(1972) 11 KL CK 0032

In the High Court Of Kerala

Case No : O.P. No. 3891 of 1970

Ramco Cement Distribution Co. (P.) Ltd. APPELLANT

Vs

The State of Kerala and Another RESPONDENT

Date of Decision : 16-11-1972

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5(5)
Kerala General Sales Tax Rules, 1963 — Rule 9(f)(ii)

Citation : (1973) 31 STC 226

Hon'ble Judges : P. Govindan Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : N.N. Venkitachalam, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P. Govindan Nair, J.—The short question arising in this petition is whether the petitioner, a dealer under the Kerala General Sales Tax Act, 1963, is liable to pay sales tax on the amount.of packing charges separately shown in the bills for the sale of cement by him. His contention that he is entitled to exemption under Rule 9(f)(ii). of the Kerala General Sales Tax Rules, 1963 (hereinafter referred to as the Rules), which provides that in determining the taxable turnover all amounts falling under the head "charges for packing and delivery", when specified and charged for by the dealer separately without including them in the price of goods sold should be included, (sic) has been negatived. The commodity sold is cement. Exhibit PI, a sample bill states the price for the cement. Packing charges (packing in gunny bags) are stated separately. It is admitted that all the transactions for the two years 1968-69 (the period from 1st November, 1968, to 30th March, 1969) and 1969-70 are covered by similar bills.

2. The Sales Tax Officer negatived the claim for exemption by the dealer on the basis of the decision of the Supreme Court in Dyer Meakin Breweries Ltd. Vs. State of Kerala, , which was at that time only short-noted in 24 S.T.C. 6. We do

not think this decision has any application.

3. Various contentions have been raised in this original petition including the vires of Sub-section (5) of Section 5 of the Act. We do not think that we should deal with in this case the argument relating to the vires of Sub-section (5) of Section 5, which was challenged on the ground that it is violative of Article 14.

4. Counsel then contended that there was really no sale of the gunny bags, which were the packing materials admittedly used and so no sales tax can be attracted at all. Such a contention was not raised before the Sales Tax Officer and we do not think that such a contention can be dealt with in this petition.

5. The only question that therefore arises is whether the entire amount of the packing charges claimed by the assessee can be exempted under Rule 9(f)(ii) of the Rules. This depends on the further question whether what was sold was a packet of cement, or cement with packing materials. In the former case, the decision in M. Kutty Hassan Kutty v. Sales Tax Officer, Ponnani [1967] 19 S.T.C. 278, may govern the matter and the petitioner may not be entitled to exemption. If what was sold was really cement and the packing materials along with it, we do not think that M. Kutty Hassan Kutty v. Sales Tax Officer, Ponnani [1967] 19 S.T.C. 278, would have any application. Counsel on behalf of the revenue has submitted that the principle of the decision in M. Kutty Hassan Kutty v. Sales Tax Officer, Ponnani [1967] 19 S.T.C. 278, is applicable to the facts of the case. He said that the cement, it is admitted by the petitioner, is either sold as cement in bulk or in paper packet or in gunny bags ; so also the kerosene, which was the commodity with which this court was concerned in M. Kutty Hassan Kutty v. Sales Tax Officer, Ponnani [1967] 19 S.T.C. 278, was sold either in bulk or in tins. The rules that were considered by this court then were identically worded. It was therefore urged that the decision in M. Kutty Hassan Kutty v. Sales Tax Officer, Ponnani [1967] 19 S.T.C. 278, is indistinguishable. We are not satisfied.

6. Under the Cemept Control Order, 1967, the price is fixed separately for cement and the proviso to Clause 8 indicates that to the price there shall be added such charges "as may be fixed by the Central Government in respect of packing or the containers". There is no case that no such price for packing or the containers has been fixed by the Central Government. Nor is there any case that what is shown in the bill exceeds the price fixed for packing or the containers. Substantially the transaction is for the sale of cement though it might and it appears to us to involve the sale of the packing material utilised for conveying the goods, namely, the cement sold. So this is a case in which cement was sold along with the packing material, namely, gunny bags. Prima facie therefore the entire amount will come within the definition of the term turnover in the Act and in fixing the taxable turnover as defined in the Act, exemption under Rule 9(f)(ii) of the Rules should be granted.

7. It was however contended by the counsel for the revenue that the charges for packing and delivery will not take in the cost of packing material. This contention

is supported by the decision of the Madras High Court in The State of Madras and Ors. v. R. Damodaran Chettiar Co. [1966] 18 S.T.C. 451 With great respect, we find it difficult to accept the dicta therein that the charges for packing and delivery will take in only the labour charges for packing and not the cost of the materials used for packing. The ordinary meaning to be attributed to the words "charges for packing and delivery" (we are now concerned here only with charges for packing) must include not only the charges for the labour involved in packing but must take in the cost of the material used for packing. No reasons have been stated in the judgment in The State of Madras and Ors. v. R. Damodaran Chettiar & Co. [1966] 18 S.T.C. 451 for holding otherwise excepting the assertion that the expression under Rule 9(f)(ii) will take in only the cost of services. This view has not been accepted by the Madras High Court in a later ruling in Dalmia Cement (Bharat) Limited v. Deputy Commercial Tax Officer, Lalgudi and two Others[1969J 23 S.T.C. 355. Counsel for the revenue submitted that the observations relating to the basis of the decision in The State of Madras v. R. Damodaran Chettiar & Co. are not correct. Whatever it be, the court in Dalmia Cement (Bharat) Limited v. Deputy Commercial Tax Officer, Lalgudi and two Ors. [1969] 23 S.T.C. 355 has taken a definite view that the words "charges for packing" will include the cost of material used for packing. We think, with respect, that the view taken in Dalmia Cement (Bharat) Limited v. Deputy Commercial Tax Officer, Lalgudi and two Ors. [1969] 23 S.T.C. 355 is the correct view.

8. Counsel for the revenue then referred to the amendment introduced by the Madras State to the rule corresponding to Rule 9(f)(ii) of the Rules clarifying that charges for parking will include the cost of packing materials and urged that but for the amendment the cost of packing materials will not fall within the rule. We think that the amendment is only by way of clarification and not by alteration by addition. The words used in Rule 9(f)(ii) are wide enough to take in the cost of packing materials.

9. In the light of the above, the imposition of sales tax amounting to Rs. 6,415.75 for the year 1968-69 and Rs. 33,139.08 for the year 1969-70 relating to the turnover pertaining to charges for packing is not justified. We, therefore, set aside the assessment orders to the extent of deleting the above amounts from the total tax determined for the two years. This petition is ordered on the above terms. There will be no order as to costs.

