
(2010) 11 KL CK 0382
In the High Court Of Kerala
Case No : ST. Rev. No. 104 of 2010

State of Kerala

APPELLANT

Vs

P.D. Thomas

RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Central Sales Tax Act, 1956 — Section 15
Kerala General Sales Tax Act, 1963 — Section 5A

Citation : (2011) 43 VST 199

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : Mohammed Rafeeq, Government Pleader, for the Appellant; T.M. Sreedharan, Smt C.K. Sherin and V.P. Narayanan, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair J.

1. The question raised is whether the Tribunal was justified in cancelling levy of tax u/s 5A of the Kerala General Sales Tax Act, 1963, applying the decision of the Supreme Court in Surendra Modern Rice Mill's case which was decided by the Supreme Court along with Peekay Re-rolling Mills (P) Ltd. v. Assistant Commissioner (2007) 6 VST 541 (SC). We have heard the Government Pleader appearing for the petitioner and Sri T. M. Sreedharan, counsel appearing for the respondent-assessee.

2. The facts leading to controversy are the following. The respondent-assessee is a rice mill enjoying sales tax exemption on the sale of products manufactured by it like rice, rice bran, etc., by virtue of certificate of exemption issued to it under Notification SRO No. 1729 of 1993. Paddy is a raw material out of which rice is produced in the mill. Admittedly both the paddy and rice fall under declared goods, and restriction in regard to levy of tax on these products contained in section 15(c) of the Central Sales Tax Act, 1956, is that while levying tax on rice, rebate should be allowed on tax if any levied on paddy. In other words, when

there is levy of tax on paddy, the same has to be set off against levy of tax on rice. In this case the assessee happens to be the purchaser of paddy and since source of its purchase is not known or declared to the Department, tax is payable u/s 5A of the Act. However, tax paid at the hands of the assessee is to be set off from the tax levied on the sale of rice produced by it. In this case, what is done by the assessing officer in the assessment issued to the respondent is to levy and demand tax on the purchase turnover of paddy and then reduce the same while levying tax on the sale of rice. Since the respondent enjoyed exemption the net amount found payable as tax for the sale of rice is set off from the exemption amount covered by the certificate issued to the respondent. Even though the first appellate authority dismissed the appeal, the Tribunal following the above decision of the Supreme Court cancelled the levy of tax u/s 5A on paddy against which the State has filed this revision.

3. Before us the Government Pleader submitted that Peekay Re-rolling Mills (P) Ltd.'s case [2007] 6 VST 541 (SC) decided by the Supreme Court is now referred to Larger Bench of the Supreme Court and he produced copy of reference order issued by the Supreme Court before us. We notice that the Supreme Court has not considered the factual position in regard to rice mill while deciding the case in Surendra Modern Rice Mill's case. In fact the Supreme Court just applied the decision in Peekay Re-rolling Mills (P) Ltd.'s case [2007] 6 VST 541 (SQ to the Rice Mill's case as such though factual position is different in the case of rice mill. As already stated, the Legislature itself has provided safeguard against multiplicity of levy of tax on both paddy and rice falling under declared goods. So much so, the position is such that levy of tax on both paddy and rice has to be considered at the hands of dealer. In Peekay Re-rolling Mills (P) Ltd.'s case [2007] 6 VST 541 (SQ, the Supreme Court found that there is levy of tax at the point of purchase of ingots by the SSI unit because it was purchased from another industrial unit which was liable to pay tax, but for the exemption granted to that unit. So much so, the Supreme Court held that there is levy at the hands of the seller of ingots, no matter such levy did not lead to collection of tax. So far as the case of paddy is concerned, there is no such position available here. It is not known wherefrom the respondent procured paddy. If purchase is not from any dealer liable to pay tax, then there cannot be any levy of tax on paddy at all. In fact, purchase may be from farmers, petty dealers, etc., who are not liable to tax as dealers under the Act. However, unless there is proof of levy of tax at the hands of selling dealer, section 5A is applicable because the respondent admittedly purchased paddy from unregistered dealers and manufactured rice out of the same. In fact, exemption is obtained by respondent under SRO No. 1729 of 1993 on the ground that it is engaged in manufacture of rice from paddy. So much so, tax is to be levied on the purchase of paddy u/s 5A as all the conditions of section 5A are satisfied. We have in a detailed judgment in Empees Modern Rice Mills Vs. State of Kerala, considered this issue and declared that levy of tax on paddy on an industrial unit which enjoys sales tax exemption on sale of products, namely, rice, rice bran, etc., is perfectly in order. We feel the

above decision squarely applies here and so much so, the decision of the Tribunal has to be reversed and we do so.

4. It is seen from the assessment order that the assessee is given set-off of tax levied on paddy against tax liability on rice and only net amount is allowed set-off from the exemption available in the certificate. In view of the scheme of levy stated as above, it will be perfectly in order to set off the tax liability determined u/s 5A also against exemption available under certificate of exemption along with net tax determined on rice after reducing the tax levied on paddy. In other words, the total amount to be set off against exemption granted under certificate should be the tax levied on rice without granting rebate of tax on paddy. The assessing officer is directed to verify the exemption granted for all the years based on the certificate and the scheme suggested above will be applied only if the assessee continued business till full exemption available under certificate is set off as indicated above. Sales tax revision is allowed to the extent indicated above.