

(2004) 04 KL CK 0036
In the High Court Of Kerala
Case No : T.R.C. No. 304 of 2001

State of Kerala

APPELLANT

Vs

Siraj Timbers

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 5, 8(1), 8(2), 8(2A)

Citation : (2006) 145 STC 464

Hon'ble Judges : J.M. James, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Georgekutty Mathew and Government Pleader, for the Appellant;
K.B. Mohamedkutty, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—The matter arises under the Central Sales Tax Act, 1956 (for short, "the Act").

2. State is the revision-petitioner. Assessee is the respondent. The assessment year concerned is 1997-98. The respondent-assessee is a dealer in timber. The assessee had effected inter-State sales of timber to the tune of Rs. 13,45,929 unsupported by C form declarations. In the assessment for the year 1997-98 the assessing authority proposed to levy tax on the said transaction at the rate of 13.75 per cent. According to the assessee the rate of tax on timber applicable to the inter-State transaction unsupported by C form is only 10 per cent since the tax under the Kerala General Sales Tax Act, 1963, is only 2.5 per cent at the hands of the petitioner. However, this was not accepted by the assessing authority. He levied tax at 13.75 per cent. In appeal filed by the assessee the first appellate authority held that the rate of tax applicable in the instant case is 12.5 per cent as against 13.75 per cent adopted by the assessing authority. In further appeal by the assessee the Sales Tax Appellate Tribunal accepted the contention of the assessee that since the rate of tax leviable on timber is only 2.5 per cent plus surcharge the correct rate to be applied on inter-State sales

turnover in the absence of C form is 10 per cent.

3. The learned Government Pleader appearing for the petitioner-State contended that the sale of timber is liable to tax u/s 5 read with entry No. 8 of the Fifth Schedule to the Kerala General Sales Tax Act, 1963 at 12.5 per cent and therefore by virtue of the provisions of Section 8(2)(b) of the Act the inter-State transaction unsupported by C form is liable to tax at 12.5 per cent. The Government Pleader submitted that the first appellate authority has rightly held that the transaction in question is liable to be assessed at the rate of 12.5 per cent and that the Tribunal had erroneously held that the rate of tax under the K.G.S.T. Act is only 2.5 per cent and therefore the tax leviable u/s 8(2)(b) of the Act is only 10 per cent.

4. Dr. K.B. Mohammedkutty, learned Counsel" for the respondent-assessee, on the other hand, submitted that timber is taxable under entry No. 8 of the Fifth Schedule to the K.G.S.T. Act at two points, one at the point of first sale in the State by a dealer who is liable to tax u/s 5 to a registered dealer for sale and the other at the point of last sale in the State by a dealer who is liable to tax u/s 5. He submitted that it is only in cases where the first sale in the State is by a dealer who is liable to tax u/s 5 to a person other than a registered dealer or to a registered dealer other than for sale the rate of 12.5 per cent is applicable. The counsel further submitted that the respondent had purchased timber only from the Forest Department of the Government after paying the tax at the first point of sale and therefore the respondent's liability in the State was only for the last point sale at 2.5 per cent. The counsel on that basis submitted that when Section 8(2A) of the Act says that the tax payable under the Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than 4 per cent, shall be nil or, as the case may be, shall be calculated at the lower rate. It only refers to the tax payable by the assessee under the General Sales Tax Act and not to the rate of tax applicable to timber at all points. The counsel submitted that the Tribunal has correctly understood the legal position and had held that the rate of tax applicable under the Sales tax law of the State in respect of the transaction of the respondent is only 2.5 per cent and consequently the respondent is liable to pay tax at the rate of 10 per cent on the inter-State transaction of timber effected by the respondent.

5. We have considered the rival submissions and have also perused the orders of the assessing authority as well as the two appellate authorities.

6. At this point of time, it is necessary to refer to the relevant provisions of the Act and the K.G.S.T. Act governing the rate of tax on the inter-State sale of timber :

8. Rate of tax on sales in the course of inter-State trade or commerce.--(1) Every

dealer, who in the course of inter-State trade or commerce,--

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1)--

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher ; and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

5. Levy of tax on sale or purchase of goods.--(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than two lakh rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year,--

(v) in the case of goods specified in the Fifth Schedule at the rates and at the two points specified against such goods in the said Schedule :

Provided that where there are no two points of sale in the State for any goods coming under the Fifth Schedule and the first sale is to a person other than a registered dealer, the rate specified in Column (8) of that Schedule shall apply to such sales.

Provided further that the registered dealer effecting the last sale within the State to a person other than a registered dealer shall, pay tax at the rates shown in Column (6) or in Column (8), as the case may be, of the Fifth Schedule irrespective of his turnover;

Provided also that where a registered dealer, after purchasing the goods on payment of the tax mentioned in Column (4) of the Fifth Schedule,--

(a) uses or disposes of such goods in any manner other than by way of sale within the State, or

(b) despatches them to any place outside the State except as a direct result of sale in the course of inter-State trade or commerce, he shall pay tax at the rate shown in Column (6) of the said Schedule on the purchase turnover of the goods.

Provided that no tax shall be payable on that part of the turnover on which tax has already been levied on the preceding sales in the State.

(1) (2) (3) (4) (5) (6) (7) (8) 8. Timber At the 10 At the 2.5 At the point of 12.5. point of point of first sale in the first sale last sale State by a in the in the dealer who is State by a State by liable to tax dealer who a dealer u/s 5 is liable to who is to a person tax under liable to other than a Section 5 tax under registered dealer to a regis- Section 5 or to a regis- tered tered dealer

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7. Admittedly the inter-State sales in question effected by the assessee is not supported by C forms. In cases where the inter-State transaction is covered by C form the transaction is liable to tax only at the rate of 4 per cent as provided u/s 8(1)(b). However, under Sub-section (2) of Section 8 tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within Sub-section (1), in the case of goods other than declared goods, shall be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher, and for the purpose of making any such calculation any such dealer, shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law. Sub-section (2A) however, provides that notwithstanding anything contained, inter alia, in Clause (b) of Sub-section (2) of Section 8 the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than 4 per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

8. As observed by the Supreme Court in *Deputy Commissioner of Sales Tax v. Aysha Hosiery Factory (P.) Ltd.* [1992] 85 STC 106 the rate of tax applicable to the intra-State sales at a particular point of time is a relevant consideration for finding out the rate of tax on inter-State sale and that it is still the Central Act that is applied but only for the purposes of fixing the rate leviable under the Central Sales Tax Act the provisions of the local Act are looked into. The aforesaid decision of the Supreme Court is also an authority for the proposition that sales tax law of the State takes in the Kerala Surcharge on Taxes Act, 1957 also. In the instant case the State has not canvassed for the same is evidenced from the fact that the State did not file any appeal against the order of the first appellate authority holding that the rate of tax applicable is only 12.5 per cent and not 13.5 per cent.

9. Coming to the present case the respondent-assessee is a registered dealer under the K.G.S.T. Act as well as under the Act. It is the case of the assessee that it had purchased timber from the Forest Department of the State after paying the first point tax at the rate of 10 per cent and therefore his liability under the K.G.S.T. Act in respect of the subsequent transaction is only at the rate of 2.5 per cent and that the liability to pay 12.5 per cent tax mentioned in Column Nos. (7) and (8) of entry 8 of the Fifth Schedule has no application to his case. If the said contention is understood in the background of the provisions of Section 8(2)(b) of the Act, especially with reference to the observation made by the Supreme Court in *Aysha Hosiery's* case [1992] 85 STC 106 regarding the

particular point of time, the said contention, if based on facts appears to be justified, for, the expression "shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State" used in Section 8(2)(b) would show that the calculation for the purpose of Clause (b) has to be made with reference to his liability if the very same goods are sold locally in the State. If the assessee's contention that it has paid the first point tax to the Forest Department of the Government is correct then his liability under the K.G.S.T. Act on the last sale is only at the rate of 2.5 per cent. In such a situation the liability to tax under the State law inclusive of surcharge being less than 10 per cent provided in Clause (b) of Section 8(2) of the Act, the assessee is liable to pay Central sales tax on the inter-State transaction only at the rate of 10 per cent.

10. Thus the only question which remains to be considered is as to whether the assessee is the second seller of timber inside the State. There is no due consideration of this question either by the assessing authority or by the first appellate authority. Both of them went by the fact that what is relevant for the purpose of Section 8(2)(b) of the C.S.T. Act is the rate prescribed under the State Act and that since the rate of tax on "timber" under the Act as per the Fifth Schedule is 12.5 per cent (both the points put together) that is the rate which has to be reckoned for the purpose of the tax u/s 8(2)(b) of the C.S.T. Act it being higher than 10 per cent. In this view, they did not consider the factual situation.

11. However, we find that the Tribunal had clearly adverted to the contention of the assessee in the argument note submitted as follows :

The appellant's entire purchases during the year, except rubber wood for Rs. 1,01,039 were as in the previous year, from the Government Forest Depots after paying tax at 10 per cent at the point No. (i) mentioned in paragraph (4) above. So the rate of tax applicable to the appellant's entire sales inside the State, other than of rubber wood purchased from unregistered dealers for Rs. 1,01,039 could be only 2.5 per cent.

The following statements are produced herewith:

- (i) Statement of Trading Account for 1997-98, and
- (ii) Statement of purchases made during the year from the Kerala Government Forest Depots with copies of bills.

12. These factual situations are not disputed by the Revenue before the Tribunal or before us. It is in the above circumstances the Tribunal has held in paragraph 5 of the appellate order that "in the impugned case the rate of tax leviable on timber if sold in the State is 2.5 per cent plus surcharge". This view, according to us, accords with the view which we have already taken. We do not think that any interference is called for with the findings entered by the Tribunal.

The tax revision case is accordingly dismissed.