

(2003) 02 KL CK 0089

In the High Court Of Kerala

Case No : T.R.C. No"s. 265 and 2440 of 2000

Memex Informations Systems (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 2, 5

Citation : (2004) 1 KLT 490 : (2006) 143 STC 414

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : B. Krishnamani and V. Premchand, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The same assessee is the revision petitioner in both the cases. The assessment years concerned are 1992-93 and 1993-94. The assessee is a dealer in electronic components, computer parts and peripherals, software, communication equipments, etc. at Vazhuthacad, Thiruvananthapuram. They are registered dealers under the Kerala General Sales Tax Act, 1963 (for short "the Act"). For the assessment year 1992-93 the assessee had reported a total and taxable turnover of Rs. 93.50 and nil respectively. Similarly for the assessment year 1993-94 the assessee reported a total and taxable turnover of Rs. 2,73,500/-. On a verification of the accounts of the assessee for the above two years the Additional Sales Tax Officer-III, First Circle, Thiruvananthapuram found that the assessee did not include in its return the charges received towards the sale of information received from U.S. Computers, etc. The assessments were completed on a taxable turnover of Rs. 2,69,380/- for the year 1992-93 and on Rs. 10,40,850/- for the year 1993-94. The appeals filed by the assessee against the said orders were dismissed. Second appeals filed against the same were also dismissed confirming the order of the first appellate authority.

2. Shri. V. Premchand, learned counsel appearing for the assessee submits that

the assessee is not engaged in the sale of any software packages as alleged by the department and that the assessee is only collecting information from U.S. and other countries and the same is passed on to its customers like Kerala State Industrial Development Corporation Ltd., Thiruvananthapuram, University of Kerala, Mahatma Gandhi University, etc. as printed materials and are collecting only service charges. These, according to the counsel, cannot be treated as sale exigible to tax under the Act. Counsel also submits that the transaction in question does not come within the definition of goods and taxable turnover.

3. The learned Government Pleader appearing for the respondent submits that in the transaction of the assessee in conveying information obtained from other countries in the form of printed materials, there is a transfer of valuable information having high technical importance and so it squarely falls within the definition of "sale" u/s 2(xxi) of the Act read with the definition of "goods" u/s 2(xii) and the definition of "taxable turnover" u/s 2(xxv) of the Act.

4. We have considered the rival submissions. The main part of the definition of sale u/s 2(xxi) reads as follows:

"Sale with all its grammatical variations and cognate expressions means every transfer, whether in pursuance of a contract or not, of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge".

The definition of goods u/s 2(xii) reads as follows:

"Goods means all kinds of movable property other than news papers, actionable claims, electricity, stocks and shares and securities and includes live stock, all materials, commodities and articles including those to be used in the construction, fitting out, improvement or repair of immovable property or used in the fitting out, improvement or repair of movable property whether as goods or in some other form involved in the execution of a works contract and all growing crops, grass or things attached to or forming part of the land which are agreed to be served before sale or under the contract of sale".

The definition of taxable turnover u/s 2(xxv) reads as follows:-

"Taxable turnover means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions, from his total turnover, of purchase or sale in the course of interstate trade or commerce or in the course of export of goods out of the territory of India or in the course of import of the goods into the territory of India".

A dealer whose total turnover of goods of a year exceeds the limits specified in Section 5(1) of the Act, the taxable turnover is exigible to tax at the point and at the rates provided in the Schedule. In the instant case the Tribunal has considered the matter thus:

The appellants obtain valuable informations having business importance from different sources and they transfer such valuable informations having high technical importance to various parties who require such technical informations, after receiving consideration. So, it cannot be held here that the appellant only transmitted certain informations sent by certain particular parties intended to be transmitted to certain particular parties here. On the other hand, the informations the appellants obtained are of high technical value, which is general in character and which can be used by interested parties in their business, and so the appellants transact in such informations for money consideration. The above nature of the transactions makes them a "sale" for valuable consideration and so, the turnovers involved in such transactions are taxable at the appellant's hands".

From this it is clear that the transactions is covered by the definition of "goods" and certainly once the various deductions available under Rule 9 of the Kerala General Sales Tax Rules are allowed, the balance turnover will become the taxable turnover which is exigible to tax under the Act.

5. We have no doubt that the transaction in question is goods and since the assessee is parted with its rights over the said goods in the form of printed materials supplied to its customers, there is a sale which is exigible to tax under the Act. In this context it is relevant to refer the decision of a Division Bench of this Court in *Escotal Mobile Communications Ltd. v. Union of India* 2002 (2) KLT 22 (SN No. 24), where this Court considered the question of exigibility to tax on the turnover of SIM card. It was held in that case as far as the sale of SIM card is concerned, there cannot be any doubt that it amounts to "sale" within the meaning of Section 2(xxi) of the Act as there is transfer of property in the goods, ie., SIM Card, by the service provider to the subscriber, for cash or for deferred payment or other valuable consideration and the entire consideration moving from the subscriber to the service provider would be exigible to sales tax as there is a "sale" within the meaning of the expression as used in the Act.

6. In the present case the valuable information obtained by the assessee from U.S. Computers, etc. transferred to its customers in the form of printed materials for consideration. The contention of the assessee is that what it has received is service charges and service charges cannot be treated as consideration which is contemplated under the definition of sale. We are unable to agree. The definition of sale only contemplates transfer of property in the goods by one person to another for consideration either in cash or valuable consideration. Certainly the service charges received by the assessee is consideration for transferring the property in printed materials which contained valuable information for use by the customers for their advantage. We do not find any illegality in the order of the Tribunal. There is no merit in these two revisions. They are accordingly dismissed.