(2002) 09 KL CK 0095

In the High Court Of Kerala

Case No : T.R.C. No. 336/98

Palakkad District Co-operative Printing Press Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2003) 1 ILR (Ker) 210 : (2003) 1 KLT 622 : (2004) 135 STC 207

Hon'ble Judges : G. Sivarajan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : G. Hariharan, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—This revision is at the instance of the assessee. The assessment year concerned is 1986-87. The assessee is a Co-operative Printing Press, inter alia, engaged in the manufacture and sale of printed Account Books and Registers. In the assessment year concerned, the assessee contended before the assessing authority that printed Account Books and Registers are stationery items exigible to tax only at the rate of 5 per cent as they are unclassified items. The assessing authority took the stand that these two items will fall under Entry 97B of the First Schedule to the Kerala General Sales Tax Act as it stood at the relevant time. In appeal, the first appellate authority considered both items with reference to Entries 97 and 97B of the First Schedule to the said Act as they stood at the relevant time and took the view that the two items will not fall under any of the said two entries and held that it is liable to be assessed only as unclassified items exigible to tax at 5 per cent. On appeal by the State, the Tribunal, relying on the decision of the Madhya Pradesh High Court in M. P. State Co-operative Press Ltd. v. Additional Commissioner of S.T. (M.P.) (1988) 68 STC 245 held that the two items fall under Entry 97B of the First Schedule to the Act and accordingly set aside the order of the first appellate authority and sustained the assessment order.

2. Learned Counsel for the assessee submits that the assessee is only a printing press which undertakes job works and that at any rate, the two items in question being only stationery items which are unclassified items are liable to tax only at the general rate of 5 per cent. He also submits that printing in the Account Books and the Registers are only minimal and therefore it cannot be called as printed material. The learned Government Pleader for the State, on the other hand, submits that the two items squarely fall under Entry 97B of the First Schedule or in any case under Entry 97.

3. In order to test the correctness of the contesting claims it is necessary to refer to the relevant entries in the First Schedule to the Act which are extracted hereunder.

Sl. No. Description of goods Point of levy Rate of tax

97. Paper (other than news print), card boards and their products At the point of first sale in the State by a dealer who is liable to tax under S. 5 8

97B. Printed materials other than journals and books meant for reading. do. 8

It is pertinent to note that Entry 97B specifically excludes journals and books meant for reading. Thus Entry 97B relates to all other printed materials whether they are meant for reading or not. The words ''meant for reading" qualifies only ''journals and books''. In other words the said words do not qualify ''printed materials''. It is not as if all journals and books are excluded from Entry 97B. In other words even printed books and journals not meant for reading of the nature we are concerned will fall under the entry. In the instant case admittedly there are printings in the Account Books and Registers which will not fall under the excluded category. In order to name them as account books and registers the required details are to be printed in the said books. Without the details printed in the Account Books and Registers the purchasers will not be able to use those account books and registers for their purpose. Account books and registers without any printing will not fall under Entry 97B. Such books and registers however will fall under Entry 97 "Paper (other than news print), card boards and their products". Thus looked at from any angle this printed account books and registers sold by the assessee will fall under any of the two Entries, viz., 97 and 97B exigible to tax at 8 per cent.

4. In this context, it is relevant to note that the Tribunal had relied on a decision of the Madhya Pradesh High Court in M. P. State Co-operative Press Ltd. v. Additional Commissioner of S.T. (M.P.) (1988) 68 STC 245 which is directly on the point. In that case the assessee, a Co-operative Printing Press contended that since the assessee had only carried out job works in printing items such as printed registers for banks and Co-operative Societies on specifications provided by the customers it was only a case of works contract. The Madhya Pradesh High Court considered the question very elaborately and it was held that the items

including printed registers for banks and cooperative societies were stationery and sale thereof being of finished goods the turnover relating to these items would be taxable, as orders for these items were placed by customers in the course of their business and after giving specifications of the goods, they required the petitioner to supply the goods in the specified quantities. The court took the view that when printed materials are sold to the customers there is a sale of finished goods to the customers. The aforesaid decision, as already noted, answers the question raised by the petitioner on all aspects.

5. This court considered the scope of Entry 97 of the First Schedule to the Act as it stood at the relevant time in Deputy Commissioner of Sales Tax v. Indian-Duplicator Co. Ltd. 1987 (2) KLT 164. The court noted that a Bench of this court in P.K. Dewer v. State of Kerala 1970 KLT 454 held that ''paper product'' means an article different from paper and something produced with or out of paper. The Division Bench thereafter considered whether duplicating paper or stencil paper is to be considered as ''paper product'' and observed that the decisive test to determine whether a particular commodity can be considered to be a ''paper product'' is whether, people who are conversant in the subject, will consider it as a paper product. The Supreme Court in Khatema Fibres Ltd v. State of Uttar Pradesh AIR 2001 SCW 22 has observed that ''paper'' as understood in common parlance and commercial sense can be used for writing, printing, packing and wrapping purposes. This court in The Mathrubhumi Priming and Publishing Co. Ltd. v. State of Kerala (1992) 1 KTR 21 considered the rates of tax applicablelo diaries and calendars. The assessee contended that the said items will not fall under the first schedule as printed-materials. However the Tribunal took the view that diaries and calendars are admittedly printed materials and they cannot be called books and journals meant for reading. As printed materials they fall under Entry 97B of the First Schedule to the Act. This court held that a plain reading of the Entry 97B clearly supports the, view taken by the Appellate Tribunal.

6. The Supreme Court in Commissioner of Sales Tax v. Macneill and Barry Ltd. 1986) 61 STC 76 considered the question whether ''ammonia paper or ferro paper'' is paper in the popular sense of the term. In that context it was observed as follows:

"The paper is used for preparing prints and sketches of site plans. An impression of the print or sketch is made on the paper, and it is then exposed to light for a period of time during which the chemical evaporates resulting in the emergence of the print or sketch of the site plan. Plainly, ammonia paper and ferro paper cannot be regarded as paper in the popular sense of that term. Paper is used for printing or writing or for packing. Ammonia paper and ferro paper are not employed for any of the purposes and subjected to any of the processes for which a paper, as commonly understood, is generally used....."

7. Again a Division Bench of this Court in M/s. Kunnamkulam Book Company v. State of Kerala (2001) 9 KTR 400 considered the question whether, in converting paper into note books, a manufacturing process resulting in the emergence of a

different commercial commodity. This Court noted that paper and paper products as per Entry 136 of the First Schedule to the Act (same as Entry 97) are liable to levy of sales tax on the first sale point at the rate of 8 per cent and therefore the turnover of paper, paper products, note books and books are liable to levy sales tax at 8 per cent. The Division Bench relied on the decision of the Supreme Court in Maharaja Book Depot Vs. State of Gujarat, where the Supreme Court held as follows:

"In substance, therefore, paper, whether lined or blank, means a material on which writing, printing, drawing, etc. can be done. In light of this meaning of the expression ''paper'' the question is whether an exercise book would be covered by that expression or not? It cannot be disputed that an exercise book is nothing but a collection of sheets of paper (blank or lines) stitched together by a piece of string or pinned together with pines of a stappler and is a substance used for writing and, therefore, would clearly fall within the item ''paper''. The test would be whether because of stitching or pinning them together such a collection of sheets losses its identity as paper? The answer must be in the negative. Looked at from this angle it is difficult to accept the contention that an exercise book is a distinct commodity other than ''paper''. The Supreme Court followed another decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers 46 STC 63. There, the processing of pineapple fruit is processed into pineapple slices for being sold in sealed cans. It was held that although it has undergone a degree of processing, it must be regarded as still retaining its original identity."

8. The Tribunal, as already noted, has taken the view that account books and registers are ''printed materials'' coming under Entry 97B of the First Schedule to the Act. According to us the Tribunal was right in arriving at the said conclusion. Even if the said items do not come under Entry 97B still it squarely come under Entry 97 of the First Schedule to the Act. Be it under Entry 97B or under Entry 97 the rate of tax is the same 8 per cent. Account books and registers cannot be treated as unclassified items taxable at the general rate of 5 per cent. We accordingly uphold the Order of the Tribunal and dismiss this tax revision case.

