

(2000) 10 KL CK 0042

In the High Court Of Kerala

Case No : T.R.C. No"s. 32, 34, 35, 36, 52, 53, 54, 55 and 56 of 2000

Mahavir Plantations Limited

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 17-10-2000

Acts Referred:

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

Citation : (2002) 126 STC 212

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

Bench : Division Bench

Advocate : C.N. Ramachandran Nair and Anil D. Nair, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—The petitioners are Mahavir Plantations Ltd. and Jayashree Tea and Industries Ltd., and the same question arises for consideration in all these cases. Both sides agreed that the facts in T.R.C. No. 32 of 2000 may be taken into consideration and the other T.R.Cs. can be disposed of in the light of T.R.C. No.32 of 2000.

2. The petitioner is a plantation company engaged in manufacture and sale of tea. The tea produced by the petitioner in its estates is brought to Cochin and entrusted to tea brokers for sale in auction. The petitioner's tea is sold in auction by the brokers. Tea being an item taxable at the point of first sale in the State under item 193 of the First Schedule to the Kerala General Sales Tax Act, 1963, the petitioner's sale in auction is the taxable sale. The petitioner submits that until 1984-85 all the planters including the petitioner were paying tax in their own name though the brokers were conducting the auction sales. However, on the basis of the instruction from the Board of Revenue, the brokers started remitting tax on the entire turnover on tea sold in auction on behalf of the planters. The only thing is that the petitioners have to produce a certificate for identification from the brokers.

3. The question involved in these cases is regarding the liability of the petitioner

for the payment of turnover tax. The turnover tax on tea u/s 5(2A) of the Kerala General Sales Tax Act is at the rate of 1/2 per cent at all points of sale. However the Government by Notification S.R.O. No. 714/88 dated June 13, 1988 granted exemption from turnover tax on tea at all points of sale except at the point of second sale in the State. The notification states that an exemption in respect of the turnover tax payable by dealers under Sub-section (2A) of Section 5 of the said Act, on the turnover of manufactured tea at all points of sale, except at the point of second sale in the State which is not exempted from turnover tax, subject to the condition that any dealer who claims exemption on such turnover tax shall produce before the assessing authority concerned, a declaration from the dealer who paid the turnover tax in the form annexed to the notification.

4. There is no dispute in these cases that the petitioner is not the dealer at the second point of sale. Hence they may come within the exception. But before the authorities including the Tribunal, the petitioner did not produce the declaration as per the annexure to the notification. Learned counsel for the petitioner Sri Ramachandran Nair contends that it is not necessary to produce the declaration inasmuch as it is admitted that the assessee do not come under the second sale. On the other hand, the Government Pleader submitted that the petitioner claims exemption under the notification. If the petitioner wants to get the exemption, he should strictly comply with the conditions stated in notification for exemption. If those conditions are not satisfied, then the petitioner is not entitled to exemption.

5. Learned Government Pleader brought to our notice the decision of the learned single Judge of this Court in K.V. Gangadharan v. Additional Sales Tax Officer-I [1993] 91 STC 80. There, the notification is concerned with regard to rubber, pepper, etc. In the notification it is stated that the person who claims exemption shall produce before the assessing authority a declaration in the form annexed to that notification. The challenge was against the imposition of this notification. Considering this question, T.L. Viswanatha Iyer, J., observed as follows :

".....The position in the notifications before me is the identification, of the one dealer who pays the tax so that the others may be exempted, inasmuch as the State did not intend to give up the tax altogether, as empowered by Section 5(2A) but to limit it to one point. It is therefore obligatory on the dealers, if they wanted to be exempted, to assist the State in this task. Having been granted the exemption, the dealers cannot drive the State to the further task of proving that others have not paid the turnover tax in respect of the goods of a dealer, to fasten the liability on him.....".

Further it was observed as follows :

"The provision for production of declaration is a necessary condition to be fulfilled before the exemption can be availed of. "

It was also contended that the production of the declaration is impossible or impracticable. This contention was negatived.

5. At paragraph 15, the learned single Judge observed thus :

"I am therefore of the view that the notification as it stands with the condition is valid and is not liable to be struck down in any manner."

Learned single Judge went on to add further :

"However, it must be stated, that having regard to the difficulties expressed, dealers may be permitted to prove by other satisfactory evidence, than the production of declarations, the facts sought to be established by the declaration."

In Clause (b) at paragraph 24, the learned Judge observed as follows :

"If any dealer wants to avail of the benefit of exemption granted by these notifications, he has to produce the declaration in the form annexed to the notifications, but he may be permitted to prove the requisite fact by other satisfactory evidence produced for the purpose in lieu of the declaration."

6. We agree with the reasoning given by the learned single Judge. It may be true that the petitioner is not liable to pay the tax because he is not the second seller. But so far as the turnover tax is concerned, u/s 5(2A), there is turnover tax on the sale of tea. But there is an exemption with regard to certain categories of dealers. To get the benefit of exemption we have to prove the conditions stipulated in the notification.

7. Learned counsel for the assessee brought to our notice the judgment of the learned single Judge in O.P. No. 8229 of 1991 (A. Jakkir Hussain, Fathima Spices v. Agricultural Income Tax and Sales Tax Officer [2001] 124 STC 14). That was a case where the demand notice was attacked. By the demand notice turnover tax amounting to Rs. 52,73,385 at the rate of 1/2 per cent on the hill produce, namely, cardamom was demanded. On the facts it was stated that the petitioner therein was a dealer in cardamom. Cardamom is a different commodity liable to be taxed only at the point of first sale. The petitioner therein effected the taxable sale through auction purchase centres, and the auction centres collected tax for the year in question. On the basis of that the petitioner already obtained declaration of such remittance, which was produced as exhibit P1. On the basis of exhibit P1 the petitioner cannot be compelled to pay the turnover tax. But so far as these cases are concerned, there is no evidence to show that the payment of turnover tax by the dealer at the point of second sale. According to us, the authorities were not correct in insisting only on the declaration form for the proof of the payment of turnover tax to get the exemption. As stated in the decision in K.V. Gangadharan v. Additional Sales Tax Officer-I [1993] 91 STC 80 (Ker) the petitioner can get exemption by producing the declaration in the form annexed to the notification or he can prove the requisite fact by other satisfactory evidence produced for the purpose in lieu of the declaration.

8. In the above view of the fact, we think, it is necessary to give an opportunity to the petitioner to produce the said proof.

9. In view of that, the orders passed by the Tribunal in all these cases are set aside and all these cases are sent back to the Sales Tax Appellate Tribunal. The petitioners will be given an opportunity to produce either the requisite evidence to show the payment of turnover tax by the dealer at the second point of sale. The Tribunal is directed to give the petitioner an opportunity to produce the documents or other relevant records. The Tribunal shall dispose of the appeal afresh after looking into the documents and after hearing the parties.

T.R.Cs. are disposed of as above.

Order on C.M.P. No. 485 of 2000 in T.R.C, No. 32 of 2000 dismissed.