(2011) 05 KL CK 0211

In the High Court Of Kerala

Case No : S.T.R. No. 369 of 2008

The Alleppey Company Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 27-05-2011

Acts Referred:
Central Sales Tax Act, 1956 — Section 5(3)
Kerala General Sales Tax Act, 1963 — Section 2(xxv), 5A

Citation : (2011) 3 KLJ 130

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar and Anil D. Nair, for the Appellant; K.P. Pradeep (GP), for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the connected revision cases filed by the very same Company is whether the Sales

Tax Appellate Tribunal was justified in holding that the petitioner is liable to pay purchase tax u/s 5A of the Kerala General Sales Tax Act

(hereinafter referred to as the Act for short) on the purchases of tags and labels from exempted dealers which were attached to coir products

exported outside India. We have heard learned counsel appearing for the revision petitioner and learned Government Pleader for the respondent.

2. The petitioner is engaged in manufacture and export of coir products. As per the requirement of foreign buyers and in terms of the export

orders, the petitioner has to attach tags and labels to each and every coir product exported giving product description in terms of the Buyers''

norms. The petitioner outsourced these tags and labels from printing presses, which have sales tax exemption under the notification issued by

Government of Kerala. Since suppliers of tags and labels did not collect sales tax on the sales made to the petitioner and such tags and labels were

attached to the products exported, the Assessing Officer levied purchase tax u/s 5A of the Act holding that tags and labels purchased were

consumed in the manufacture of coir products exported that attracts tax u/s 5A of the Act. The assessments completed disallowing exemption have

been confirmed for the years 1998-1999 and 1999-2000 by the first appellate authority as well as the Tribunal, against which these revision cases

are filed.

3. Learned counsel appearing for the petitioner relied on the decision of the Supreme Court in the case of State of Karnataka v. Asad Coach

Builders Pvt. Ltd, reported in 2010 (36) VST 1 and contended that since the commodity purchased as such is exported by attaching the same to

the coir products exported, the petitioner is entitled to get exemption u/s 5(3) of the CST Act. Learned Government Pleader on the other hand

contended that the commodity purchased was not exported as such, but was used for manufacture of final products for export and so much so,

exemption cannot be granted u/s 5(3) of the CST Act. Relying on the decision of this Court in C.Y. Meeran v. State of Kerala, reported in

2003(11) KTR 584, which was relied on by the Tribunal in their order, Government Pleader contended that all the conditions of Section 5A are

satisfied to attract liability. According to the learned Government Pleader, the Tribunal rightly confirmed levy of tax u/s 5A of the Act because tags

and labels purchased were attached to coir products exported by the petitioner, and there was no separate export sale of the tags and labels. After

hearing both sides, we notice that taxable turn over u/s 2(xxv) of the KGST Act excludes export turnover which takes in deemed export turnover

falling u/s 5(3) of the CST Act. Section 5(3) of the CST Act grants exemption on the last sale or purchase of any goods preceding the sale or

purchase occasioning the export of those goods out of the territory of India. In the decision of the Supreme Court above referred the Honourable

Court held that when a commodity purchased is exported though not in the same form but without change of identity, the same falls within the

scope of Section 5(3) of the CST Act. What is stated in Section 5(3) is that sale or purchase should be for sale which should occasion export of the commodity purchased. In this case, admittedly tags and labels were printed by the supplier-printing press in terms of the petitioner''s orders,

which were in conformity with export orders. So much so, the commodity even at the time of printing or manufacture is earmarked for export after

purchase. Admittedly the petitioner attached the tags and labels to the products exported. Therefore the commodity purchased was for export by

attachment to the coir products without any change whatsoever and so much so, the decision of the Supreme Court squarely applies to the facts of

this case.

Even though the applicability of Section 5A are satisfied in as much as goods purchased are used in the manufacture, which includes labeling of the

commodity for export, still since Section 5A of the Act is subject to Section 5(3) of the CST Act, liability has to be considered keeping in view of

the exemption available to the purchaser/exporter u/s 5(3) of the CST Act. Since the purchases of tags and labels were the penultimate purchases

for export falling u/s 5(3) of the CST Act, the petitioner was not liable to be assessed u/s 5A of the Act. Therefore, we allow the revision cases by

cancelling Section 5A assessments made on the petitioner on the purchase turnover of tags and labels, which were purchased and attached as such

to the products exported outside India. The orders of the first appellate authority and that of the Tribunal confirming disallowance of exemption will

stand reversed.

These Revision cases are allowed as above.

