

(2006) 08 KL CK 0088

In the High Court Of Kerala

Case No : T.R.C. No's. 423 of 2000, 7, 8, 340, 349, 376, 378, 390, 392, 410, 436 and 461 of 2002 and 17 of 2003 and S.T. Rev. No's. 24, 37 and 100 of 2003 and 94 and 100 of 2004

State of Kerala

APPELLANT

Vs

K.P. Thankappan Nadar

RESPONDENT

Date of Decision : 08-08-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10(1), 22(1), 59A

Citation : (2007) 1 KLJ 69 : (2007) 9 VST 569

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.V. Asokan, Government Pleader, for the Appellant; M.C. Madhavan and S. Vinodkumar, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question involved in these tax revision cases is whether nylon fishing net fabric is liable to be assessed under entry 129 of the First Schedule to the Kerala General Sales Tax Act, 1963 up to April 1,1992 and thereafter under entry 89 of the First Schedule or whether the item is entitled to exemption under entry 7 of the Third Schedule to the KGST Act which entry was later renumbered as entry 11 of the very same Third Schedule. Different Benches of the Sales Tax Appellate Tribunal decided the appeals differently, some granting exemption, while the others declining exemption holding that the item comes under the above entries of the First Schedule to the Act. Therefore, tax revisions are filed challenging the orders of the Tribunals both by the State as well as by the assesseees. We have heard various counsel appearing for the assesseees and Government Pleader appearing for the State.

2. On going through the Tribunal's orders, we find the Tribunals have referred to a Government order, G.O.P. No. 162/88/TD dated November 25,1998, clarifying that nylon fishing net fabric sold in length will fall under entry 7 of the Third Schedule to the Act, and therefore eligible for exemption from tax. It is seen

from the copy of the notification produced in court that the Government issued the clarification on application for sales tax exemption by a section of manufacturers and dealers of nylon fish net including Matsya Fed, an organisation under Government control. When the parties sought for exemption, Government felt that no exemption was required as the item falls under the Third Schedule to the Act. In spite of Government orders, the assessing officers levied tax because this court held in a series of decisions that Section 59A under which the Government issued the above clarification is invalid. Counsel for the assessee besides referring to Government orders relied on the decision of the Supreme Court in *Reliance Trading Co. v. State of Kerala* [2006] 147 STC 211(SC), wherein the Supreme Court in a similar case held that tarpaulin made up of cotton fabric is entitled to exemption even though tarpaulin was brought under the First Schedule taxable at the point of first sale in the State. Situation in this case is almost the same as in the tarpaulin case because original entry 7 later substituted by entry 11 of the Third Schedule to the Act provides for exemption from man-made fabric covered under entries 54.08, 54.09 of the Central Excise Tariff Act. On going through the Central Excise Tariff Act, we find nylon yarn is treated as man-made filament yarn. Therefore nylon net fabrics made of nylon yarn are man-made fabrics covered by entry 54.08 of the Central Excise Tariff Act. There is some controversy as to whether the item is nylon net or nylon net fabric. We do not think there is any need to consider this issue because what is granted exemption under the Third Schedule is man-made fabric covered under the entries of the Central Excise Tariff Act. Moreover, fabric by itself is nylon net and that is the understanding of the Government in the clarification above referred.

3. Government Pleader referred to the decision of this court in *Choice Plywood Industries Vs. State of Kerala*, whereunder this court held that letters, circulars or clarificatory orders issued by the Commissioner are not binding on courts or Tribunals. In view of the Supreme Court decision above referred, and since we find the item falls under entry 7 which was later renumbered as entry 11 of the Third Schedule to the Act, we do not think there is any need for the court to rely on the circular of the Government above referred for the purpose of declaring exemption in favour of the assessee. Moreover it has to be noted that Government's clarification above referred is issued on application for exemption and going by the contents of it, we are of the view that but for the clarification issued above, the Government would have issued exemption notification u/s 10(1) of the Act. It is also to be noted from the clarification that the Government has taken into account the request from Matsya Fed which is a Government agency which also requested for sales tax exemption. But for the judgment of this court declaring Section 59A as invalid, the officers would have followed the clarification issued by the Government in which case there is no need for any litigation up to this court. From January 1, 2000 onwards, nylon fishing net is specifically granted exemption, which continues even now under the VAT Act. Therefore we do not think it was the intention of the Government to recover tax

on sale of nylon fishing net probably because the liability ultimately falls on the fishermen. Above all, Government's clarification which remains unchallenged did not entitle dealers to collect tax u/s 22(1) of the Act and after depriving their valid right to collect tax, it is wholly unfair and inequitable to assess and sustain the demand based on some fine principle of law laid down by this court. Therefore we hold that nylon fishing net or net of fabric sold by the assesseees is entitled to exemption under entry 7 which was later renumbered as entry 11 of the Third Schedule to the Act. Tribunals' orders in favour of the assesseees are upheld and those against them are reversed.

4. Tax revision cases and sales tax revisions are disposed of as above.