General Sales Tax Act, paper other than newsprint, cardboards and their products was taxed at the point of first sale in the State by a dealer who is liable to tax under S. 5. According to the assessee, it is not the first purchaser. It purchased papers and tax was being paid and thereafter, it converted the same into note books and sold them. According to the assessee, the sale of such note books will not attract tax liability. It is not the first sale. But this contention was negatived by the Tribunal holding as follows:"The Supreme Court Judgment, dated 27th April 1981 dealt with production of note books by using paper completely exempted from tax by the Orissa Sales Tax Act. According to Entry No. 136 of Schedule I of the Kerala General Sales Tax Act, 1963, paper and paper products are liable to levy of sales tax on the first sale point at the rate of 8 per cent. Sales turnover of note books was exempted only from 1st April 1989. Therefore, the turnover of paper, paper products, note books and books are liable to levy sales tax at the rate of 8 percent and accordingly the lower authorities levied tax on the turnover of paper, paper products, note books and books". According to us, the Appellate Tribunal has not properly discussed this question. In Rameswarlal Muralidhar v. State of Orissa 51 STC 401 the Supreme Court held as follows: "It is agreed on all hands that the question raised in this appeal is covered by the decision of this Court in Maharaja Book Depot Vs. State of Gujarat, and also by the ratio of the decision in Deputy Commissioner, Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers (1980) 46 STC 63 The appeal is accordingly allowed...." The above decision of the Supreme Court was against the Judgment of the Orissa High Court in Rameswarlal Muralidhar v. State of Orissa 1980 46 STC 115 . There, the assessee was a registered dealer under the Orissa Sales Tax Act and carries on business in paper and exercise books. During the period 1970-71, the assessee was working as authorised agent of Titaghur Paper Mills Ltd. for shortage an sale of paper. The Sales Tax Officer, while examining the assessee''s accounts, found that the assessee had purchased paper with worth Rs. 36,992.40 from its principal free of tax by furnishing declaration. The assessee, however, did not sell the paper qua paper but converted the same into exercise books and sold them as such. The Sales Tax Officer was of the opinion that the assessee had contravened the declarations and as such the purchase turnover was added for determining the taxable turnover in the hands of the assessee. It is the above question that was considered by the Orissa High Court. The court relied on another decision reported in State of Orissa v. Bondia Art Press (1973 SJC 152 wherein the Orissa High Court held that paper undergoes a process of change to become writing paper or a bill book. After paper is converted into such material, it ceases to be paper as such and in place of paper new commodities intended for specific use appear. Thus, Orissa High Court held that the paper is purchased by the assessee and it is sold as note book. There was violation of declaration by the assessee. It was this decision that was reversed by the Supreme Court. The Supreme Court held that there was no challenge of process that paper is converted into note book. Thus, according to us, the decision of the Supreme Court shows that there is no change of paper even though it converts into paper products. The decision relied on by the Supreme Court, viz., Maharaja Book Depot Vs. State of Gujarat, was a case which arose under the Essential Commodities Act. There, the appellant was a Firm dealing in books and stationary articles. On a surprise inspection and search of the appellant''s shop it was found that in regard to exercise books the appellant committed breach of the Regulation Order, in that he did not display the stock thereof that he did not write the names of customers on the bills issued to them and that he did not maintain the stock registers properly and thereof a sizable quantity of exercise books were seized. The Collector found that the appellant was guilty of breach of the Regulation Order and directed that the seized stocks of exercise books be confiscated. In appeal, the Sessions Judge set aside the Collector''s order on the ground that exercise books did not fall within the item "paper" as envisaged in the Act and the Regulation Order. The High Court took the view that the term paper was wide enough to cover exercise books, which was nothing but a collection of papers, stitched together by a piece of string or pinned with pins of stapleer, and quashed the order of the Sessions Judge. It is against that the appellant approached the Supreme Court. The Supreme Court referred tot he meaning of "paper" from the various Dictionaries. According to the Concise Oxford Dictionary, paper means-"A substance used for writing, printing, drawing etc., made of interlaced fibres of rags, straw, wood etc. In Webster''s New World Dictionary, the meaning of the word "paper" is given as follows:"paper"-thin flexible material in sheets or leaves, made from rags, wood pulp, or other fibrous decorate etc." In Black''s Law Dictionary (Revised Fourth Edition 1968) the expression "paper" is explained thus: "paper" - manufactured substance composed of fibres (whether vegetable or animal) adhering together in forms consisting of sheets of various sizes and of different thicknesses, used for writing or printing or other purposes to which flexible sheets are applicable". Thereafter, the Supreme Court held as follows:"In substance, therefore, paper, whether lined or blank, means a material on which writing, printing, drawing etc., can be done. In light of this meaning of the expression "paper" the question is whether an exercise book would be covered by that expression or not? It cannot be disputed that an exercise book is nothing but a collection of sheets of paper (blank or lines) stitched together by a piece of string or pinned together with pins of a stapler and is a substance used for writing and, therefore, would clearly fall within the item "paper". The test would be whether because of stitching or pinning them together such a collection of sheets losses its identity as paper? The answer must be in the negative. Looked at from this angle it is difficult to accept the contention that an exercise book is a distinct commodity other than paper." The Supreme Court followed another decision in Deputy Commissioner, Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers (1980) 46 STC 63 There, the processing of pineapple fruit is processed into pineapple slices for being soled in sealed cans. It was held that although it has undergone a decree of processing, it must be regarded as still remaining in original identity."

In the light of the above, we set aside the order of the Tribunal and direct the Tribunal to consider the appeals afresh and dispose of the same in accordance with law.

