(2006) 08 KL CK 0028

In the High Court Of Kerala

Case No : S.T.R. No''s. 365 of 2003 and 137, 138 and 161 of 2004

P.J.A. Manoj APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-08-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5A

Citation : (2007) 10 VST 432

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Arikkat Vijayan Menon, Harisankar V. Menon and Meera V. Menon, for the Appellant; V.V. Asokan, Special Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Question raised in these connected cases is whether the Tribunal was justified in sustaining assessment of scrap materials u/s 5A, consumed in the production of lead. We have heard counsel for the petitioner and the Special Government Pleader appearing for the respondent. During hearing, counsel produced photographs and process chart involved in the recovery of lead metal from scrap. It is seen that main raw material is battery scrap wherefrom lead is recovered. In the course of use of battery, lead plates get corroded and fall to the bottom of the battery-shell. Petitioner in the factory, processes the scrap material and recovers lead by employing various processes to eliminate the wastes. It is seen that melting plant is also run by petitioner for melting the recovered lead and making it into ingots. From the purchase turnover and sales turnover, it is seen that substantial value addition is involved in recovery of the fine metal in ingot-form from waste materials. Therefore, we are of the view that recovery of lead from battery waste by engaging various processes in the factory involves consumption of raw material in manufacture and production of a commercially different article. In such circumstances, levy of tax u/s 5A of the Kerala General Sales Tax Act, 1963 in respect of purchase of old and waste battery shells, is upheld.

2. Even though there is no separate consideration of purchase of lead scrap as such in the form of lead sheets, fishing sinkers, press metal, lead wires, lead seals, lead bushes, wheel balance weights, lead lining for non-reactive tanks, protective coverings for X-ray rooms, etc., counsel submits that petitioner is making purchases of such lead scraps which are just melted and made into ingots in the factory. Counsel relied on the decision of the Supreme Court in The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji, , wherein the court has held that in melting and conversion of iron and steel scraps into bars, there is no manufacture involved. Another decision relied on by petitioner is in State of Tamil Nadu v. Annai Industries [1994] 94 STC 393 (Mad), wherein the court has held that recovery of polythene from old and waste polythene bags is not manufacture. Following these decisions, we are of the view that if the petitioner has purchased scrap sinkers and similar items melted and made into ingots, there cannot be any liability for purchase tax u/s 5A. Since the issue is raised first time before this court, while confirming the order of the Tribunal to the extent indicated above, we direct the officer to conduct an inspection in the factory of petitioner, verify the accounts and grant exemption from purchase tax u/s 5A oh the purchase of the items referred above, to the actual quantity of pure scrap of lead purchased and melted into ingot and limit the levy u/s 5A only in respect of battery and similar other scrap items, where recovery involves elimination of other materials.

