(2012) 03 KL CK 0279

In the High Court Of Kerala

Case No : O.T. Rev. No''s. 52, 53, 54 and 55 of 2010

Tropical Farms APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 59
Kerala Value Added Tax Act, 2003 — Section 5, 6(1)(d), 6(5)

Citation : (2012) 53 VST 153

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : E.K. Nandakumar, A.K. Jayasankar Nambiar, K. John Mathai, P. Benny Thomas, P. Gopinath and Raja Kannan, for the Appellant; Bobby John, Senior Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The issue raised in the connected revision cases relating to two assessees is whether the activities carried on in the poultry farm, i.e., buying one or two day old chicks, rearing the same into full grown chicken and sale of the same, entitles the farm to get the benefit of presumptive tax u/s 6(5) of the Kerala Value Added Tax Act, 2003 (hereinafter referred to as "the Act", for short). We have heard learned counsel for the petitioners and learned Senior Government Pleader appearing for the respondent.

2. The petitioners are admittedly poultry farmers engaged in purchase of one or two day old chicks, rearing the chicks in the poultry farm under the strict control of air, temperature, standardised feeding and medication and sale of full grown birds as broiler chicken exclusively for its meat value for human consumption. Admittedly, chicken is taxable under the residuary entry under notification issued in 2006 u/s 6(1)(d) of the Act taxable at 12.5 percent. When assessments were taken up for different periods of 2005-06 and 2006-07, the petitioners claimed benefit of presumptive tax at 0.5 percent of the turnover on the ground that annual turnover was below Rs. 50 lakhs. However, u/s 6(5) those dealers engaged in first taxable sale of goods are not entitled to the benefit of

concessional rule under the Scheme of payment of presumptive tax under the said section. The claim made by the petitioners before the assessing officer was that since one or two day old chicks are purchased locally, the sale of full grown birds after rearing should be treated as sale of the same commodity so that the petitioners cannot: be treated as first taxable sellers of chicken. The assessing officer rejected the claim stating that one or two day old chicks purchased by the petitioners completely loose the identity, character and use when it is sold after rearing for about 45 days in the farm as full grown birds sold by weight for meat purpose. The first appellate authority as well as the Tribunal completely agreed with the findings of the assessing officer that the chicks and the full grown birds are different commodities, and since the petitioners are first taxable sellers of full grown birds they are not entitled to the benefit of section 6(5) of the Act. It is against these orders of the Tribunal, the petitioners have approached this court with these revision petitions.

3. In order to consider the controversy we have to refer to the relevant provisions of the Act, which are extracted hereunder:

6. (5) Notwithstanding anything contained in sub-section (1), but subject to sub-section (2), any registered dealer not being,--

(a) an importer; or

(b) a dealer making any sale in the course of inter-State trade or commerce or export; or

(c) a dealer registered under the Central Sales Tax Act, 1956 (Central Act 74 of 1956); or

(d) a dealer effecting first taxable sale of goods within the State; or

(e) a dealer covered by sub-section (1A); or

(f) a contractor,

whose total turnover for a year is below fifty lakh rupees, may, at his option, pay tax at the rate of half percent of the turnover of sale of taxable goods as presumptive tax instead of paying tax under subsection (1):

....

Explanation.--''First taxable sale'' for the purpose of this subsection shall mean the sale of taxable goods effected by a registered dealer immediately after the import of such goods into the State or its manufacture in the State as the case may be, but shall not include the sale of goods in respect of which tax u/s 5 or under subsection (4) of section 59 of the Kerala General Sales Tax Act, 1963 (15 of 1963), had been paid and which are held as opening stock on the date of coming into force of the Act.

4. The Tribunal held against the petitioners by relying on the decision of the Supreme Court in Indian Poultry and Others Vs. Sales Tax Officer, Rajnandgaon

and Others, , wherein the Supreme Court held that:

Held, that rearing of chicks over a period of five weeks under strict control of air, temperature, standardised feeding, medication and chemicals and sale of broilers that resulted amounted to manufacture of goods within the special meaning of ''manufacture'' in the Madhya Pradesh General Sales Tax Act, 1958, and the concession u/s 6(2)(a) of the Act was available in respect of chicks which are reared into broilers.

5. The learned counsel for the petitioners submitted that the Supreme Court was dealing with the definition of "manufacture" contained in section 2(j) of the Madhya Pradesh General Sales Tax Act, wherein the definition is wide enough to cover production, processing and even preparation. The definition of ''"manufacturer" contained in section 2(xxvi) of the Act does not have the wide meaning including "preparation" as in the Madhya Pradesh General Sales Tax Act and so much so, the above decision of the Supreme Court has no application is his contention. For easy reference we extract hereunder section 2(xxvi) of the Act.

2. (xxvi) ''manufacture'' with its grammatical variations and cognate expression means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods, and includes any process incidental or ancillary to such activities but does not include any process or mode of manufacture as may be prescribed;

6. The learned Government Pleader raised the contention that the above definition in the Act is also wide enough to cover rearing of chicken as a result of which the original commodity, namely, chick loses it''s identity, character and use.

7. After hearing both sides, we do not think there is any necessity for us to consider this technical question as to whether rearing of one or two day old chicks to full grown broiler chicken amounts to "manufacture" or not because in our view, the petitioners are not entitled to claim benefit of presumptive tax at concessional rate u/s 6(5) because they happened to be first taxable sellers of full grown broiler chicken. The definition clause of "manufacture" in our view does not intend to cover live-stock where there is no manufacturing activity in the literal or technical sense. On the other hand, chicks are reared under temperature control and under medication and feeding specifically geared to achieve fast growth of birds basically for gaining weight because chicken is sold by weight for meat value. In our view, if one or two day old chicks purchased cannot be equated with full grown birds, then certainly the petitioners cannot raise the contention that they are not first taxable sellers of broiler chicken, which is full grown bird sold for meat purpose. We do not find that the petitioners have paid any tax on the purchase of chicks or claimed input tax when the assessment was made rejecting the claim u/s 6(5) of the Act. From the definition of "first taxable seller" itself, it is clear that in order to avoid a dealer from being treated as first taxable seller, the commodity after purchase in the State should

be resold in the same form. This is because the words "such goods" used followed by the description "goods imported to the State" in the Explanation to the definition clause can only mean "same goods". Therefore, the only question that arises for consideration in this case is whether the commodity purchased is the commodity sold to treat the sale by the petitioners as second sale and not "first taxable sale". Nobody can even raise a contention that one or two day old chicks is anyway comparable with the full grown broiler chicken sold after minimum 40 days rearing to gain meat weight above 1.5 kgs. In the first place, value wise, chick is of insignificant value compared to the value of full grown broiler chicken, which weigh around 1-2 kgs. of meat. Chicks have only an intrinsic and potential value for growth which depends on it''s rearing to grow into full grown birds, whereas broiler chicken is sold only by weight for the purpose of meat. Ultimate full grown birds are harvested after substantial investment in care, protection, feeding and medication of chicks and therefore, it is a value added product and so much so, full grown birds can never be treated as same as one or two day old chicks. If this argument of the petitioners is accepted, we have to accept the position that a seedling is the same as the tree to which it can grow into. So much so, in our view, irrespective of whether there is manufacture or not in the rearing of chicks to chicken, the petitioner''s sale of broiler chicken as full grown birds for meat purpose have to be and rightly treated as first taxable sale. By virtue of the specific exclusion of first taxable sellers from the scheme of payment of presumptive tax under clause (d) of section 6(5), the lower authorities including the Tribunal rightly rejected the claim of the petitioners. Consequently, we dismiss all the O.T. revision cases.