
(1998) 01 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeals Nos. 994-95 Of 1991 With Nos. 3275-88 Of 1997 And Tp (C) No. 29 Of 1992

Nilambur Rubber Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-01-1998

Acts Referred:

Citation : (1999) 9 SCC 205 : (1999) 112 STC 654

Hon'ble Judges : V. N. Khare, J;S. P. Bharucha, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We shall deal with the facts for the assessment year 1978-79. The facts for the assessment year 1980-81 are similar.

2. The assessee-company owns substantial estates in the State of Kerala and plants rubber thereon. The latex which is obtained from the rubber trees is converted into rubber sheets and sold in Kerala and outside. We are here concerned with sales made outside Kerala. The assessing authority found that the company was a dealer within the meaning of that word in the Central Sales Tax Act and he made an assessment upon that basis. The Appellate Assistant Commissioner confirmed the assessment. The company approached the Sales Tax Tribunal, which reversed the view taken by the lower authorities. It did so upon the basis that it had not been established that the company was actually engaged in the purchase and/or sale of rubber or that the objects specified in the company's Memorandum and Articles of Association were actually being carried on. In the absence of any finding by the assessing authority that the company was actually engaged in the business of purchase and sale, the Tribunal was unable to accept the Revenue's contention that the company fell within the definition of "dealer". The Revenue filed a tax revision case before the High Court at Kerala against the findings of the Tribunal. The High Court noted that the definition of "dealer" was very wide and remanded the matter to the Tribunal to

find out the intention with which the company had formed a selling organisation and other relevant facts. The Tribunal, on remand, found that the amended definition of the term "dealer" was wide enough to take in the company. It said :

Considering the amended provisions defining 'business' and 'dealer' in the CST Act together with the various clauses of Memorandum and Articles of Association of the appellant-company, we find that the transactions of the company will come squarely under the terms 'business' and 'dealer' and so, they are liable to be assessed under the CST Act. The fact that the appellants are registered under the CST Act and they have collected CST on their inter-State sales is also evident from the records.

From the decision of the Tribunal on remand the company moved the High Court in revision. By its brief judgment referring to an earlier judgment where the same question had been considered in some detail, the High Court held that the company was engaged in a regular systematic activity and when it sold rubber produced by it inter-State, it was a dealer. The revision was, therefore, dismissed and the company is here against the order by special leave.

3. Learned Counsel for the company drew our attention to the judgment of this Court in Deputy Commissioner of Agricultural income tax and Sales Tax Quilon v. Travancore Rubber and Tea Co. [1967] 20 STC 520. This was a case of a company growing rubber trees on estates in Kerala. The only facts that were established were that it was converting the latex lapped from its rubber trees into sheets which it sold to its customers, and that the conversion of latex into rubber sheets was a process essential for the transport and marketing of the product. This Court said :

Apart from the facts that the assessee converts the latex tapped from as rubber trees into sheets-a process essential for the transport and marketing of the produce concerned-and it sells these sheets, nothing else has been found. No effort has been made to find out the intention with which the assessee was formed, the selling organisation it had set up and other relevant facts. On the facts found in this case it seems to us that the department has not discharged the onus.

This Court, therefore, dismissed the appeal filed by the Revenue, decli(sic) to remit the matter to the Sales Tax Officer to enable him to find fresh (sic) The decision in this case was followed in Deputy Commissioner of Agricu(sic) income tax and Sales Tax, Quilon v. Midland Rubber and Produce Co. Ltd. 1997 25 STC 57 (SC) and the appeal by the Revenue again failed.

4. In the present case despite the remand ordered by the High Court that the company is a dealer. The Revenue was the appellant in the til that we have first cited. It could not have been unaware of the onus that it was required to discharge, but it tailed to do so. liven so, we are persuaded to remand the matter to the Tribunal so that the Revenue may have a last opportunity to produce such facts as are requisite to support its case. The company would, of

course, also be entitled to lead such evidence as it thinks necessary to counter the Revenue's case.

5. The appeals are, therefore, allowed and the order under appeal is set aside. The matters are remanded to the Sales Tax Appellate Tribunal to be disposed of afresh, having due regard to the observations made above.

6. No order as to costs.