

(1972) 12 KL CK 0013
In the High Court Of Kerala
Case No : T.R.C. No. 5 of 1971

The Kannan Devan Hills Produce Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1973) 32 STC 42

Hon'ble Judges : T.C. Raghavan, C.J.;K. Bhaskaran, J

Bench : Division Bench

Advocate : M. Pathros Mathai, E.M. Jacob, George Tharakan, Joseph Vellapally and Joy Joseph, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, C.J.—The question we have to consider in this case is whether the following items of goods are not includible in the Central sales tax registration certificate granted to the petitioner. The items of goods are :

(1) Cultivation: Garden implements, irrigation equipments including water supply fittings, pumps, etc., soil testing machines and laboratory stores, polythene bags, sheeting and ropes, seeds (tea and shade), mechanical saws, winches, etc., soil fumigants, chemicals, etc., for cultivation.

(2) Crop protection : Fertilisers, manures, insecticides, fungicides, acaricides, weedkillers, treekillers, dusters, sprayers, blowers and chemicals, respirators and eye shields, etc., for use in tea cultivation for crop protection.

2. Before considering the question, the relevant provisions of the Central Sales Tax Act and the Rules may be noted. Section 8(1) of the Act reads :

8. Rates 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....

(b) sells to a registered dealer other than the Government goods of the

description referred to in Sub-section (3); shall be liable to pay tax under this Act, which shall be three per cent, of his turnover....

(3) The goods referred to in Clause (b) of Sub-section (1)....

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power....

3. Rules have been framed as contemplated by Sub-section (3) of the section quoted above; and the Rules are the Central Sales Tax (Registration and Turnover) Rules, 1957. The relevant rule is Rule 13 and it reads:

13. Prescription of goods for certain purposes.-The goods referred to in Clause (b) of Sub-section (3) of Section 8, which a registered dealer may purchase, shall be goods intended for use by him, as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel, or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power.

4. These provisions came for consideration before a Division Bench of this Court in Travancore Tea Estates Company Ltd., Vandiperiyar v. The State of Kerala (T.R.C. No. 46 of 1969-not reported) Since reported at p. 47 infra. Unnikrishna Kurup, J., who spoke for the Division Bench, considered similar contentions in detail and held :

Where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods".

5. This, we point out, was what was laid down by the Supreme Court in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, Kurup, J., stated further :

Green tea leave is a raw material for the manufacture of tea and the growing of tea leaves appears to us to be so integrally connected with the manufacture of tea that it can reasonably be taken as part of the process of manufacturing tea.

6. Still, the learned Judge held :

But this by itself is not sufficient to make the goods eligible for inclusion in the sales tax registration certificate. Under Rule 13 read with Section 8(3)(b) the use of the goods in the manufacture or processing of goods for sale will not be a sufficient ground for inclusion in the certificate. The further requirement is that the goods must be for use as raw materials or processing materials, or machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants.

7. And the Division Bench disallowed the claim of the assessee in that case for inclusion of similar goods, viz., fertilisers, chemicals, insecticides, etc., in the certificate of registration. It may also be pointed out that Kurup, J., considered both the Supreme Court decisions in Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, . and J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, .

8. Since there is already a Division Bench ruling of this Court, our normal inclination is to follow that decision and dismiss this revision case. But, the counsel for the petitioner has brought to our notice the decision of Ramaprasada Rao, J., of the Madras High Court in The Anglo-American Direct Tea Trading Company Ltd. v. The Assistant Commercial Tax Officer, Srirangam Division, Srirangam [1972] 29 S.T.C. 123, in a similar case taking a different view. That naturally compels us to consider the question more closely and decide which of the two decisions lays down the correct legal position. In the Madras decision also, the learned Judge has held that the cultivation or growing of tea leaves is an integral part of manufacturing tea as was held by the Division Bench of this Court. Thereafter, the learned Judge has considered Rule 13 and has concluded his reasoning thus :

It is therefore clear that if on a fair understanding of the nature of business of a dealer one comes to a reasonable conclusion that the intermediate goods, which are required for one of the processes in the composite activity, is essential for the ultimate manufacture or processing of the finished product, then it would follow that such intermediate goods are also goods which would come within the meaning of Rule 13 and Section 8(3)(b) of the Central Sales Tax Act as goods required in the manufacture or processing of goods for sale.

9. Ramaprasada Rao, J., has also considered the two Supreme Court decisions which were considered by the Division Bench of this Court. The decision of our Court was also brought to the notice of the learned Judge; and the learned Judge has disagreed with our decision disposing of it in just one sentence without considering our reasoning and the correctness of our reasoning. The learned Judge has said :

With the utmost respect to the learned Judges, I am unable to fall in line with the view expressed, as the Supreme Court has clearly given expression to the real intendment and purport of Rule 13 read with Section 8(3)(b).

10. At this stage, it will be worth while to compare the two passages we have already extracted from the judgment of our Division Bench and the judgment of Ramaprasada Rao, J., of the Madras High Court regarding the language of Rule 13. And in the light of the language of Rule 13, it will be interesting to consider the two decisions of the Supreme Court considered by the Division Bench of our Court and Ramaprasada Rao, J. In the first of these cases, viz., Indian Copper Corporation Limited Vs. Commissioner of Commercial Taxes, Bihar and Others, , the Supreme Court has held:

We are also of the opinion that in a case where a dealer is engaged both in mining operations and in the manufacturing process-the two processes being inter-dependent-it would be impossible to exclude vehicles which are used for removing from the place where the mining operations are concluded to the factory where the manufacturing process starts.

11. And the Supreme Court has observed further:

The expression "goods intended for use in the manufacturing or processing of goods for sale" may ordinarily include such vehicles as are intended to be used for removal of processed goods from the factory to the place of storage.

12. The still further observation of the Supreme Court in the same decision that "the expression "intended to be used" cannot be equated with "likely to facilitate" the conduct of the business of manufacturing or of processing goods or of mining" is more worth noting. The Supreme Court has held that vehicles used for removing manufactured goods to the store should be included in the certificate, but the equipment necessary to maintain a hospital would not be includible in the certificate. Similarly, the Supreme Court has held that "stationery" was not "intended for use in the manufacture or processing of goods for sale or for mining operations" and was not, therefore, includible in the certificate.

13. The next decision of the Supreme Court, J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , throws more light on the question we have to decide in this case. The Supreme Court has held in that case that the process of designing, though might be distinct from the actual process of turning out finished goods (cotton textiles, tiles and other commodities), should still be included in the expression "in the manufacture of goods". In the opinion of the Supreme Court, the expression "in the manufacture" took in within its compass all processes which were directly related to the actual production. In the opinion of the Supreme Court, drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing, which was directly related to the actual production of goods and without which commercial production would be inexpedient, must be regarded as goods intended for use "in the manufacture of goods". The reasoning of the Supreme Court, where their Lordships have considered "electrical equipment", throws still more light on the question before us. Their Lordships have observed that for electrical goods to come within "electrical equipment", the goods must be a commodity which was used in the creation of goods; if, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, such equipment would be regarded as intended for use in the manufacture of goods for sale; this would not include electrical equipment not directly connected with the process of manufacture.

14. Thus, on a close scrutiny of the two Supreme Court decisions, we feel that

the approach of the Division Bench of this Court was more in conformity with the principles laid down by the Supreme Court than the approach of Ramaprasada Rao, J. All "intermediate goods, which are required for one of the processes in the composite activity" cannot be considered as "essential for the ultimate manufacture or processing of the finished product" (Ramaprasada Rao, J.). On the other hand, for the goods to come within Rule 13, the further requirement that "the goods must be for use as raw materials or processing materials, or machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants" (Kurup, J.) must also be satisfied. And that requirement will be satisfied, as the Supreme Court has laid down in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , only if the processes in which the goods are used are directly related to the actual production of the finished goods.

15. In the light of these principles gathered from the aforesaid decisions, if we examine the goods before us, viz., cultivation implements, like garden implements, irrigation equipments, etc. and crop protection materials like fertilisers, insecticides etc., it will be apparent that these might be required in "one of the processes in the composite activity" but will not be directly connected with the production, or manufacturing or processing of the ultimate product. It must then follow that these goods will not come within Rule 13 of the Central Sales Tax (Registration and Turnover) Rules; and that they are not therefore entitled to the benefits of Section 8(1) by virtue of their being included in Section 8(3)(b) of the Central Sales Tax Act.

16. In this view, we prefer to follow the Division Bench ruling of our Court and we dismiss the revision case. However, we pass no order regarding costs.