(2006) 09 KL CK 0053

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 373/04 and 405/04

State of Kerala APPELLANT

Vs

M.A. Subaida Begum RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 23(3)

Citation : (2006) 3 KLJ 266 : (2006) 4 KLT 276 : (2007) 8 VST 179

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

Bench : Division Bench

Advocate : V.V. Asokan GP, for the Appellant; N. Muraleedharan Nair and V.K. Shamusudheen, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Question raised in the S.T. Rev. Cases filed by State is whether the tribunal was justified in granting exemption to respondent/asses see on sales turnover of chicks and chicken brought from outside State and sold in Kerala based on Entry 24 of IIIrd Schedule to Notification SRO 1727/93. For easy reference, the relevant Entry of the Notification is extracted hereunder:

Respondent/asses see was engaged both in production of chicks and chicken in the hatchery and poultry farm maintained in the State and was also bringing chicks and chicken from outside State for sale in Kerala. In the assessment, the Assessing Officer granted exemption on the turnover of chicks produced in the hatchery and chicken reared in the poultry farm maintained in the State, but disallowed exemption on the sales turnover of chicks and chicken brought from outside Kerala and sold in the State. Even though first appellate authority disallowed exemption, tribunal granted exemption on the entire turnover including sales turnover of chicks and chicken brought by petitioner from outside Kerala.

2. Learned Special Government Pleader contended that the description of "dealer" in the above Notification clearly conveys the idea that exemption is for poultry farm and hatchery producing goods within the State. Therefore, he has

contended that when the poultry farm acts as a trader by making inter-state purchase and sale of chicks or chicken, he will not get exemption on such turnover. On the other hand, counsel for respondent/assessee relying on Notification SRO No. 291/00 dated 31-3-2000, contended that exemption prior to the amendment was not confined to the turnover of chicks and chicken produced in the State, but was available to entire turnover of the poultry farm or hatchery in the State. Admittedly. Notification SRO No. 291/00 prescribes condition for exemption that chicks and chicken should be hatched or reared in the State. The answer to the question raised will depend on whether SRO No. 291/00 is clarificatory or not, or whether it is a substantive notification imposing fresh conditions for exemption on the turnover of chicks and chicken. We are of the view that the Notification has to be understood with reference to it''s object which is clear from the Notification itself. The dealer who is granted exemption is poultry farmer or hatchery in the State. Turnover of such dealer obviously is the turnover of chicks raised in the hatchery or chicken reared in the poultry farm in the State. In fact, a poultry farmer or hatchery is not treated as a trader in the Notification, but as a person engaged in production of chicks in the hatchery or the farmer rearing chicken in poultry farm. In fact, if respondent/assessee''s contention is accepted, a poultry farmer or hatchery maintaining a farm or hatchery in the State with insignificant production can trade in chicks and chicken by sourcing it from outside Kerala and enjoy sales tax exemption, whereas a trader engaged in inter-state purchase and sale of chicks and chicken in the State will be completely liable to pay tax. In other words, the interpretation given by tribunal in favour of respondent/assessee will lead to a complete discrimination of traders as against farmers or hatcheries, in as much as a person technically maintaining hatchery or farm with nominal turnover can engage in trading of chicks and chicken brought from outside Kerala without payment of tax, but when trader brings chicks and chicken and sells the same in the State, he will be liable to tax. We do not think this is the scope of the Notification and to our mind, turnover of chicks and chicken by poultry farmers in the State under Notification SRO 1727/93 only applied to chicks reared in hatcheries maintained in the State and chicken reared in the poultry farms in the State. We are, therefore, of the view that Notification SRO 291/00 is only clarificatory and so much so, the tribunal''s decision relying on the said Notification is not sustainable. The S.R. Rev. Cases are, therefore, allowed, reversing the order of tribunal and upholding the assessment of turnover of chicks and chicken brought from outside State. However, since respondent/ assessee is only a poultry farmer and the amnesty scheme was in force during 2004, we grant waiver of forty per cent of interest payable u/s 23(3) of the KGST Act, provided petitioner clears the arrears of tax with sixty per cent interest in three equal monthly instalments, first of which shall be paid on or before 15th of October, 2006 and the remaining instalments on or before 15th of the two succeeding months. However, if he petitioner fails to pay the amounts as aforesaid, the waiver of forty per cent interest granted herein will automatically stand forfeited.

