(1986) 11 KL CK 0019

In the High Court Of Kerala

Case No : O.P. No''s. 2562 of 1984 and 6261 of 1985

Palghat Oil Mills APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 27-11-1986

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10

Citation : (1987) 65 STC 169

Hon'ble Judges : T. Kochu Thommen, J;Chettur Sankaran Nair, J

Bench : Division Bench

Advocate : Jose Joseph, A.K. Jose, V.S. Asokan and K.I. Mayankutty Methar, for the Appellant; Government Pleader, for the Respondent

Judgement

T. Kochu Thommen, J.—The petitioner in these two petitions challenges the orders of assessment for the years 1976-77, 1977-78 and 1978-79. The main contention of the petitioner is that the expression "his mill" in notifications S.R.O. No. 137/69 and S.R.O. No. 854/74 issued u/s 10 of the Kerala General Sales Tax Act, 1963, granting reduced rates, are wide enough to include a person who does not have a proper title, but who is in sole control of the mill. The petitioner contends that the Sales Tax Officer unjustifiably rejected its claim for reduction in rate on the basis of the two notifications. The notifications read:

68. Coconut or copra by oil miller.

S.R.O. No. 137/69...hereby reduce the rate of tax payable by an oil miller under the said Act in respect of his purchases of coconut or copra which is used by him for production of coconut oil and cake in his mill within the State for sale, from 3 per cent to 2 per cent.

This notification shall come into force on and with effect from 1st April, 1969. (Notification dated 1st April, 1969, in Kerala Gazette, Extraordinary No. 88 dated 1st April, 1969.)

131. Coconut oil and coconut oil cakes.

S.R.O. No. 854/74.-In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963) and in supersession of the Taxes (B) Department Notification No. G.O. Ms. 130/74/TD, dated the 22nd October, 1974, published as S.R.O. No. 787/74 in the Gazette Extraordinary No. 732 dated the 22nd October, 1974, the Government of Kerala, having considered it necessary in the public interest so to do, hereby make a reduction in the rate of tax payable under the said Act by an oil miller in the State on the sale of coconut oil and coconut oil cake produced in his mill to any dealer for sale by such dealer in the course of inter-State trade or commerce including transfer to any other place of business or to an agent or principal situated outside the State from five per cent to one per cent, subject to the condition that the oil miller shall produce before the assessing authority a declaration obtained from the purchasing dealer in the form hereto appended.

2. The words "his mill" in the context of the two notifications, in our view, refer to a mill solely operated by the assessee. The assessee must be in such control of the mill as to be its sole operator. His control may be by virtue of his full or limited ownership or other rights in the mill. What is important is not his title, but his exclusive control. He must be in exclusive control of the mill either as an individual or as a corporation. The question therefore is, is he the sole operator of the sole mill ? In O.P. No. 404 of 1968, Govindan Nair, J., as he then was, held :

...The ordinary meaning of the word ''miller'' will take in not only a person who owns a mill but also a person who works a mill. There is no reason why this ordinary meaning should not be applied to the case of the petitioner...

With respect, we adopt this definition, subject to the miller, whether as an individual or a partnership or a company, being in exclusive control of the mill, whatever be the title or other rights.

3. Whether in the instant case the facts as determined by the competent authority qualify the petitioner as a miller so as to be entitled to the reduction in rate granted under the two notifications is a matter for final determination by the appropriate authority. We are told that appeals filed against the orders impugned in these petitions are now pending before the appellate authority. It is for that authority to determine the relevant facts and apply the same to the law as we have declared. The original petitions are accordingly disposed of. No costs.

Issue carbon/photo copies of this judgment to the parties on the usual terms.