

(1975) 06 KL CK 0005
In the High Court Of Kerala
Case No : T.R.C. No. 79 of 1973

M.M. Nagalinga Nadar and Sons

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-06-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 6

Citation : (1975) 36 STC 177

Hon'ble Judges : K. Bhaskaran, J;G. Viswanatha Iyer, J

Bench : Division Bench

Advocate : V. Bhaskaran Nambiar, C.R. Natarajan and M.K. Anandakrishnan, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Bhaskaran, J.—In this revision u/s 41 of the Kerala General Sales Tax Act, 1963 (15 of 1963), the question of law for decision raised by the petitioner-assessee is :

Whether the value of containers (packing materials-tins) separately shown in the bills and invoices is liable to be included in the taxable turnover of the assessee and liable to sales tax.

2. The petitioner-firm is a registered dealer in coconut oil at Quilon in Kerala State. Most of the petitioner's transactions are stated to be inter-State sales covered by C forms issued by the sales tax department. Since the oil cannot be despatched to far-off places outside the State by rail or road without proper packing, tins are utilised for that purpose. The petitioner also incurs labour charges for packing. The value of the containers (tins) and packing charges are shown separately in the petitioner's accounts, bills and invoices.

3. For the assessment year 1966-67 an amount of Rs. 1,75,839 was shown separately as the total value of the packing materials and labour charges by the petitioner. It was the petitioner's contention before the Sales Tax Officer, Special

Circle, Quilon, on whose file the petitioner is an assessee, that, the above amount separately shown as value of packing materials and packing charges is not liable to tax and the petitioner is entitled to exemption. The Sales Tax Officer, however, included the value of the packing materials and packing charges amounting to Rs. 1,75,839 in the assessment for the period 1966-67 and imposed sales tax on the same. Aggrieved by the order of the Sales Tax Officer, the petitioner preferred an appeal before the Appellate Assistant Commissioner of Agricultural Income Tax and Sales Tax, Quilon, who confirmed the order of the Sales Tax Officer in respect of the value of packing materials and packing charges, holding that the assessee was not entitled to claim exemption in respect of the said amount. In the second appeal before the Sales Tax Appellate Tribunal the order of the Appellate Assistant Commissioner was modified holding that the turnover of the containers could be assessed at the rate at which the turnover of the contents is assessed and dismissed the appeal in all other respects.

4. Sri V. Bhaskaran Nambiar, the counsel for the petitioner, has contended before us that the provision contained in Section 8(2A) of the Central Sales Tax Act, 1956 (74 of 1956), read with Rule 9(f) of the Kerala General Sales Tax Rules, 1963, would entitle the petitioner to claim deduction of the value of the containers (tins) from his taxable turnover. In support of his contention that not only labour charges, but also the value of the packing materials, would fall within the purview of the provision contained in Rule 9(f) of the said Rules, he has cited the decisions reported in State of Madras, In re [1956] 7 S.T.C. 355, Ramco Cement Distribution Co. (P.) Ltd. v. State of Kerala 1973 KLT 118 and State of Tamil Nadu etc. Vs. Cement Distributors Private Ltd. etc. etc., 668 Rule 9(f) referred to above reads as follows :

9. In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer....

(f) all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of goods sold ;

(i) freight;

(ii) charges for packing and delivery.

5. Sri K. S. Paripoornan, the Government Pleader appearing for the State has argued, inter alia, that the decisions relied on by the petitioner's counsel do not go to the extent of holding that where the, packing materials are separately charged for in the bill, but it is not shown that it has not been included "in the price of goods sold", the petitioner is entitled to claim deduction from his taxable turnover. It is also contended by him that the pleadings and evidence before the Sales Tax Officer, the Appellate Assistant Commissioner, and the Appellate Tribunal are so meagre and inadequate so as to disentitle the petitioner from canvassing the position now advanced before this court. We do not think that it is necessary in this case to go in detail into the question as to whether the

petitioner is entitled to claim deduction by virtue of the provision contained in Rule 9(f) of the Rules. Assuming, without deciding the question, that the petitioner would have been entitled to claim deduction of the amount charged towards packing materials from the taxable turnover if Rule 9(f) is applicable to the case, the petitioner has yet to establish that his claim for deduction would fall within the ambit of Section 8(2A) of the Central Sales Tax Act which is the provision sought to be invoked by the petitioner to claim exemption from assessment under the Central Sales Tax Act in so far as the value of the containers is concerned. Section 8(2A) of the Central Act reads as follows:

Notwithstanding anything contained in Sub-section (1A) of Section 6 or in Sub-section (1) or Sub-section (2) of this section, if under the sales tax law of the appropriate State the sale or purchase, as the case may be, of any goods by a dealer is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent (whether called a tax or fee or by any other name), the tax payable under this Act on his turnover in so far as the turnover or any part thereof relates to the sale of such goods shall be nil or, as the case may be, shall be calculated at the lower rate.

Explanation.-For the purposes of this sub-section a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods.

The argument of the counsel that if it is held that the petitioner would have been entitled to claim deduction of the value of the packing materials from the taxable turnover by virtue of the provision contained in Rule 9(f), that would automatically entitle him to claim the benefit u/s 8(2A) of the Central Act, in our view, is fallacious. The benefit claimed by the petitioner u/s 8(2A) can be only in respect of goods which is exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent. The explanation to the said sub-section makes it clear that for the purpose of the subsection a sale or purchase of goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law it is exempt only in specified circumstances or under specified conditions or in relation to which the tax is levied at specified stages or otherwise than with reference to the turnover of the goods. The petitioner has no case that the containers (tins) in this case would fall within the class of goods in respect of which the Government have granted exemption or reduction in the rate of tax by notification in the Gazette u/s 10 of the General Sales Tax Act. The petitioner cannot contend that the containers (tins) by themselves as a class are exempt from sales tax or are not liable to be assessed to sales tax. At best, what he could attempt to establish is that the provision contained in Rule 9(f) would enable him to claim deduction of their value when used as packing material if specified and charged for by him

separately, without including it in the price of goods sold, if the liability to assessment is under the General Sales Tax Act; that is not, however, sufficient for the purpose of attracting Section 8(2A) of the Central Act.

The result is that we find no reason to hold that the Appellate Tribunal has either decided erroneously or failed to decide any question of law. The revision is accordingly dismissed, but in the circumstances of the case we direct the parties to suffer their respective costs.