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(1985) 09 KAR CK 0028

In the Karnataka High Court

Case No : S.T.R.P. No. 90 of 1978

The State of Karnataka APPELLANT

Vs

Peirce Leslie India Ltd. RESPONDENT

Date of Decision : 25-09-1985

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5 (3) (a), 6

Citation : (1987) 66 STC 371

Hon'ble Judges : S.A. Hakeem, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : S. Rajendra Babu, for the Appellant; K. Srinivasan and S.G. Shivaram, for the Respondent

Judgement

K.S. Puttaswamy, J.—This revision petition is by the State of Karnataka ("Revenue") and is directed against the order dated 12th June, 1978 of the Karnataka Appellate Tribunal, Bangalore ("Tribunal") in Appeal STA No. 153 of 1976.

2. M/s. Peirce Leslie India Ltd., a public limited company, incorporated under the Companies Act, which is the respondent assesses is, inter alia, engaged in the business of purchase and sale of cashew-nuts, cashew and cashew kernels. The assessee is a registered dealer under the Karnataka Sales Tax Act, 1957 ("the Act") and the Central Sales Tax Act, 1956.

3. For the assessment period from 1st October, 1970 to 30th September, 1971, the assessee in its return filed under the Act before the Assistant Commissioner of Commercial Taxes, Mangalore ("ACCT") disclosed a purchase turnover of Rs. 35,47,962.75 of cashew-nuts and a sales turnover of Rs. 13,56,548.61 on cashew kernels extracted or pressed from out of the aforesaid cashew-nuts. On the said sales turnover of cashew kernels, the assessee claimed total exemption from payment of sales tax under the Act on the ground that it had paid purchase tax u/s 6 of the Act. On 19th September, 1975, the ACCT completed the assessment and rejected the said exemption and brought the sales turnover of

Rs. 13,56,548.61 to tax at the rate of 2 per cent under the Act.

4. Aggrieved by the said order of the ACCT, the assessee filed an appeal before the Deputy Commissioner of Commercial Taxes (Appeals), Mangalore Division, Mangalore ("DC") who by his order dated 21st January, 1976 dismissed the same. Aggrieved by the said orders of the DC and ACCT, the assessee filed a second appeal before the Tribunal which by its order dated 12th June, 1978 has allowed the same and has granted complete and full relief on that claim of the assessee. Hence, this revision by the Revenue.

5. Sri S. Rajendra Babu, learned Government Advocate appearing for the Revenue, contends that explanation VI appended to Schedule II of the Act applies to sales u/s 5(3)(a) of that Act and does not apply to sales of products from out of articles purchased and the view expressed by the Tribunal to the contrary was erroneous.

6. Sri K. Srinivasan, learned Advocate appearing for the assessee, in supporting the order of the Tribunal, contends that explanation VI appended to Schedule II of the Act applies to all cases of "taxes levied" under the Act and so construed the exemption allowed was legal and valid.

7. On a fairly detailed examination of the question that arose before it, the Tribunal has found that the levy of sales tax on cashew kernels of Rs. 13,56,548.61 was wholly unjustified and has cancelled the same. We are of the view that this conclusion of the Tribunal flows from the language of explanation VI appended to Schedule II of the act which reads thus :

"Explanation VI. - Where a tax has been levied in respect of cashew under item 88, the kernel pressed out of the said cashew shall not be liable to tax under this Act."

The term "tax levied" on cashew occurring in this explanation is general in its sweep and does not restrict itself to cases of sales only as urged for the Revenue. The term "tax levied" on cashew has to be construed as any tax levied under the Act either u/s 6 or u/s 5(3)(a) of the Act. On this construction of explanation VI, the assessee''s sales turnover of cashew kernels was not liable to sales tax.

8. In the very case of the assessee for the very assessment year (since reported as Peirceleslie India Ltd. Vs. State of Karnataka, a Division Bench of this Court consisting of Jagannatha Shetty, J., and one of us (S. A. Hakeem, J.), speaking through the latter, examining one other question observed on the scope of the explanation thus :

"It seems to us that explanation VI is in the nature of an exemption clause which provides for exemption of kernel from the tax at the sale point if tax had been paid on the purchase of cashew. This is obviously a concession extended by the legislature to keep down the price of edible kernel and not indicative of any other intention of the legislature."

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We are of the view that these observations also support the conclusion reached by the Tribunal and the case urged for the assessee.

9. On this short ground, we are of the view that the order of the Tribunal granting relief to the assessee is legal and valid and does not call for our interference. On this conclusion, we decline to examine the correctness of other reasons on which the Tribunal had found in favour of the assessee which means that we should not be understood to express our concurrence with any of them.

10. In the result, we dismiss this revision petition. But, in the circumstances of the case, we direct the parties to bear their own costs.

11. Petition dismissed.

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