

(1981) 06 KL CK 0011
In the High Court Of Kerala
Case No : T.R.C. No. 129 of 1980

Moncompu Egg Store

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-06-1981

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5, 5(6), 5A, 5A(1)(c)

Citation : (1982) 1 ILR (Ker) 184 : (1981) 48 STC 518

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; George Abraham Vadakkal, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Subramonian Poti, Ag. C.J.

1. The revision petitioner is a dealer in eggs. The eggs are sold by the revision petitioner in inter-State commerce. Necessarily the eggs have to be sent properly packed. That calls for purchase of packing materials such as baskets, coir, straw and sticks. These are purchased by the petitioner from parties outside the State and it is agreed that no tax has been paid on the sales effected to the petitioner in respect of packing materials. The eggs sold by the revision petitioner is exempt from tax under the Central Sales Tax Act. The tax under Kerala General Sales Tax Act was sought to be imposed in respect of the purchase turnover of the packing materials. It was so imposed by the order of the assessing authority despite the objection by the assessee that the turnover of the packing materials ought not to be taxed u/s 5A of the Kerala General Sales Tax Act. Two reasons were urged by the assessee. The first was that u/s 5(6) of the Kerala General Sales Tax Act if the commodity sold is exempt the container sold must also be exempt. The second contention was that Section 5A(1)(c) operates to render the purchases not taxable in case the goods so purchased are despatched to any place outside the State in the course of inter-State trade or commerce. These

pleas did not get the acceptance of the Sales Tax Officer or the Appellate Assistant Commissioner. The Appellate Tribunal also did not accept these and hence the assessee has come up in revision.

2. Section 5(6) of the Kerala General Sales Tax Act may not help the revision petitioner for it may operate to save the tax when tax is levied at sale point on packing material and for any goods which are taxable at the sale point tax is attempted to be levied at the sale point. The other contention alone needs examination.

3. u/s 5A, a dealer, who purchases from a registered dealer or from any other person goods, the sale or purchase of which is liable to tax under the Act, in circumstances in which no tax is payable u/s 5 has to pay tax on the taxable turnover relating to such purchase if one of the three conditions mentioned in Clauses (a), (b) and (c) of Sub-section (1) of Section 5A is shown, that is, he should have either consumed the goods in the manufacture of other goods for sale or otherwise, or he should have disposed of such goods in any manner other than by way of sale in the State, or he should have despatched the goods to places outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce. Evidently the purpose of Section 5A is to meet any possibility of evasion of tax in cases where goods, the sale or purchase of which is liable to tax, when such sale or purchase happens to be in circumstances in which no tax is payable u/s 5. In such a case in the hands of the purchaser tax is levied u/s 5A. That again would be only if the goods would not come back into the stream of trade in the State. If it is sold again in the State then of course there is no question of tax being avoided. The three instances mentioned in Clauses (a), (b) and (c) are instances where goods are disposed of in a manner otherwise than by a taxable sale in the State. Where goods are consumed in the manufacture of other goods the commodity which was purchased for such manufacture could no longer be sold as such; in such a case Section 5A is attracted. Where otherwise than by sale the goods are disposed of the same result would follow. Where it is despatched outside the State also the result would be the same ; the State would lose the tax. But in Clause (c) there is an exception, namely, where despatches to any place outside the State as a direct result of sale or purchase in the course of inter-State trade or commerce. When the goods are in the inter-State stream of trade or commerce there is no question of invoking Section 5A.

4. It is, therefore, clear that in a case to which Section 5A would be attracted because the purchase has been made in circumstances in which no tax is payable u/s 5 nevertheless there will be no tax liability u/s 5A in case the goods have been despatched outside the State as a direct result of a sale in inter-State trade or commerce. The contention of the revision petitioner is that though the purchase by him of packing materials may be in circumstances in which no tax is payable u/s 5 he is not liable to be taxed u/s 5A because the goods so purchased are used as packing material which are to be despatched along with the eggs.

These goods are used to despatch the eggs to places outside the State as a result of contracts for sale of goods in inter-State trade. That eggs are sold in inter-State trade is not in controversy. That is admitted. That the packing materials are used for despatching such goods is also not in controversy. Then the only question is whether the despatch of packing materials is as a result of sale or purchase in the course of inter-State trade or commerce.

5. When parties enter into an agreement for sale or purchase and that requires despatch either by rail or by road normally goods requires to be packed and the nature of the packing will depend upon the commodity dealt with. In such cases parties normally contemplate the supply of the goods in the form in which they ought to move properly packed. There is no case for the department that the parties to the contract for sale of eggs contemplated sending the eggs without packing. In fact it is submitted by the Government Pleader himself that the bills show packing charges also. That indicates the intention of the parties that the goods should be despatched properly packed. In such a case even though the agreement does not particularly spell out the transfer of property in the packing materials it goes without saying that the property passes along with the goods sold. Packing materials by themselves may not be of value to the purchaser and so long as parties do not contemplate return of the packing material it is implied in the terms of sale that the purchaser of the eggs obtains the property in such packing material. It is by reason of the performance of the contract by the assessee in selling the eggs to the purchaser that the property in the goods in the form in which it reaches the purchaser passes to him. Therefore, there is a sale of the packing materials. If so, Section 5A(1)(c) applies in terms.

6. The Appellate Tribunal referring to these questions observes at the end of paragraph 4 of its order that there must be an implied or express contract for the sale of packing materials and the purchase price must include the value of packing materials. The Tribunal then goes on to say that no evidence has been produced to accept the revision petitioner's point of view. It is because of this that we have referred to the proper approach in regard to transfer of property in such packing materials. Where goods are sold, such as oil, parties do contemplate passing of property also in the tins in which the oil was sold. Of course, it is open to the parties to contract that the packing material should be returned and no price is levied in respect of packing materials. Unless there is a case that there is a specific contract it would normally be presumed that the property in the packing materials passes with the goods and the parties contemplate passing of such property under the terms of the agreement for sale.

7. In the circumstances of the case we have no difficulty in holding that Section 5A(1)(c) applies and consequently there is no liability to pay tax on the packing materials used for despatch of eggs in inter-State trade or commerce.

8. We may notice that the party himself conceded that he is liable to pay tax on coir not because that stands differently from other goods used as packing materials but because he is liable to tax on coir not u/s 5A but as a purchaser at

the last point of purchase in the State. Therefore, irrespective of Section 5A he is liable to pay tax on such purchases and that liability is not in any way affected by what has been said in this judgment.

9. The tax liability will be recomputed in accordance with this judgment and the refund of amount, if any, will naturally follow.