

(2009) 03 KL CK 0023

In the High Court Of Kerala

Case No : W.A. No. No. 878 of 2007

Meenachil Rubber Marketing and Processing Co-operative
Society Ltd.

APPELLANT

Vs

Commercial Tax Officer and Others

RESPONDENT

Date of Decision : 06-03-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19, 41, 5, 5(3)
Kerala General Sales Tax Rules, 1963 — Rule 32(14)

Citation : (2009) 26 VST 344

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair

1. The appellant is a member society engaged in processing of rubber latex to centrifuged latex and selling the same. Centrifuging is a process by which substantial portion of water is removed from field latex to make it thick cream of rubber and preservatives are added to it. Centrifuged latex is nothing but a raw material used for making rubber gloves, automobile tubes, clinical examination gloves, etc. The original entries in the Sales Tax Act providing for sales tax on various forms of rubber are the following:

38. Rubber excluding synthetic rubber At the point of last purchase in the State by a dealer who is liable to tax u/s 5. 39. Rubber products other than those At the point of first sale in the State specifically mentioned in this by a dealer who is liable to tax Schedule. u/s 5.

2. Entry 38 was later substituted covering rubber in all forms under one single

entry all of which were made taxable at the point of last purchase in the State. These are:

Raw rubber, latex, dry ribbed sheet of all RMA grades, tree lace, earth scrap, ammoniated latex, preserved latex, latex concentrate, centrifugal latex, dry crepe rubber, dry block rubber, crumb rubber, skimmed rubber and all other qualities and grades of latex.

3. The assessments of the appellant for the assessment years 1976-77 to 1986-87 were completed by granting exemption on the field latex purchased and also on the sale of centrifuged latex made by them treating both as rubber falling under entry 38 of the First Schedule to the Kerala General Sales Tax Act, 1963. Centrifuged latex is sold to industrial units for manufacture of rubber products. Since the Department treated centrifuged latex also as rubber taxable at last purchase the purchasers from the appellant were liable to pay tax. In order to ensure assessment and collection of tax from the purchasers the sellers were required to produce form No. 25 prescribed under Rule 32(14) of the Kerala General Sales Tax Rules, 1963 obtained from the purchasers. The appellants produced form No. 25 on the sale of centrifuged latex and based on the same they were granted exemption. Even though the original assessment completed was modified by the assessing officer u/s 19 for other purposes, still exemption originally granted was retained. Further though original assessments were revised once after remand in appeal, exemption granted in the original assessments were retained. This Court in the decision reported in *Padinjarekkara Agencies Ltd. v. Assistant Commissioner* [1996] 2 KLT 641 held that producers of centrifuged latex are entitled to purchase drums by availing concessional rate u/s 5(3) of the KGST Act as centrifuged latex is different from field latex. Based on this decision the Deputy Commissioner set aside the assessments of the petitioners for all the years vide exhibit P26 and remanded the case for fresh assessment. Even though the petitioner challenged the orders of the Deputy Commissioner before the Tribunal the Tribunal referred to Circular 16/98 issued by the Board of Revenue and remanded the case for reassessment based on circular. In the revision petition filed by the appellant before this Court and in the review filed against the judgment in the said revision case this Court did not interfere with the orders of the Tribunal. We are told that pursuant to the Tribunal's order confirmed by this Court, assessments were again revised raising demand of tax on the appellant on the purchase turnover of field latex and the revised assessments are now pending in second appeal before the Tribunal. In between a writ petition was filed by the appellant challenging Circular No. 16/98. Besides challenging the circular the appellants have challenged the notices for revision of assessments which have ceased to exist now as revised assessments are already completed. The learned single judge rejected the writ petition on the ground that once the Tribunal's orders are confirmed by this Court relegating the appellants to face assessment, there is no justification to challenge the circular in writ proceedings. It is against this judgment the appellants have filed the writ petition.

4. We have heard Shri. V.P. Sukumar appearing for the appellant and Special Government Pleader appearing for the respondent.

5. We are unable to uphold the view taken by the learned single judge because the appellants were not entitled to challenge the circular in revision filed before this Court u/s 41 of the KGST Act against orders of the Tribunal. In fact in the later order issued by this Court in the review petitions this Court observed that the appellants are free to challenge the circular. The circular as held by the Supreme Court in the decision reported in *State of Kerala v. Kurian Abraham Pvt. Ltd.* [2008] 13 VST 1 may not bind the Tribunal or the High Court and de hors the circular the Tribunal and the High Court are free to decide the validity of assessments. However, this does not mean that the parties aggrieved cannot challenge a circular if it is otherwise not tenable. This is a case where the appellants are in perpetual contest against sales tax assessment pertaining to a period which is 20 to 30 years back. Therefore, if challenge against the circular can achieve finality certainly the court should entertain the writ petition and put a quietus to the matter. We are therefore of the view that the writ petition is maintainable and therefore, we proceed to decide the appellant's challenge against exhibit P33 circular.

6. The basis of the circular is decision of this Court in *Padinjarekkara Agencies'* case [1996] 2 KLT 641 referred above which was not dealing with question of liability for sales tax on rubber in any of the forms. What is stated in the circular is that centrifuged latex produced out of field latex will not fall within the description of rubber under entry 38 until April 1, 1988. But from April 1, 1988 field latex and centrifuged latex will be treated as one and the same commodity. The question to be considered is whether this circular is tenable or not. Writ petition has to be allowed for the simple reason that the very same Department treated centrifuged latex also as rubber and collected sales tax from the purchasers of the item from the appellant based on form No. 25 issued by purchasers furnished by the appellant. In other words the Department treated centrifuged latex at the hands of the purchaser from the appellant as rubber taxable at last purchase point under entry 38 and at the same time they want to treat the same centrifuged latex as "rubber product" in the hands of the appellant that too not for the purpose of levy of tax on sale point but to justify levy of purchase tax on field latex out of which the centrifuged latex is produced. Admittedly centrifuged latex is nothing but preserved latex in concentrate form again used as a raw material by manufacturing industries for production of tyre tubes, gloves, threads, etc. It is to be noted that the position is clarified by later amendment by which natural rubber in all its forms are made taxable at the point of last purchase in the State. Rubber latex obtained from the tree is a highly perishable commodity and for marketing the produce various processes are engaged by planters and rubber processors. Even though there is value addition in centrifuging, it is nothing but a process of preservation and concentration of field latex. When rubber is converted from one form to another, it does not become a rubber product and so much so even prior to the

amendment, the word "rubber" used in entry 38 meant to cover rubber in all its forms. In fact the Department has accepted this position and that is the reason why the appellant was originally granted exemption on field latex purchased and centrifuged latex produced and sold by them subject to tax at the hands of the purchaser treating it also as "rubber" taxable at last purchase point under entry 38. We do not find any justification to uphold circular which interferes with the scheme of assessment and exemption granted to large dealers in the State. The circular cannot be applied uniformly because if circular is upheld and assessment is held in the hands of the appellant the Department will be compelled to grant refund of tax collected from purchasers on centrifuged latex at last purchase point. Moreover in the appellant's case strangely the Department has no case that centrifuged latex is a rubber product which is taxable at sale point at entry 39. Therefore, going by the Department's own stand the appellant is not liable to pay sales tax on centrifuged latex as it is not a rubber product. As already found by us above centrifuged latex continues to be rubber taxable at last purchase point. So much so the conversion of field latex into centrifuged latex cannot be treated as manufacture of a rubber product for the purpose of levy of tax under entry 39 of the First Schedule. Since the Department has not treated centrifuged latex as a rubber product at the hands of either the seller or purchaser there is no justification to demand tax at the purchase point of field latex. In view of the findings above we allow the writ appeal and quash exhibit P33 circular to the extent it says that centrifuged latex is a rubber product up to March 31, 1988.