

(2001) 10 KL CK 0018
In the High Court Of Kerala
Case No : T.R.C. No's. 353 to 357 of 2001

Kwality Cocoa Products

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2
Kerala General Sales Tax Rules, 1963 — Rule 8(2), 9

Citation : (2002) 126 STC 7

Hon'ble Judges : P.K. Balasubramanyan, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, Harisankar V. Menon and Meera V. Menon, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Tax revision case Nos. 353, 355, 356 and 357 of 2001 are by the same assessee, while tax revision case No. 354 of 2001 is by another assessee. As common issues are involved in all these cases, we have heard the cases together and they are disposed of by this common judgment. The only issue arising in these cases is whether the expenses, carriage, inward and freight inward, form part of the purchase turnover liable to tax under the Kerala General Sales Tax Act and Central Sales Tax Act.

2. The petitioners are processors and dealers in cocoa, purchasing cocoa from farmers. The petitioners are processing the same and selling it. The petitioners' case is that cocoa is purchased from the field, from farmers and after the purchase is effected, the petitioners are transporting the same to their shop/processing unit for processing for sale. According to the petitioners, the expenditure incurred for transportation and handling after the purchase for bringing the same to their shop or godown does not form part of the purchase turnover to attract sales tax. It is important to note that the item purchased, namely, cocoa, is taxable at the last purchase point in the State. Sri Harisankar,

learned counsel appearing for the petitioners, relied, on Rule 8(2) of the Kerala General Sales Tax Rules, 1963 to contend that in the case of goods which are taxable at the point of purchase, the total turnover for the purpose of this rule shall be the amount for which the goods are bought by the dealer. According to him, the expenses claimed under two heads, carriage inward, and freight inward, are post purchase expenditure and the same do not form part of purchase turnover. However, in respect of inter-State sales the contention is that freight charge is incurred on behalf of the purchaser after sale, and therefore the same does not constitute sale price as defined under the Central Sales Tax Act, We have heard the learned Government Pleader also in the matter.

3. The Sales Tax Appellate Tribunal, after referring to the definition of "turnover" contained in Section 2(xxvii) of the Kerala General Sales Tax Act, 1963 held that the aggregate amount for which the goods are bought in this case will include the transportation charges incurred by the petitioners from various points of purchase of the dealer to the place of their business in the State. Accordingly, the Tribunal rejected the claim of the petitioners. Similar is the finding in the appeal filed against the Central sales tax assessment as well. The Tribunal has also relied on the decision of the Mysore High Court in Pandavapura Sahakara Sakkare Kharkhane (P.) Limited v. State of Mysore [1973] 32 STC 104 (hc) , and that of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, . In the latter case, the Supreme Court has held as follows :

".....all the expenditure incurred by the appellant towards freight and handling charges was incurred prior to the sale and was a component of the price for which the goods were sold and the appellant was not entitled to the deduction claimed.

Rule 9(f) seeks to exclude only those charges which are incurred either expressly or by necessary implication for and on behalf of the purchaser, after the sale, when the dealer undertakes to transport the goods and to deliver the same or where the expenditure is incurred as an incident of sale. It is not intended to exclude from the taxable turnover any component of the price, expenditure incurred by the dealer which he had to incur before sale and to make the goods available to the intending customer at the place of sale."

There is no definition of "purchase turnover" in the Kerala General Sales Tax Act. However, "turnover" as defined u/s 2(xxvii) of the Act is as follows :

" "turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant, or otherwise, shall be excluded from his turnover."

Counsel for the assessee has relied on the decision of this Court in Co-operative

Sugars case reported in [1993] 88 STC 84(hc) and that of the Orissa High Court in P.R. Tata & Co. v. Sales Tax Officer, Koraput I Circle reported in [1971] 27 STC 176(hc) in support of his argument that freight is not includible in the purchase price. In view of the decision of the Supreme Court referred to above, we are not inclined to accept the contention of the assessee based on these decisions. The argument raised by the learned counsel for the petitioners is particularly with reference to Rule 8(2) which provides that in respect of goods taxable at the point of purchase, the turnover is the amount for which the goods are bought. However, we find that Rule 8(2) also refers not to purchase price but "total turnover" of goods taxable at purchase point. Therefore it is obvious that Rule 8(2) is subject to, Section 2(xxvii) and purchase turnover obviously includes the aggregate amount for which goods are bought. The aggregate amount in the context can only mean the price paid and incidental charges incurred for the purpose of purchase. So far as the dealer is concerned, the purchase of goods is effective or complete only when the goods are brought to his place of business, where he enters it in his books of accounts. The cost towards price paid for the purchase made at the field through agents or representatives is only a component of the turnover and further expenditure has to be incurred for transportation and handling to reach the place of business of the dealer. In other words, the purchase cost of the dealer includes the cost of inward freight and carriage inward. Therefore we are in agreement with the view taken by the Tribunal that the aggregate amount for which goods are bought as defined in Section 2(xxvii) includes carriage inward and freight inward, which are in the form of handling and transportation charges, and We do not find any reason to interfere with the order of the Tribunal.

4. Incidentally We are constrained to observe that the claim of the petitioners does not appear to be genuine. Cocoa is not an item planted by large planters. It is well-known that farmers having small holdings only are planting the same, and therefore the quantity stated to have been purchased by the petitioners in truck loads from the farmers does not appear to be a believable story. Anyhow we are not going into the genuineness of the lorry vouchers produced before us because we have taken the view that the cost of transportation even if incurred will constitute purchase price liable to tax. It may also be observed that while providing exclusion of freight charge from taxable turnover under Rule 9(f)(i), the goods taxable at purchase point is not considered at all. On the other hand, exclusion is provided only from sales turnover. In other words, in so far as the purchase of goods is concerned, there is no provision for exclusion of freight incurred by the purchasing dealer.

5. The position with regard to the Central Sales Tax Act is not very different. "Sale price" as defined u/s 2(h) of the Act includes all expenditure incurred until the goods are delivered to the buyer. The petitioners have not established or proved that the purchasers have accepted the goods in their godown and requested for delivery to carrier at the cost of the buyer. In fact, if freight is payable by the buyer, there is no reason why freight is paid by the petitioners

who could have sent the goods on freight payable basis. Of course there is no bar against sending of goods after paying freight by the seller and claim reimbursement of the same separately, provided freight is borne on behalf of the buyer and sale is complete on delivery to carrier. This does not appear to be correct on the facts of this case because there is no corresponding expenditure claimed for handling, transit, insurance, etc. Therefore the conclusion is inescapable that sale in this case will be complete only on receipt of the goods by the buyer probably after satisfying with the quality and quantity. Therefore the deduction claimed on freight under the Central Sales Tax Act also is not allowable.

We are of the view that the Tribunal is justified in rejecting the claim. Accordingly, we reject the tax revision cases.