
(2002) 01 KL CK 0068
In the High Court Of Kerala
Case No : T.R.C. No. 80 of 2001

P.I. Varghese and Sons

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(2A)

Citation : (2002) 126 STC 217

Hon'ble Judges : S. Sankarasubban, J; C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K.B. Mohammed Kutty, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Revision petitioner is the assessee. The assessment year is 1988-89. The assessee is a dealer in arecanut. The assessment relating to the petitioner for the year 1988-89 was completed by the Sales Tax Officer (R), Special Circle (Produce), Mattancherry, accepting the trade results. Turnover tax was also levied on the petitioner as no declaration as required under Government Notification S.R.O. No. 717/88 was produced in support of the claim for exemption. As per S.R.O. No. 717/88 turnover tax is exempted on all purchases except purchase previous to the last purchase. Since, admittedly, the petitioner is not the penultimate purchaser, levy of turnover tax is clearly illegal.

2. The petitioner has been assessed to tax on the turnover of arecanut, they being the last purchaser. It was contended that the assessment order itself is a clear proof to show that the petitioner is not the penultimate purchaser and that they are only the last purchaser within the State. But the assessing authority as well as the appellate authority took the view that the petitioner is liable to pay turnover tax as he has not produced necessary declaration for claiming exemption. The Appellate Tribunal held that even though the petitioner did not produce declaration as per Government notification, it is true that the petitioner

is not the penultimate purchaser of arecanut in the State and the petitioner has in fact paid tax u/s 5(1) of the Kerala General Sales Tax Act, 1963, on the purchase turnover of arecanut. But the notification provides that the petitioner should produce the declaration in order to avail exemption. In the absence of declaration, the Appellate Tribunal was of the view that the assessing authority was justified in levying turnover tax on the purchase turnover of arecanut.

3. The notification, S.R.O. No. 717/88 is as follows :

"In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963), the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the turnover tax payable by dealers under Sub-section (2A) of Section 5 of the said Act, on the turnover of the following goods at all points of purchases except at the point of purchase preceding the purchase in the course of export or at the point of purchase previous to the last purchase in the State, which is not exempted from turnover tax, subject to the condition that any dealer who claims exemption on such turnover tax shall produce before the assessing authority concerned a declaration from the dealer who paid the turnover tax in the form annexed to this notification :--

- (1) Garbled pepper ;
- (2) Ungarbled pepper ;
- (3) Arecanut ;
- (4) Dried ginger ;

The notification shall be deemed to have come into force with effect from 1st July, 1987."

There is an annexure to the notification to be furnished by a purchasing dealer for claiming exemption from turnover tax. The question of burden of proof regarding the claim for exemption under the S.R.O. came up for consideration before this Court in the decision reported in K.V. Gangadharan v. Additional Sales Tax Officer-I [1993] 91 STC 80 ; 1993 KLJ 432. Viswanatha Iyer, J., in the above case held as follows :

"That particular dealer who has to pay the tax has to be identified and that is the purpose to be achieved by producing the declaration. I cannot accept the petitioner's plea that the exemption granted is an unconditional one.....The provision for production of declaration is a necessary condition to be fulfilled before the exemption can be availed of. Else, it will be defeating the very levy u/s 5(2A). If the State decided that they will grant the exemption only subject to the condition, for the purpose of administrative convenience and otherwise, none can find fault with them, In a taxing statute, the intention to fetch tax is the dominant one. The petitioners cannot therefore claim the exemption without complying with the condition. The tall claim made by the petitioners that the

exemption may be retained without the condition is not capable of being accepted even assuming that the condition is rather difficult to comply with.....I am therefore of the view that the notification as it stands with the condition is valid and is not liable to be struck down in any manner. However, it must be stated, that having regard to the difficulties expressed, dealers may be permitted to prove by other satisfactory evidence, than the production of declarations, the facts sought to be established by the declaration. This will only be fair and just having regard to the avowed object of the notifications."

If it is difficult to produce the declaration, this Court had given liberty to the assessee to produce the requisite evidence to show the payment of turnover tax by the dealer at the second point of sale. The above decision was referred to in a division Bench decision of this Court in T.R.C. No. 32 of 2000 (Mahavir Plantations Limited v. State of Kerala [2002] 126 STC 212).

4. The Tribunal itself has found that the petitioner is the last purchaser. With regard to arecanut, the petitioner has paid tax. According to us, this item of evidence would show that the petitioner is not the penultimate purchaser. The assessment itself will show that the assessment order itself has identified the penultimate purchaser. The burden of proof is on the assessee. Hence in this case, the burden of proof has been discharged. Hence, the petitioner is liable to be exempted from paying the turnover tax on arecanut. The order of the Appellate Tribunal is set aside.

The revision is allowed.

Order on C.M.P. No. 1293 of 2001 in T.R.C. No. 80 of 2001 dismissed..