
(2010) 09 KL CK 0379
In the High Court Of Kerala
Case No : S.T. Rev. No. 113 of 2010

M/s. J. K. Tyres and Industries Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 43

Citation : (2011) 1 KLJ 19

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

Bench : Division Bench

Advocate : Pathrose Matthai Saji Varghese, for the Appellant; Jose Joseph, SC, for the Respondent

Final Decision : Dismissed

Judgement

Ramachandran Nair, J.—The question raised in the connected revision cases is whether the Sales Tax Appellate Tribunal was justified in holding that the Sales Tax Officer rightly declined to rectify the assessments completed for the assessment years 1999-2000 and 2000-2001 based on claim of exemption made subsequent to assessments by the petitioner. We have heard Sri Pathrose Mathai counsel appearing for the petitioner and the Government Pleader for the respondents.

2. The facts leading to the controversy are the following:

The petitioner is a tyre manufacturer. They were engaged in purchase of rubber from Kerala during the assessment years 1999-2000 and 2000-2001. Rubber is an item taxable at last purchase-point in the State and the petitioner was paying tax on the last purchases along with monthly returns filed by them. The Government had issued notification dated 30.11.1999 granting exemption from tax on the purchase of rubber by manufacturers of rubber products in the State from State Trading Corporation Limited for the period from 1.9.1997 to 31.10.1999 subject to certain conditions to be proved with documents. Even

though the petitioner was purchasing rubber from State Trading Corporation also and according to them, such purchases were entitled, to exemption, they were not aware of the exemption and consequently, they did not claim exemption with supporting documents. On the other hand, purchases from State Trading Corporation were also included in the taxable turnover in returns filed and tax was also paid. Assessments were taken up by the Assessing Officer on 4.11.2005 and notices were issued on the same day proposing to complete the assessments in terms of the returns filed. For the assessment year 1999-2000 the petitioner filed reply on 6.1.2006 without claiming any exemption and therefore based on reply filed, the assessment was completed by order dated 16.2.2006. For the assessment year 2000-2001, notice for the assessment was issued on 20.10.2006 and reply was filed by the petitioner on 27.11.2006. The assessment was completed on 28.12.2006. It is seen from both the assessment orders that the petitioner has not claimed any exemption from tax on the purchases from State Trading Corporation in terms of the notification referred above, neither in any of the returns filed nor in the replies filed or at any time before the completion of assessments. However, nearly after one year of the completion of assessments, the petitioner filed rectification application u/s 43 of the Kerala General Sales Tax Act before the Assessing Officer claiming exemption on the purchase turn over of rubber from State Trading Corporation. The Assessing Officer rejected it holding that there is no mistake in the assessments warranting rectification u/s 43 of the KGST Act. Against the order rejecting the claim for exemption, appeals were filed, which were dismissed by the First Appellate Authority and the second appeals filed before the Tribunal were also dismissed against which these revisions are filed. The only question to be considered is whether the claim of exemption not made in the returns filed or at any time before completion of assessment is a mistake that could be corrected by the Assessing Officer u/s 43 of the KGST Act, which is as follows.

43. Power to rectify any error apparent on the face of the record:- (1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, on application or otherwise, at any time within three years from the date of any order passed by it, rectify any error apparent on the face of the record:

Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the person affected and has allowed him a reasonable opportunity of being heard.

(2) Where such rectification has the effect of reducing an assessment or penalty, the assessing authority shall make any refund to the person entitled thereto.

(3) Where any- such rectification has the effect of enhancing an assessment or penalty, the assessing authority shall give the dealer or other person a revised notice of assessment or penalty, and thereupon the provisions of this Act and the rules made there under shall apply as such notice had been given in the first

instance.

Explanation:- The liability to pay the tax or other amount will arise only from the date specified in the revised notice

3. So far as facts are concerned, admittedly, the petitioner did not claim, any exemption on the turn over of purchase of rubber from the State Trading Corporation in any of the returns filed in terms of the notification and the petitioner made no claim for exemption in the replies filed or at any time before assessments were completed. Therefore, assessments were completed based on the returns filed. For the first time, a claim for exemption was made before the Assessing Officer, nearly after an year of completion of assessment.

The petitioner did not file appeal against the assessments to claim exemption because time for filing appeals were also over. What is clear from the above provision, is that only mistakes apparent on the face of the- record could be corrected in rectification proceedings. A claim of exemption that is not raised before the Assessing Officer at any time before completion of assessment does not constitute part of the record. In fact the claim was put forward before the Assessing Officer for the first time nearly after one year of completion of assessment which the Assessing Officer did not entertain u/s 43 of the Act. In order to substantiate their claim for exemption under SRO 977/99, the petitioner has to produce documents and certificate from the State Trading Corporation stating that the rubber purchased by them is from the stock of rubber procured by the State Trading Corporation in Kerala from 1.9.1997 to 31.10.1999 and that the petitioner made such purchases by utilising advance licences obtained for import of natural rubber. Therefore, it is obvious that the claim of exemption has to be first put forward with the documents and unless it is substantiated, the Assessing Officer will not be able to grant exemption. The exemption on this kind based on notification cannot be considered in rectification proceedings, because none of the materials including the claim itself was not even made known to the officer before the assessments to treat it as part of record of assessments, Once the assessment is made, the assessing officer becomes functus officio and he can modify the assessment only in accordance with powers conferred under the Statute. As already concluded by us, a new claim cannot be entertained in rectification proceedings u/s 43 after assessment. We are therefore of the view that the Assessing Officer the First Appellate Authority and the Tribunal rightly rejected the claim for rectification.

4. Senior Counsel appearing for petitioner relied on the decision of this Court in State Trading Corporation of India Ltd. v. Sales Tax Officer, Mattancherry & others (1972 KLT 289) and also a single judge decision of the Madras High Court in Ramco Cement Co. Pvt. Ltd., Rajapalayam v. Deputy Commercial Tax Officer, Rajapalayam (Vol. 33 STC 1974 page 180). The Madras High Court held that if claim for exemption is available under Rule 60 it could be allowed even on rectification proceedings. The Government Pleader on the other hand relied on the decision of the Delhi High Court in Lalitha Dalmis v. Commissioner of Wealth-

Tax, Delhi (Central) and another reported in 132 ITR 1981, page 139, wherein it is held that the exemption cannot be claimed, in rectification proceedings. We are not persuaded, by the decisions cited by the counsel for the petitioners to hold that exemption that was not claimed in the return or at any time before the assessment could be allowed in rectification proceedings. Probably, if the commodity assessed is not taxable under the Act then, the assessment itself could be held to be wrong and therefore rectification is possible. However, in this case, the commodity is taxable under the Act and the exemption provided is a conditional one available on production of proof of satisfaction of conditions of notification which are mandatory. Therefore, there is no mistake in the assessment. On the other hand assessment of the entire purchase turnover of rubber is strictly in accordance with the changing section and entry in the schedule. The claim of exemption under the notification if at all tenable should have been claimed in returns and proved with evidence. In the absence of any such claim or evidence on record, to prove it, the assessments completed based, on returns filed, and reply filed against assessment notice does not become a mistaken assessment justifying rectification. We, therefore, dismiss the revision petitions.