
(1966) 07 KL CK 0030
In the High Court Of Kerala
Case No : T.R.C. No. 26 of 1965

Pothen Joseph and Sons

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 20-07-1966

Acts Referred:

Central Sales Tax Act, 1956 — Section 2(j), 2(k), 8, 8(1), 8(2)

Citation : (1966) 10 KLJ 1085 : (1967) 19 STC 123

Hon'ble Judges : M.S. Menon, C.J.; P. Govindan Nair, J

Bench : Division Bench

Advocate : Joseph Vithayathil, George Vadakkal, Varghese Kalliath and K.J. Kurien, for the Appellant; Government Pleader, for the Respondent

Judgement

P. Govindan Nair, J.—The question that arises for determination is whether in fixing the turnover of the petitioner for imposing tax on him u/s 8 of the Central Sales Tax Act, 1956 (hereinafter called the Act) the turnover represented by the excise duty paid by the assessee should be deducted or not.

2. Shortly stated, the contention of the assessee is that by virtue of Section 9(3) of the Act, the tax payable by him will have to be assessed "in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected.

Section 9(3) reads thus : -

The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected ; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of

such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly :

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf, make necessary provisions for all or any of the matters specified in this sub-section, and such rules may provide that a breach of any rule shall be punishable with fine which may extend to five hundred rupees ; and where the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

3. It is clear that had these sales been the subject-matter of assessment under the General Sales Tax Act, 1125, which is the general sales tax law of the State concerned, the turnover represented by the excise duty paid will have to be deducted. This is so because under the General Sales Tax Act, 1125, turnover by virtue of the definition in Section 2(k) of that Act means the aggregate amount for which goods are bought by or sold by a dealer ; and by virtue of Rule 7 of the General Sales Tax Rules, 1950, which it is admitted are the rules applicable, the amounts of excise duty paid by the dealer to the State or to the Central Government shall be deducted [rule 7(1)(i)]. The question is whether in computing the turnover for the purpose of assessment under the Act, the provision in the above rules must be applied or not.

4. Counsel for the assessee would submit that by virtue of the provision in Section 9(3), which we have already read, we must go through the whole process as envisaged by the General Sales Tax Act, 1125, and the rules framed thereunder to determine the net turnover taxable under that statute and then apply the rate provided by Section 8(1) of the Act and assess the petitioner. On the other hand, on behalf of the department the learned counsel has stressed that the Central Act itself has provided a machinery for the determination of the turnover and since there is such a machinery provided by the Act and because of the provision in Section 9(3) of the Act, that the assessment in the manner provided by the general sales tax law of the State can only be subject to the rules made under the Act, it is those rules that must govern and those rules alone must govern the matter. He invited our attention to the definition of "turnover" in Section 2(j) of the Act which is in these terms :

"turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period and determined in the prescribed manner;

He then invited our attention to Rule 11(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, which runs thus :-

In determining the turnover of a dealer for the purposes of Section 8, there shall be deducted the following amounts from the aggregate of sale prices, namely :-

(a) the amount arrived at by applying the following formula-

Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of Section 9A, has been otherwise deducted from the aggregate of sale prices ;

Explanation.-Where the turnover of a dealer is taxable at different rates, the formula shall be applied separately in respect of each portion of the turnover liable to a different rate of tax.

(b) the sale price of all goods returned to the dealer by the purchaser of such goods within a period of three months from the date of delivery of the goods :

Provided that satisfactory evidence of such return of goods and such payment of the amount by way of refund in cash or adjustment in accounts, is produced before the prescribed authority." and contended that these provide a complete machinery for the fixation of the turnover for the purposes of the Central Act and there being thus a specific method provided by the Act and rules framed thereunder, there can be no scope for relying on the provisions for computation of turnover contained in the general sales tax law of the State or the rules framed thereunder. In this contention counsel is supported by more than one decision. The Madras High Court in the decision, *S. Mariappa Nadar and Ors. v. The State of Madras* [1962] 13 S.T.C. 371 has accepted this view. This Court also came to the same conclusion in *Parvathi Mills (Private) Ltd. v. The State of Kerala* [1962] 13 S.T.C. 927. And the Mysore High Court in the decision, *The State of Mysore and Anr. v. Mysore Paper Mills Ltd.* [1964] 15 S.T.C. 176 had also taken an identical position. But we are confronted by counsel on behalf of the assessee with the decision of the Supreme Court in *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231. The question that arose for determination in that case was whether sales taxable at a single point according to the general sales tax law of the State, in that case the Mysore Sales Tax Act, were taxable at multipoints under the Act. The conclusion was reached that "in the manner" in Section 9(3) of the Act already read indicated that taxation can be only in the same manner as it is done under the general sales tax law of the State. Therefore it was held that the transactions were only taxable at the single point as provided in the State law. This principle perhaps may stand by itself without affecting the question of the determination of the turnover. However we understand the observations of the Supreme Court in the majority judgment as comprehending the contention raised on behalf of the assessee that in all respects the taxation must be as envisaged in the general sales tax law of the State. We say so because the three decisions to which we have referred, those of the Madras High Court in *S. Mariappa Nadar and Ors. v. The State of Madras* [1962] 13 S.T.C. 371 of this Court in the same volume at page 927 (*Parvathi Mills (Private) Ltd. v. The State of Kerala* [1962] 13 S.T.C. 927) and of the Mysore High Court in *State of Mysore and Anr. v. Mysore Paper Mills Ltd.* [1964] 15 S.T.C. 176 all have been referred to by his Lordship Justice J.

C. Shah in the dissenting judgment in *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty and Sons* [1965] 16 S.T.C. 231]. At least by implication, though not expressly, the views expressed in these decisions have been negated by the majority judgment. Their Lordships observed in the majority judgment:

There has been considerable difference of opinion among the High Courts about the true construction of Section 8(2), but none of them has relied on Section 9 of the Central Act. Therefore, it is not necessary to refer to the cases cited before us.

And the general remarks with reference to Section 9(3) run thus :

Section 8(2) provides for the method of calculating the tax under that sub-section, the tax shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate State. The expression "in the manner" may give rise to two conflicting views, namely, (i) it is concerned only with the calculation of the tax, and (ii) it deals not only with the calculation of the rates but also the manner of levy of the tax. But Section 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-section (2); and Sub-section (2) of Section 9 empowers the appropriate State authorities to assess, collect and enforce payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected. The expression "levy" means "impose". u/s 5(3)(a) of the Mysore Sales Tax Act, 1957, hereinafter called the State Act, tax shall be levied in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule by the first or the earliest of successive dealers in the State, who is liable to tax under that section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule on the turnover of sales of such dealer in each year relating to such goods. When Section 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied" in Section 9(1) of the Central Act refers to the expression "levied" in Section 5(3)(a) of the State Act. There is no reason why the Central Act made a departure in the manner of levy of tax on the specified goods which are taxed only at a single point under the State Act; if any such radical departure was intended, the Central Act would have expressly stated so. The Central Act was passed to levy and collect sales tax on inter-State sales to avoid confusion and conflict of jurisdictions ; the tax is also collected only for the benefit of the States. Therefore, the construction we accept avoids the anomaly of the State collecting tax on powerloom textiles only at a single point and the Centre, through the agency of the State authorities, collecting the said tax for and on behalf of the State at multipoints.

5. We think the above observations conclude the matter. Therefore following the decision we hold that the turnover represented by the excise duty payable is to be deducted.

6. The same is the position so far as the discount claimed which is another question raised before us. We did not refer to this specifically at the beginning because the decision in regard to the first must necessarily govern this as well, this being an item of deduction provided by Rule 7(a) of General Sales Tax Rules, 1950, framed under the General Sales Tax Act, 1125. Counsel on behalf of the department has conceded that the decision in regard to the first point must govern this point also.

7. The only other point raised in this Tax Revision Case is in relation to the production of the C Forms. The departmental authorities have declined to accept the duplicate of the forms produced before the assessment. Counsel on behalf of the department has conceded before us that the C Forms produced will be sufficient to grant the exemption claimed and that tax could be imposed only at the rate of one per cent, in relation to the turnover covered by the C Forms. We accept this and direct that such modifications as are necessary will be made in this regard.

8. We dispose of this Tax Revision Case in the above terms. There will be no order as to costs.