
(2004) 09 KL CK 0012

In the High Court Of Kerala

Case No : Writ Petition No. 27756 of 2004 (D)

Ricetech Agro Mills (P) Ltd.

APPELLANT

Vs

The Sales Tax Officer

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5A

Citation : (2004) 3 ILR (Ker) 546 : (2005) 1 KLT 403

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : V.M. Kurian, A.V. Thomas, Mathew Kurian and K.T. Thomas, for the Appellant; S. Soman, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging Ext.P4 sales tax assessment for 2000-2001 on the ground that it is against the charging Entry 9 of the Second Schedule to the K.G.S.T. Act and hence without jurisdiction. In the normal course since there is a statutory appeal provided against assessment, this Court should not entertain challenge against assessment in writ proceedings. However, since petitioner's is a case of implementation of the rebate scheme under the charging Entry 9 of the Second Schedule and along with it grant of sales tax exemption under Ext.P1 certificate of exemption issued under Government notification and since the matter was argued on merits I proceed to dispose of the case on merits after hearing counsel for the petitioner and the Government Pleader.

2. The petitioner is a rice mill which is granted sales tax exemption on the sale of manufactured products namely, rice and rice bran from out of paddy which is the raw material. The sales tax exemption granted is for the period commencing from 28th December, 1998 to 27th December, 2005. There is no dispute with regard to the exemption granted on the sales turnover of products namely, rice and rice bran. The Assessing Officer determined the undisputed sales tax liability

on the taxable turnover of rice and rice bran together at Rs. 7,55,071 as is seen from Ext.P4. In the normal course this amount should have been set off against the unabsorbed sales tax exemption carried from the previous years for carrying over the balance to the next year. However, the officer first granted rebate of the tax payable on paddy as provided under Explanation to Entry 9 of the Second Schedule to the K.G.S.T. Act which provides for levy of tax on rice and thereafter granted sales tax exemption under Ext.P 1 certificate. Entry 9 of the Second Schedule to the K.G.S.T. Act is as follows:

Sl. Description of Point of levy Rate of tax No. goods per cent

9 Cereals, that is to say At the point of first sale 1 paddy, rice, jowar or in the State by a dealer milo, bajra, maize, ragi, who is liable to tax under kodon, kutki and barli Section 5

Explanation.- Where a tax has been levied in respect of paddy, the tax leviable on rice produced out of such paddy shall be reduced by the amount of tax levied on such paddy.

3. It is clear from the above Entry that tax is payable both on paddy as well as on rice at the rate of 1 per cent on first sale point in the State. The legislative intention to avoid spiraling taxes both on paddy and rice is clear from the Explanation to the Entry which provides for rebate of tax on paddy while tax is levied on rice produced out of it. However, paddy is also an item taxable at the point of first sale in the State at the rate of 1 per cent as provided under the very same Entry, of the Second Schedule above stated. If the petitioner purchases paddy from a registered dealer who collects sales tax from the petitioner at the rate of 1 per cent as provided under the Second Schedule, then of course based on such payment of tax the petitioner is entitled, to rebate of such tax from the tax payable on the rice in terms of the above Explanation, On the other hand if the petitioner is buying paddy from unregistered dealers, milling it and selling rice and rice, bran, then of course the petitioner will be liable, to) pay/tax u/s 5A on the purchase turnover of paddy. The petitioner paying tax or on whom tax is levied u/s 5A on the purchase turnover of paddy by virtue of Explanation to Entry 9 of the Second Schedule above-referred, will get rebate, of such tax paid or payable on paddy, in the tax payable on rice. In fact after determining the net tax payable on rice in terms of entry 9 of the Second Schedule as above, the officer has to grant exemption under, Ext.P1 certificate. It is seen from Ext.P4 that the officer has in fact granted rebate first under Explanation to Entry 9 and net tax on rice and tax on rice bran are set off against unabsorbed tax exemption earned forward from the previous year. In effect the officer has granted full exemption on sales tax and levied purchase tax on paddy at 1 per cent and demanded the same from the petitioner vide Ext. P4 order. The petitioner cannot contest levy of tax u/s 5A on paddy which is squarely covered by the decision of the Supreme Court in State of Kerala Vs. M/s. Vattukalam Chemicals Industries, . Moreover, since paddy is not an item taxable at purchase point but taxable at sales" point, no exemption is available on the purchase turnover of it under the

notification is based on which Ext.P1 certificate is issued. The officer while demanding tax u/s 5 A on the purchase turnover of paddy is used in the production of rice in terms of the above decision of the Supreme Court, granted rebate of such tax to the petitioner in terms of Explanation to Entry 9 of the Second Schedule to K.G.S.T. Act and set off against carried forward exemption only Rs. 3,46,786 instead of Rs. 7,55,071 the tax liability otherwise payable by the petitioner but for the rebate. The petitioner would have had a grievance only if the entire tax levied on rice and rice bran i.e. Rs. 7,55,071 were set off from the unabsorbed earned forward tax exemption even after demanding tax u/s 5A on the purchase turnover of paddy which is not done. So much so, Ext.P4 is issued after granting benefit under Ext.P1 certificate of exemption and rebate under Explanation to Entry 9 of the Second Schedule to the K.G.S.T. Act. Since, the demand of tax u/s 5A on the purchase turnover of paddy is based on the above decision of the Supreme Court, there is no scope for interference. Therefore Ext.P4 assessment calls for no interference. The W.P. is devoid of merit and is dismissed.