(1986) 10 KL CK 0007

In the High Court Of Kerala

Case No : T.R.C. No''s. 80 and 144 of 1983 and 23 to 26, 66 and 143 of 1984

State of Kerala APPELLANT

Vs

Ocean Wealth and Others RESPONDENT

Date of Decision : 24-10-1986

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5A(1)(b)

Citation : (1987) 1 ILR (Ker) 520 : (1987) 65 STC 16

Hon'ble Judges : T.L. Viswanatha Iyer, J;K.S. Paripoornan, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; V. Rama Shenoi, Arikkat Vijayan Menon and T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—These 8 tax revision cases are filed by the Revenue. The respondents are assessees under the Kerala General Sales Tax Act. Most of them are dealers in prawns, etc. They purchased baskets and other consumable stores like packing materials from unregistered dealers for stocking and transporting the prawns purchased, through lorries to their factories. The assessing officers included the turnover relating to these items in the taxable turnover by placing reliance on Section 5A(1)(b) of the Kerala General Sales Tax Act. The Appellate Tribunal took the view that the turnover related to the above goods is not exigible to purchase tax u/s 5A(1)(b) of the Kerala General Sales Tax Act. The Revenue has come up in revisions from the orders passed by the Appellate Tribunal.

2. Since a common question of law centering round the interpretation to be placed on Section 5A(1)(b) of the Kerala General Sales Tax Act alone arises for consideration, these revisions were heard together. The facts in the individual cases were not highlighted or sought to be explained in detail as it is common ground that the interpretation placed on Section 5A(1)(b) will apply in the same manner for all these 8 revisions.

3. We heard counsel for the Revenue, Mr. T. Karunakaran Nambiar and Mr. T.R. Ramachandran Nair, Vijayan Menon and V. Rama Shenoi, advocates, who appeared for the respondents.

4. Section 5A(1) of the Kerala General Sales Tax Act is as follows :

5A. Levy of purchase tax.-(1) Every dealer who, in the course of his business, purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable u/s 6 and either-

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) disposes of such goods in any manner other than by way of sale in the State ; or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year at the rates mentioned in Section 5.

In these cases, we are concerned only with Section 5A(1)(b) of the Act. Counsel for the Revenue contended that the object of Section 5A is to plug the loophole and bring to tax the non-available or non-existing goods. So, when the assessees purchase baskets and other consumable stores like packing materials and used them for stocking and transporting prawns purchased by them through lorries to their factories, the dealer "disposes" of "such goods" other than by way of sale in the State. We are unable to accept this submission. It is evident that baskets, ice, waste-cotton were purchased by the assessees from unregistered dealers. They were purchased for stocking and transporting the prawns purchased through lorries to their factories. Regarding ice, the amount is reimbursed to suppliers of prawns for purchase of ice so as to keep the prawns fresh. The purchase itself is iced prawns and the purchase value includes the cost of ice. Regarding baskets, waste-cotton, etc., the plea of the assessees that they were purchased and used for stocking and transporting prawns purchased, through lorries to their factories, is not disputed by the assessing authorities. The question is whether the user of these articles will amount to disposal of such goods other than by way of sale in the State. The answer can only be in the negative. In Corpus Juris Secundum (Volume 27) the word "disposal" and "disposed of" have been denned. In regard to the expression "dispose of", it has been stated to mean :

to alienate, bargain away, barter, bestow, convey, exchange, give, give away or transfer by authority. Also in other senses, to collect, finish with, get rid of, put away by any means or remove. Even when standing alone the phrase ''dispose of, when used in a criminal statute, is universally held by the courts to include only those transactions in which there has been a transfer of either title or absolute possession of the property or else some such disposition of it as would destroy it in whole or in part.

In K. Cheyyabba Vs. State of Karnataka, at page 4, construing Section 6(i) of the Karnataka Sales Tax Act, wherein the language is similar to Section 5A(1)(b) of the Kerala General Sales Tax Act, the Division Bench held that the context in which the words "disposed of" are used in Section 6, it means transfer of title in the goods to any other person in the State otherwise than by sale. In Goodyear India Limited Vs. The State of Haryana and Another, while construing Section 9(1)(a)(ii) of the Haryana General Sales Tax Act, in the light of the meanings given to the words "disposes of", in Webster''s Third New Internationa] Dictionary, Shorter Oxford English Dictionary, 27 Corpus Juris Secundum, Sandhawalia, C.J., tersely stated thus, at page 166:

It would seem to follow from the aforesaid dictionary meanings of the phrase ''disposes of that it may well involve the forsaking of both title and control over the goods. The most apt example may well be the disposing of goods by sale which may involve both the passing of title as of possession by delivery in favour of the purchaser. Even in the absence of a consideration, a gift with delivery of goods to another may amount to disposing of the same. Even with the utmost degree of liberality in favour of the respondent-State, disposal of goods would at least involve an abandonment of control thereof. In plain language, it seems difficult, if not impossible, to subscribe to the position that even where the title and the possession continue to vest in the owner, he would be deemed to have disposed of such goods.

In that case, it was held that a mere despatch of goods by a dealer out of the State to his own branch, whilst retaining both title and possession of the goods will not come within the ambit of the phrase "disposes of the manufactured goods in any manner otherwise than by way of sale". Reference was also made to the decision of the Karnataka High Court in K. Cheyyabba''s case [1980] 45 STC 1. We concur with the above statement of law. The ratio will equally apply to Section 5A(1)(b) of the Kerala General Sales Tax Act as well.

5. On these premises, we hold that in these revisions the Revenue has not established that the dealer has disposed of the goods (ice, basket and other consumable stores) in any manner other than by way of sale in the State. A mere user of the various consumable stores cannot be said to be a disposal of the goods in any manner other than by way of sale in the State. What is essential is that the title and possession of the dealer in the goods concerned should either be transferred or forsaken or abandoned. That is not the case in these revisions.

6. We hold that the decisions rendered by the Appellate Tribunal are justified in the facts and circumstances disclosed in these cases. There is no error of law. These tax revision cases are without merit and they are dismissed. But, in the

circumstances, there shall be no order as to costs.

