
(2006) 03 KL CK 0100
In the High Court Of Kerala
Case No : T.R.C. No. 73 of 2002

PU. Usha

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-03-2006

Acts Referred:

Central Sales Tax Act, 1956 — Section 3, 3(b), 6, 6(2)
Kerala General Sales Tax Act, 1963 — Section 35

Citation : (2006) 1 KLJ 742

Hon'ble Judges : K.S. Radhakrishnan, J;K.M. Joseph, J

Bench : Division Bench

Advocate : K.C. Balagangadharan, S. Soman, Usha Ravindran and Anitha S.K, for the Appellant; Raju Joseph (Sep. G.P. Taxes), for the Respondent

Judgement

Radhakrishnan, J.—Assessee is aggrieved by the order of the Deputy Commissioner invoking the reViskmal powers uider section 35 of the Kerala General Salestax Act interfering with the assessment order dated 31-7-1995 holding that the sale effected was not in transit and that the order of the assessing authority is prejudicial to the interest of the-Revenue. We are concerned with the assessment, year 1990-91. Assessee is a dealer in paper. Assessing authority completed the assessment fixing, the total and taxable turnover at Rs.7,67,146.36 and Rs. 1,36,303.21 respectively. While fixing the turnover assessing authority allowed Rs.6,30,843.15 being accommodation sale (sale in transit) since it was supported by EI declaration. Assessment was completed by the assessing authority by order dated 31-7-1995.

2. Deputy Commissioner invoking the powers u/s 35 of the Act set aside the assessment order and remanded the matter back to the assessing authority for fresh disposal in accordance with the findings rendered by him in his order dated 17-6-1992. Deputy Commissioner found that the exemption granted for accommodation sale was not in order. Aggrieved by the same assessee took up the matter in appeal before the Tribunal. Tribunal confirmed the order of the

appellate authority and dismissed the appeal. Aggrieved by the same this tax revision case has been preferred.

3. Sri. S. Soman, counsel appearing for the assessee submitted that the Deputy Commissioner as well as the Tribunal has committed an error in not granting the benefit of Explanation I to clause (b) of Section 3 of the Central Salestax Act. Counsel submitted that the assessee has discharged the burden of proving that the transaction is not liable to tax by adducing the statutory mode of proof, namely, production of Form E1 and C declarations. In support of the contention counsel placed reliance on the decision of the Rajasthan High Court in *Guljag Industries Limited v. State of Rajasthan* (2003) 129 STC 3). Counsel also tried to distinguish the decision of the Delhi High Court in *Arjun Das Gupta and others v. Commissioner of Salestax* (1980) 45 STC 52), the decision on which Revenue had placed reliance before the Tribunal. Counsel for the assessee made considerable stress on Explanation Mo clause (b) of Section 3 of the Central Sales Tax Act and contended that the inter state sale terminates only when the delivery is taken by the carrier or bailee. Counsel submitted that the delivery of the goods was not taken not by the petitioner but by third parties since the goods were endorsed to them.

4. Sri. Raju Joseph, Special Government Pleader for Taxes on the other hand submitted that Explanation I to clause (b) of Section 3 read with Section 6(2) of the Central Sales tax Act would not come tot he rescue of the assessee. Counsel submitted that the Explanation I to clause (b) of Section 3 read with Section 6(2) of the Central Sales Tax Act would not come to the rescue of the assessee. Counsel submitted that the goods reached its destination at Kunnakulam in March 1990 and the assessee has not produced the documents of title during transit. Hence counsel submitted that the Deputy Commissioner is justified in invoking the powers u/s 35 of the Act.

5. Assessee is a dealer in paper who used to purchase paper from various paper mills in other States. Goods.were purchased by the assessee from M/s. Sree Murugan Industries,.Madurai against sale invoice No.9 dated 14-7-1990 for Rs.44.268.25. Goods purchased had arrived at the parcel office at Kunnankulam in the month of March 1990. According to the assessee, sales were effected in May, 1990 and July 1990 to parties both inside and outside the State. The question is whether the sale effected in May, 1990, June 1990 and July 1990 could be considered as sales effected during transit. Assessee would be entitled to get exemption from payment of tax u/s 6(2) of the Central Salestax Act, 1956 read with Section 3(b) Explanation I only if the sale is effected by transfer of documents of title to such goods during their movement from one State to another. We may examine whether the subsequent sales effected by the assessee after the goods reached its destination is liable to be exempted in terms of Section 3(b) Explanation I read with Section 6 (2) of the Central Salestax Act. Section 6(2) is extracted hereunder for easy reference.

6. Liability to tax on inter-state sales. (1)xx xx

(2) Notwithstanding anything contained in sub-section (1) or sub-section (1 -A), where a sale of any goods in the course of Inter-State trade or Commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from the State to another any subsequent sale during such movement effected by a transfer of documents of title to such goods. Sub-section (2) of Section 6 states that where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from the State to another any subsequent sale during such movement effected by a transfer or documents of title to such goods shall be exempted from tax. Section 3 is also extracted for easy reference.

3. When is a sale or purchase of goods said to take place in the course of inter-state trade or commerce. A sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the Sale or purchase:

- (a) occasions the movement of goods from one state to another or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. Where the movement of goods commences and terminates in the same state it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

Sub clause (b) of Section 3 states that a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one State to another and therefore it is evident that a sale or purchase of goods shall be deemed to take place in the course of inter-state trade of commerce if the said sale purchase is effected. by transfer of the documents of title to the goods during their movement from one State to another. Explanation I, in our view, cannot dilute the substantive provision. Explanation only says that where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee. Sub-clause (b) of Section 3 with Explanation 1 read with Section 6(2) of the Act would show only when sale or purchase of goods is effected by a transfer of documents of title to the goods during their movement from one State to another, the assessee would be entitled to get exemption u/s 6(2) of the Act. Facts would indicate that in March 1990

goods reached its destination. No evidence has been adduced by the assessee to show that there was inter-state sale while the goods moved from one state to another. The decision in *Guljag Industries Limited Vs. State of Rajasthan and Another*, is not applicable "to the facts of this case and it could be distinguished on facts. That was a case where assessee had purchased chemicals in the course of inter-State trade from manufacturers/suppliers from Gujarat and effected subsequent inter-State sales to various buyers in the state of Rajasthan which was by endorsing the goods receipts/billies during their movement from Gujarat to Rajasthan. Goods passed through the areas where the assessee's branches or head office were located and they were carried to the destination of the subsequent buyers. Facts in that case would evidently show that sale was effected in the course of movement of goods. Facts of this case are entirely different. The sale was effected after the goods reached its destination and not during transit. The decision in *Guljag Industries's* case is not applicable to the facts of the present case.

The Delhi High Court in *Arjan Dass Gupta and Bros. Vs. Commissioner of Sales Tax, Delhi Administration*, was dealing with the case of inter state sale endorsing the railway receipts. The court held that where the documents of title were transferred after the goods had landed in Delhi the sales effected thereafter were intra State sales within Delhi. The court also held that the Explanation 1 to Section 3(b) does not permit the dealer to expand the movement of goods beyond the time of physical landing of goods. In the instant case the goods reached the destination in March 1990 and the movement of goods ceased since then the goods are not in transit. Reading the explanation 1 to Section 3(b) along with Section 6 (2) it is clear that the transfer of document of title to goods must be during their movement from one State to another, not after. The delivery has to be " taken when the movement of goods terminates at its destination. In the instant case, the sale was effected and delivery taken long after the goods had reached its destination and hence the sale is not an inter state sale. In such circumstances, we find no error in invoking the power u/s 35 of the Act by the Deputy Commissioner to set aside the assessment order and remand the matter to the assessing authority. The revision therefore lacks merits and the same is dismissed.