(2005) 12 KL CK 0070

In the High Court Of Kerala

Case No : T.R.C. No. 227 of 2002

Rafeeque Enterprises APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 10, 5(2A)

Citation : (2006) 1 ILR (Ker) 107 : (2006) 1 KLT 207 : (2008) 11 VST 568

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K.B. Mohamed Kutty and K.M. Firoz, for the Appellant; Raju Joseph, Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—This Tax Revision Case arises out of the order in TA.No. 411 of 1997 of the Kerala Agricultural Income Tax and Sales Tax Appellate Tribunal, Additional Bench-H, Palakkad.

2. Assessee is engaged in the business of buying and selling of arecanuts. Assessment year in question is 1991-92. Assessee is the last purchaser of arecanut liable to be taxed at his hands, the taxable point of the commodity being fixed on the last purchase point. Assessee was accordingly assessed as the last purchaser on the purchase value of arecanuts as per assessment order dated 27-7-1996 and he paid tax accordingly. While making the assessment the assessing authority took the view that the assessee is liable to pay turnover tax as per Government Notification SRO. 717/88 and 1008/91 at the rate of 1/2% upto 31-7-1991 and 1/4% from 1-8-1991 since the assessee had failed to submit a declaration as provided under SRO No. 717/88. Assessee was accordingly taxed, which came to Rs. 34,080/-. Assessee took up the matter in appeal before the appellate authority which was dismissed. There was a further appeal to the Tribunal, which was also dismissed. Aggrieved by the same this tax revision case has been preferred.

3. Dr. K.B. Mohamed Kutty, learned senior counsel appearing for the assessee placed considerable reliance on the Bench decision of this Court in P.I. Varghese & Sons v. State of Kerala (2002) 10 KTR 157 and contended that even if the assessee had not filed a declaration assessee is liable to be exempted from turnover tax on arecanut since he is not the penultimate purchaser of arecanut in the State. Sri. Raju Joseph, learned Spl. Government Pleader (Taxes) on the other hand placed considerable reliance on a Bench decision of this Court in Thomas Varghese v. Asst. Commissioner 1994 KLJ 37 and submitted that this Court shall not disturb the concurrent findings rendered by the authorities as well as by the Tribunal.

4. We have gone through the assessment order as well as the order passed by the Appellate Authority and the Tribunal. We are of the view, notification SRO.717/88 being a notification granting exemption has to be strictly construed as held by the apex court in State of Punjab and Ors. v. Punjab Fibres Ltd and Ors. (2005) 139 STC 200. The Court held that to avail of the benefits of a notification the party must strictly comply with the conditions of the notification and the notification has to be interpreted in terms of its wording. Same is the view taken by the Apex Court in State of Jharkhand and Ors. Ltd. v. Ambay Cement and Anr. 2005 (1) KLT (SC) 17 : (2005) 13 KTR 167. The Court held that whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said requirement leads to severe consequences, such requirement would be mandatory. Further it is also stated that the cardinal rule of the interpretation that where a statute provides that a particular thing should be done in a particular manner, it should be done in the manner prescribed and not in any other way.

5. We are in this case concerned with SRO. 717/88 which is extracted below for easy reference.

SRO. No. 717/88:-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.

(emphasis added)

When the exemption notification SRO. 717/88 itself says that tax would be exempted subject to the filing of a declaration from the dealer who paid the turnover tax in the form annexed to the said notification, filing of declaration is not an empty formality and it has got a purpose to achieve. The statutory form calls for various details, those details have to be furnished by the dealer in the form of declaration and in the prescribed form. Unless and until that condition is complied with, assessee would not be entitled to get benefit of the notification which grants concession.

6. We have no hesitation to say that filing of declaration is a mandatory requirement applying the principle laid down by the apex court in Punjab Fibres Ltd. ''s case (supra). We are therefore unable to subscribe the view Of the Division Bench in P.I. Varghese ''s case especially, in the light of the decision of the Supreme Court in Punjab Fibres Ltd.'' case. Assuming a liberal approach can be made as stated in Gangadharan v. Addl. S.T.O. 1993 KLJ. 432 and in Thomas Varghese''s case (supra) that in the absence of a declaration, satisfactory evidence could be adduced in lieu of the declaration, no satisfactory evidence has been adduced by the assesee in the present case.

7. In such circumstance the TRC cannot be admitted and the same is dismissed in limine. We uphold the orders passed by the assessing authorities as well as by the Tribunal.

