
(1981) 07 KL CK 0006
In the High Court Of Kerala
Case No : T.R.C. No. 151 of 1980

P.C. Joseph and Sons

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-07-1981

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5A

Citation : (1981) 2 ILR (Ker) 713 : (1981) 48 STC 563

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

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, P.S. Narayanan, S.R. Dayananda Prabhu, N. Subramoniam and P. Krishnan, for the Appellant; The Government Pleader, for the Respondent

Judgement

P. Subramonian Poti, Ag. C.J.

1. The revision petitioner is a firm of timber dealers. "They purchase logs of timber and sell timber as well as sawn timber and scantling. For the year 1974-76 they were assessed to tax on their turnover. Prior to assessment a dispute arose in regard to two items. Logs of timber purchased by the assessee were being sawn in the premises of the seller since there is a saw mill also there and according to the assessee besides the value of the timber sawing charges are also paid. The assessee purchases logs and sells such logs to customers some of whom may require the service of sawing. Whether the turnover of timber must include such sawing charges also was the main question. Such charges, as seen from the bills, came to a sum of Rs. 33,629.80. The assessing authority issued a pre-assessment notice proposing to tax sawing charges shown in the bill also as part of the turnover. The other claim concerned the purchase tax leviable on the purchases of timber by the assessee, corresponding to sales of scantlings and sawn timber. The logs used for that purpose would be treated as consumed and therefore in respect of purchases of logs tax u/s 5A would be leviable. There is a dispute as to the quantum of purchases which had to be

treated as taxable u/s 6A. According to the department, in the absence of any evidence showing sales of timber as such, the entire purchase turnover of Rs. 64,269.40 was to be treated as taxable u/s 5A. According to the assessee as clarified before it appellate authority by a statement filed by him such turnover was only a sum of Rs. 3,950.60, for, it was urged before the appellate authority that only timber worth Rs. 3,950.60 had been sawn and sold as scantlings. To the pre-assessment notice the assessee filed a reply. He contended specifically that sawing charges were realised under separate contracts subsequent to the sales of logs and therefore they were not part of the turnover. The assessee disputed liability to tax u/s 5A on the entire turnover of purchase of logs.

2. The assessing authority did not accept the contention of the assessee that sawing charges should not be included in the turnover. Of course the plea of the assessee that sawing work was done under contracts entered into subsequent to the sales was not discredited by the assessing authority nor was the truth of such a case disputed. On the other hand the assessing authority seems to think that even if that be so, since the work of sawing had necessarily to be done before delivery, going by explanation (2) to the definition of "turnover" in the Kerala General Sales Tax Act such charges also would fall within the scope of "turnover". On the question of turnover taxable u/s 5A the assessing authority took the view that the entire turnover of purchases was assessable. The appellate authority accepted the case of the assessee. He found that the sawing of timber had nothing to do with the turnover of the assessee and thus the whole of the sawing charges had to be excluded. He also accepted the statement of the assessee as to the quantum of timber used for converting into scantlings and sawn timber sold as such and on that basis reduced the turnover liable to tax u/s 5A to the sum of Rs. 3,960.60. The Appellate Tribunal, before whom the matter was taken up in revision by the department, accepted the contention of the department. Adopting the reasoning of the Sales Tax Officer it found that the sawing work was done on the logs before delivery and for that reason the charges of sawing would fall within the definition of "turnover". On the question of the turnover liable to be taxed u/s 6A it found that there was some confusion and therefore the matter called for examination afresh. That was directed to be done. These two matters are covered by two of the questions raised in this revision. The third question concerns an addition of 5 per cent by way of estimate on account of the fact that such estimate had to be resorted to in view of the various defects pointed out.

3. The last question concerning the addition of 5 per cent by way of estimate can easily be disposed of. That there are defects is evident from the orders of the assessing authority as confirmed in appeal and second appeal. It is not shown that the reasoning of the assessing authority to hold that there are defects is not sustainable. The estimate of 5 per cent is moderate and does not call for interference.

4. The main question concerned the plea that charges realised by a dealer

towards the work of sawing on the logs which are the subject of the sale should also be part of the turnover since the sawing work is done prior to delivery. Before we go into the question we must notice that the assessee had categorically and unequivocally stated in his objection to the pre-assessment notice that the contract of sawing was subsequent to the sale and therefore sawing charges were not liable to be taxed. Neither the assessing authority nor the appellate authority doubted the truth of this case, let alone enquire into the truth. The question of enquiry would arise only if the assessing authority was not prepared to accept such a case. The authority has assumed that the case was true but has examined the liability to tax nevertheless. The assessing authority has expressed the view that since the sawing operations were prior to delivery the charges for such sawing would become part of the turnover. This is the argument repeated by the Tribunal. We are called upon to examine the correctness of this approach.

5. Turnover is defined in Section 2(xxvii) thus:

"Turnover" means the aggregate amount for which goods are either bought or sold, or supplied or distributed, by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation (1).-"Agricultural or horticultural produce" shall not include-

(i) such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting, drying or dehusking;

(ii) tea, coffee, rubber, cardamom or timber.

Explanation (2).-Subject to such conditions and restrictions, if any, as may be prescribed in this behalf-

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover ; and

(iii) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.

Turnover is evidently the aggregate amount for which goods are either bought or

sold. This aggregate amount would include anything done by a dealer in respect of the goods sold, at the time of or before the delivery thereof as mentioned in Clause (i) of explanation (2). No doubt read by itself the words "sums charged for anything done by the dealer in respect of the goods sold" are quite wide in their amplitude. But the explanation does not stand by itself. It is an explanation to the definition and therefore it has to be read in the context of the definition of the term "turnover". What the aggregate includes is what is indicated by the main part of the definition. The aggregate is necessarily the amount for which the goods are either bought or sold. It is the sale price. What would not be part of the consideration would not be within the scope of Clause (i) of explanation (2). When the contract of sale contemplates that the vendor shall do certain acts in relation to the goods before delivery, the charges for such services would necessarily form part of the price unless it be that parties specifically agree that it need not be so. All such charges would be brought within the scope of consideration for the sale, the aggregate amount referred to in the definition of "turnover". If there is an independent contract to pay for services and that contract is executed the amount payable under such contract for services will not be part of the sale consideration. The charges for services to be rendered under the agreement of sale either expressly or otherwise would fall within Clause (i) of explanation (2). Reference in the said part of the explanation to "any sums charged for anything done" must be understood as anything done in relation to the transfer of property in the goods, and not independent of it. The view we have expressed here is consistent with the view expressed by the High Court of Madras in *Srinivasa Timber Depot v. Deputy Commercial Tax Officer, Choolai Division, Madras-29* [1969] 23 S.T.C. 158. The Sales Tax Appellate Tribunal has evidently lost sight of the import of that decision. It has attempted to apply literally the words "charged for anything done before delivery" without noticing the real purport of the explanation. There was no scope for assessing the charges for sawing included in the bills. The assessee must succeed in relation to the turnover of Rs. 33,629.80.

6. The only question that remains concerns the remit by the Tribunal to the assessing authority to reconsider the taxability u/s 5A. The Tribunal was not prepared to accept the case of the department that the entire turnover of purchase of timber was liable to be taxed u/s 5A. Evidently that cannot be, for, even according to the Tribunal and consistent with what we have found here a part of the turnover represents sale of logs as logs. What the quantum of that turnover is, is another question. Whether the turnover indicated by the assessee in the statement filed before the Deputy Commissioner in appeal should be found to be correct is a matter for examination. The Deputy Commissioner chose to accept the statement without indicating reasons. Of course that statement would represent the case of the assessee. Such representation called for examination. That is what the Tribunal has directed to be done. Hence that part of the order of the Tribunal is unexceptionable. The result is that the tax revision case is allowed to the extent of deleting the tax on a turnover of Rs. 33,629.80 and confirmed in

other respects.