
(2002) 10 KL CK 0010
In the High Court Of Kerala
Case No : T.R.C. No. 283 of 2002

Teaktex Processing Complex Limited

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-10-2002

Acts Referred:

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

Citation : (2004) 136 STC 435

Hon'ble Judges : K. Balakrishnan Nair, J;G. Sivarajan, J

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G. Sivarajan, J.—An assessee to sales tax under the Kerala General Sales Tax Act, 1963 (for short, "the Act"), is the revision petitioner, The assessment year concerned is 1995-96. The petitioner is a company engaged in the business of undertaking job-work of bleaching and dyeing of yarn and fabrics obtained from its customers. For the purpose of fulfilling the said work, the assessee had purchased items like furnace oil, dyes and chemicals. In the assessment for the year 1995-96, the assessing authority sought to include the value of the dyes and chemicals used in the bleaching and dyeing of the materials supplied by the customer. However, the assessing authority in the final assessment has given a deduction of 20 per cent of the total cost of raw materials used in the said process. The assessee had also taken a contention before the assessing authority that a mistake has crept in, in the returns filed by the assessee, in that, the total value of the dyes and chemicals used in the bleaching and dyeing of the yarns and fabrics was shown at Rs, 39.11 lakhs as against the correct figure of Rs. 22.75 lakhs. This was also not accepted by the assessing authority. The petitioner took up the matter in appeal before the first appellate authority who dismissed that appeal. The Tribunal in second appeal has confirmed the orders of

the two authorities.

2. The petitioner had raised the following questions of law as arising out of the order of the Sales Tax Appellate Tribunal :

"(a) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is justified in law in holding that the chemicals and dyes used up in the execution of job-works is taxable at the hands of the petitioner. Is not the decision of the Appellate Tribunal contrary to the statutory provisions and decided cases ?

(b) Whether, in the light of the specific ground No. 5 raised and pressed, the Appellate Tribunal is justified in law in omitting to deal with the same. Has not the Appellate Tribunal committed an error in this respect ?

(c) Whether, on the facts of the case, is not the observation of the Appellate Tribunal that the value of consumables comes to 39.11 is without any basis. While the actual value is only 22.75 lakhs, is not the revision petitioner entitled to 20 per cent deduction therefrom on the basis of the observations of the assessing authority himself?

(d) Having found by the Appellate Tribunal that, "Chemicals used for bleaching are unconsumables which cease to have existence in any form after use", is the Appellate Tribunal justified in confirming the order of the authorities below without ordering proper allowance for the same ?

(e) Whether, on the facts and in the circumstances of the case, is not the revision petitioner entitled to exemption from sales tax, provided eligibility certificate is issued by virtue of the Government Notification governing the issue of exemption ?"

3. Dr. K.B. Muhamed Kutty, learned counsel appearing for the assessee, submits that the dyes and chemicals and other consumables purchased by the company and used in the process of bleaching, dyeing, measuring, compacting, printing, etc., are liable to be excluded from the assessment, in view of the provisions of Section 5C(1)(c)(iii) of the Act, being consumables. The counsel submits that the assessee has not transferred any of the aforesaid items to the customers in an identifiable form. Counsel also submits that the provisions of Section 5(1) of the Act are not attracted to the transaction. He points out that the assessing authority himself has taken the view that if the chemicals purchased by the assessee are used in the process of bleaching, etc., the value of the same is liable to be deducted from the charges received from the customer. Counsel also pointed out that the assessing authority had granted deduction in respect of the value of furnace oil, electricity, etc., which are used in the said process. On that basis, the counsel submits that the assessing authority should have granted deduction in respect of the entire value of the dyes and chemicals used in the execution of the works contract. Counsel in respect of his contentions has relied on various decisions of the Supreme Court, this Court and other High Courts. We

have also heard the learned Government Pleader appearing for the respondent who sought to support the orders of the assessing authority and the two appellate authorities. He also relied on the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law) v. Pio Food Packers [1980] 46 STC 63 and the decisions in Assistant Commissioner (Intelligence) v. Nandanam Construction Company [1999] 115 STC 427 ; (1999) 7 KTR 651 and Deputy Commissioner of Sales Tax (Law) v. N. Kannan Nair [1988] 70 STC 48 rendered in the context of Section 5A of the Act.

4. The facts are not in dispute. The petitioner undertakes bleaching and dyeing of yarn and textiles entrusted by customers as per agreements entered into between them. The petitioner uses dyes and chemicals apart from other items, such as furnace oil, electricity, etc., in executing the works contract. The question is as to whether the dyes and chemicals purchased by the assessee by issuing "C" form and used in the execution of the works contract attracts Section 5(1) read with Section 5C of the Act. The counsel mainly relied on the provisions of Section 5C of the Act, the relevant portion of which reads as follows :

"5C. Deduction of certain amounts in arriving at the taxable turnover of a dealer in respect of transfer of property in the execution of works contract.--The taxable turnover of a dealer in respect of the transfer of property involved in the execution of works contract shall, from the 1st day of April, 1984, be arrived at after deducting the following amount from the total amount received or receivable by the dealer for the execution of the contract--

(a)(b) (c) all amounts towards labour charges and other service charges such as--

..... (iii) cost of consumables used ;

.....

not involving any transfer of property in goods, and actually incurred in connection with the execution of the works contract"

5. Section 5C(1)(c)(iii) specifically excludes the cost of consumables used in the execution of works contract not involving any transfer of property in goods and actually incurred in connection with the execution of the works contract. The contention of the counsel is that dyes and chemicals fall under "consumables". The first appellate authority in its order has observed that what is envisaged as "deduction" in Section 5C towards "consumables" is the cost of consumables, such as water, electricity, fuel and dye used in the execution of the work, the property of which is not transferred in the execution of the contract work. It also observed that when fuel and power are consumed in the execution, the property of such goods cannot be considered to be transferred because the goods cease to exist and only such goods alone can be treated as "consumables" for the purpose of allowing deduction u/s 5C. The Tribunal also considered this question with reference to the provisions of Section 5C of the Act and observed that the

consumables not transferred in the execution of works contract alone are eligible for deduction u/s 5C(1)(c)(iii) of the Act. The Tribunal also observed that consumables which ceased to have existence in any form after the use are alone eligible for deduction under the abovesaid provision, and that in the instant case, dyes and chemicals used as consumables in the execution of works contract existed in the form of colour in the textile fabrics. It was also observed that chemicals used for bleaching consumables ceased to have existence in any form after use. However, so far as dyes used in the execution of works contract, it was observed that the property in the dye existed in the form of colour in the textile fabric.

6. We have considered the question as to whether the dyes can be treated as a consumable within the meaning of the said subsection and is liable to be excluded from the turnover u/s 5C of the Act. We are in agreement with the view taken by the two appellate authorities to the effect that if the items which are used in the process are existing in any form in the resultant product, then there is a transfer of the item used as goods exigible to tax under the Act. We are also of the view that if the item which is used in the process is not in existence in any form in the end-product, then it can be treated as a consumable. Here, it must be noted that Section 5C itself makes the position clear by specifying "not involving any transfer of property in goods and actually incurred in connection with the execution of the works contract". In the instant case, admittedly, the assessing authority has granted a deduction in respect of chemicals to the extent of Rs. 7,82,200 as being consumed or used, on an estimate. However, the assessing authority did not grant deduction for the entire value of the chemicals alleged to have been used in the process. This was for the reason that the assessee was not maintaining proper accounts and any documents to establish the entire quantity of chemicals purchased, and not available for closing stock, and was used in the process of bleaching. The assessing authority has found that the assessee had purchased the entire chemicals from outside on issuing "C" form. It was also found that every item was purchased for being used for the manufacture or processing of goods for sale or for resale. In the absence of any evidence regarding the user of the entire quantity of chemicals purchased and are not available in the closing stock for the purpose of bleaching of the textile fabric, certainly the assessing authority can presume that the assessee might have sold the item. It is in this view of the matter that the assessing authority has granted 20 per cent of the purchase value of the chemicals as deduction. We do not find any reason to interfere with the findings of the assessing authority and as affirmed by the two appellate authorities. So far as the item dyes used in the process is concerned, there cannot be any dispute that after the processing of fabric by using the dyes it existed in the form of colour. The meaning of the word "dye" is relevant in this context. The word "dye" in Chambers Twentieth Century Dictionary, Revised Edition, is :

" "to stain"; "to give a new colour to", "colour; tinge ; stain ; a colouring liquid".

The Concise Oxford Dictionary of Current English, New Seventh Edition gives the meaning :

" "Colour produced by or as by dyeing, tinge, hue, substance used for dyeing, colouring matter in solution"."

Another meaning is "impregnate with colouring matter while material as in said state, giving more permanent result".

7. Thus, by applying the principles mentioned above, it has to be held that the item "dye" used in the process of bleaching textile fabrics, cannot be treated as a consumable mentioned in Section 5C(1)(c)(iii) of the Act. In this view of the matter, we do not find any illegality in the orders of the two appellate authorities. We are in perfect agreement with the order of the Tribunal and no interference is called for. The Supreme Court in *Gannon Dunkerley & Co. v. State of Rajasthan* [1993] 88 STC 204 ; (1 KTR 178) observed that keeping in view the legal fiction introduced by the Forty-sixth Amendment whereby the works contract which was entire and indivisible has been altered into a contract which is divisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable, must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works contract, the seven items mentioned therein, including the item (v) cost of consumables, such as water, electricity, fuel, etc., which are consumed in the process of execution of a works contract and other similar expenses for labour and service will have to be excluded as charges for supply of labour and service, it was observed. The Supreme Court held that the value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover, inter alia, cost of consumables, such as, water, electricity, fuel, etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract. Here, it must be noted that all the aforesaid items will not form an identifiable part of the works contract executed. In other words, the property which is transferred will not be identifiable. The illustration of consumables, such as, water, electricity, fuel, clearly shows that in order to be a consumable, it must belong to that category which will not have any identifiable element. In other words, as the Supreme Court observed in *State of Tamil Nadu v. Arcot Cans* [1993] 88 STC 285 (Mad.), the expression "consumes" unmistakably suggests that the commodity which is said to have been consumed loses its complete character, nature and identity in the manufacture of other goods, with a different and distinct character, nature and identity.

8. The learned counsel for the appellant/assessee submits that though the appellant has specifically raised an issue regarding the mistake in the quantum of dyes and chemicals purchased and used in the process of bleaching or dyeing of fabrics, the Tribunal did not consider the same in the appellate order. Counsel

submits that the appellant had specifically raised a ground in the appeal memorandum regarding the above. But, the Tribunal did not advert to the said issue or contention or deal with it while disposing of the said appeal. We have perused the grounds of appeal. We find that ground No. 5 in annexure C relates to the same. We also do not find from the appellate order that the Tribunal has adverted to the said contention. In the above circumstances, if as a matter of fact, the assessee had argued the said question before the Tribunal, it is for the assessee to file appropriate petition for review of the order of the Tribunal on that ground for which this judgment will not stand in its way. Counsel also submits that the petitioner has applied for exemption from payment of sales tax under the notification, which has also not been considered. This question is also left open.

The tax revision case is dismissed with the above observation.