

(1993) 01 KL CK 0065
In the High Court Of Kerala
Case No : T.R.C. No"s. 4 and 5 of 1993

Pearl Food Products

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Citation : (1993) 01 KL CK 0065

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The revisions are filed by the same assessee. The assessee is a firm. It is engaged in the manufacture and sales of biscuits. The respondent is the Revenue. We are concerned herein with the assessment years 1984-85 and 1985-86. The matter arises under the. The assessee-firm has sales depot at Coimbatore in Tamil Nadu. They have got sub-depot at Tiruchirappalli and in Pondicherry. The assessee-firm is a registered dealer both in Kerala and in Tamil Nadu. The assessee-firm claimed exemption for a turnover of Rs. 52, 16, 040 for the year 1984-85. Similarly, it claimed exemption for a turnover of Rs. 41, 45, 710 for the year 1985-86. Exemption was claimed stating that the turnover represents goods transferred to its depots in Tamil Nadu and Pondicherry. The assessing authority rejected the said plea of branch transfer. The said turnovers were assessed at 10 per cent under the Central Sales Tax Act treating them as inter-State sales. The appeals filed by the assessee-firm before the first appellate authority did not meet with success. The above turnovers were treated as inter-State sales. In second appeals the Sales Tax Appellate Tribunal also affirmed the said finding; but ordered a remit giving an opportunity to the assessee-firm to collect C forms and submit them before the assessing authority within one month from the date of receipt of the order. Aggrieved by the aforesaid common order of the Sales Tax Appellate Tribunal, dated August 10, 1992, the assessee has

come up in revisions.

2. Identical questions arise for consideration for both the years. So, we are dealing with both the revisions in this common judgment.

3. We heard counsel for the revision-petitioner/assessee.

4. The sole question that arises for consideration is whether the turnover under dispute, for both the years, is a branch transfer or an inter-State sale. It has been concurrently found by all the statutory authorities, that the disputed turnovers represent inter-State sales. Counsel for the revision-petitioner argued that the Sales Tax Appellate Tribunal was in error in holding that the turnovers under dispute represent inter-State sales. Stress was laid on the fact that at least in some cases the goods were first sent to the assessee's depot at Coimbatore and it is the said depot which consigned the goods to the customers thereafter in the other States. That vital aspect was totally brushed aside in deciding the question.

5. We are unable to accept the said plea. The assessing authority stressed five aspects to hold that the disputed turnovers represent inter-State sales. They are: (1) The despatches were made to the places of actual purchasers in Tamil Nadu and Pondicherry and not to the sales depots; (2) Every stock transfer statement was followed by an invoice for local sale in the State to which the goods were despatched. The invoices were raised with the very same date for the very same value and of the same quantity as in the stock transfer invoice; (3) The freight charged in the way bills from the head office at Eramalloor was the actual freight up to the purchaser's place and not to the assessee's sales depot; (4) The assessee's goods in a lorry was intercepted in the check-post near Coimbatore and the three C.C. notes accompanying the goods in the vehicle disclosed that the goods were meant for three different dealers whereas the form 26 delivery note showed that the goods were consigned to the branch of the firm at Coimbatore. The discrepancy was admitted by the assessee. The offence was compounded by paying a sum of Rs. 1, 000; and (5) The entire freight charges from Eramalloor to the places of the purchasers in the respective States were charged in the way bill and the assessee was fully aware of the identity of the purchaser even before the goods started to move from the head office. It can be inferred therefrom that the movement of the goods was against the prior orders received from the purchasers outside the State.

6. The Sales Tax Appellate Tribunal adverted to the above five aspects stressed by the assessing authority and also section 3 of the Central Sales Tax Act. It held that the question in the instant case is as to whether the goods moved as a result of the prior contract or understanding between the parties notwithstanding the fact that the sale may have taken place in either State. The Sales Tax Appellate Tribunal held that the local sales invoices of Tamil Nadu and Pondicherry were prepared with the same date, for the same amount and for the same quantity as in stock transfer statement and the freight for the goods from

the head office to the purchaser's place was levied by the head office. After referring to the points stressed by the assessing authority and also the above facts, the Appellate Tribunal held that the movement of the goods from the head office was occasioned by the order placed by the buyer or is an incident of the contract. It was further held that the fact that in certain cases the goods were first sent to the depot at Coimbatore, is immaterial. The branch office merely acted as a conduit.

7. In the light of the various aspects stressed by the assessing authority and affirmed by the first appellate authority and the Appellate Tribunal, we have no doubt in our mind that the movement of the goods from Kerala State to the various places in Tamil Nadu and Pondicherry was occasioned by the order placed by the buyer or as an incident or covenant in the contract or at least as a result of the understanding between the parties to that effect. The Appellate Tribunal, as the final fact-finding authority, on the basis of relevant and cogent materials, found that the disputed turnovers relate to inter-State sales. We see no error of law in the said reasoning and conclusion.

8. It is feebly argued that the assessee was not afforded sufficient opportunity to represent its case. The Appellate Tribunal adverted to the said aspect in paragraphs 7 to 9 of its common order and held that sufficient opportunity was given to the assessee and the assessee was not able to produce any satisfactory evidence to prove that the turnover under dispute is a branch transfer. Even before the first appellate authority, the assessee could not do so. No attempt was made even before the Appellate Tribunal to substantiate the plea. The Appellate Tribunal rightly rejected the plea of the assessee, that sufficient opportunity was not afforded to the assessee to represent its case.

9. No other point was urged in these revisions. Having found that the transfers covered by the disputed turnover are inter-State sales, the Appellate Tribunal gave an opportunity to the assessee to produce C forms within one month from the date of receipt of the order. In all the circumstances of the case, the Appellate Tribunal afforded an opportunity to the assessee to lessen the burden of taxation by producing C forms. That is an equitable relief properly afforded by the Sales Tax Appellate Tribunal.

10. We see no merit in this tax revision cases. They are dismissed