

(2009) 01 KL CK 0065

In the High Court Of Kerala

Case No : S.T. Rev. No's. 17, 22, 23, 24, 28, 29, 30, 31, 32, 39, 45, 91, 100
and 102 of 2008

Tropical Plantations Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 10, 2

Citation : (2009) 26 VST 403

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Arshad Hidayathulla and Ramesh Cherian John, for the Appellant;
Vinod Chandran, Special Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question arising in all the connected tax revision cases filed by the petitioner, which is a rubber plantation company, is whether it is entitled to exemption from sales tax on the sale of old and unyielding rubber trees. The issue was earlier decided by this Court against the petitioner and when matter was taken up in appeal before the Supreme Court, the Supreme Court set aside the judgment of this Court/vacated the orders of the Tribunal and remanded the case back to the Sales Tax Appellate Tribunal for decision by them. In the proceedings pursuant to the remand by the Supreme Court, the Tribunal reaffirmed their earlier decision on all the questions referred to it by the. Supreme Court against which these revisions are filed. Since facts are identical in all the cases, the petitioner has argued the case with reference to the common order of the Tribunal and orders of the lower authorities produced in ST Rev. No. 17 of 2008, which pertains to sales tax assessment for the year 1983-84. We have heard senior counsel Sri Arshad, Hidayat-hullah appearing for the petitioner and Special Government pleader Sri Vinod Chandran appearing for the respondent.

2. The assessee is a plantation company which maintains multicrop plantations,

namely, coffee, tea and rubber. Rubber trees start yielding after six to seven years of planting and the economic life of the rubber trees is 20 to 25 years. When the yield is reduced rubber trees are subject to slaughter tapping and sold and replantation is raised in the land. It is seen from the impugned orders that the assessee has extensive area of plantation and invariably every year the assessee sells old trees and raises fresh plantation in such area. For assessment year 1983-84, the assessee sold old rubber trees for Rs. 18,06,680. In the sales tax returns the assessee did not concede the sale price as taxable turnover under the Kerala General Sales Tax Act, 1963, hereinafter called the "Act". However, when the assessing officer proposed to assess the turnover of sale of rubber as representing sale of goods, the assessee claimed that the rubber trees sold by it are "agricultural produce" which stands excluded from the definition of "turnover" contained in Section 2(xxvii) of the Act. However, the assessing officer rejected the claim on the ground that rubber tree is not an agricultural produce. When the assessment was taken in appeal the first appellate authority confirmed the disallowance by reference to the decision of the Division Bench of this Court in *George P. Mathew v. State of Kerala* [1979] 43 STC 438(SC). The assessee carried the matter in further appeal to the Tribunal and the Tribunal also dismissed the claim against which revision was filed before this Court. This court See [1997] 105 STC 85 Ker) though allowed the revision holding that rubber trees sold do not constitute timber, on appeal by the State, the Supreme Court See *State of Kerala Vs. Tropical Plantation Ltd. and Others*, set aside the judgment of the High Court and remanded the matter back to the Tribunal through judgment produced as annexure D in ST Rev. No. 17 of 2008. In fresh proceedings after remand, the Tribunal again decided the matter against the assessee, which is confirmed by a Division Bench of this Court in the decision *Tropical Plantations Ltd. v. State of Kerala* reported in [2001] 9 KTR 68. The assessee filed appeal against the judgment of this Court before the Supreme Court and the Supreme Court vide order produced as annexure F in this case remanded the case again to the Tribunal to decide the following issues:

- (1) Whether the agreement to sell by itself would amount to sale of goods; or that the sale would be constituted only after the trees are cut and thereafter become exigible to the levy of tax ;
- (2) Whether the standing rubber trees would be timber for the purpose of levy of sales tax under the Act; and
- (3) Whether the impugned assessment order passed by the assessing authority is legal and valid.

3. The Tribunal considered all the above issues and answered all the questions against the petitioner through common order in the batch cases produced as annexure H in this ST Rev. It is against this common order of the Tribunal that revision petitions are filed by the same petitioner.

4. The main question to be consider is whether old standing rubber trees sold by

the assessee is "agricultural produce" which alone is entitled to exemption from payment of sales tax. Even though senior counsel appearing for the assessee contended that the Supreme Court in the judgment in appeal does not mention about this and so much so, the Tribunal was not entitled to go into the question, Special Government Pleader referred to the third issue referred to in the judgment of the Supreme Court and contended that the Tribunal is bound to decide the legality and correctness of the assessment order and this issue therefore has to be necessarily decided by the Tribunal. We are in agreement with the argument of the Special Government Pleader because the basic claim of the assessee which is found in the assessment order itself is that it is entitled to exemption on sale of old standing rubber trees, because it is an "agricultural produce" which is excluded from the definition of "turnover" contained in Section 2(xxvii) of the Act. On going through definition clauses of "sale", "goods", "dealer" and "turnover" and the charging section contained in the Act we notice that all goods whether produced by agriculture, manufacture or otherwise, are subject to tax, except when it is covered by exemption clause contained in the provisions of the Act or by virtue of notification issued u/s 10 of the Act. It is pertinent to note that agricultural or horticultural produce are granted exemption when sales are made by the growers of the same. However under the Explanation to Section 2(xxvii) of the Act, tea, coffee, rubber, cardamom and timber are excluded from the scope of agricultural or horticultural produce for the purpose of exemption. Since the entire case depends upon the interpretation of definition clause "turnover" contained in Section 2(xxvii) of the Act, the same with relevant Explanation is extracted hereunder for easy reference:

2(xxvii). "turnover" means the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover.

Explanation (1): "Agricultural or horticultural produce" shall not include,-

(i) such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting, drying or dehusking;

(ii) tea, coffee, rubber, cardamom or timber.

5. From the above it is clear that exemption is granted to agricultural or horticultural produce and the exemption is only to the growers of the same. Explanation (1) makes it clear that physical, chemical or other processing of agricultural or horticultural produce to make it fit for consumption except mere cleaning, grading, sorting, drying or dehusking, will disentitle the item for exemption. Besides this tea, coffee, rubber, cardamom or timber will not be

entitled to exemption, even when grower of the same sells it as such. As already stated, the basic condition for claiming exemption is to prove that item sold is "agricultural or horticultural produce". Therefore the question to be considered is whether the old standing rubber trees sold by the assessee is an agricultural produce as claimed by them. Even though senior counsel appearing for the petitioner contended that the matter stands decided by Division Bench decision of this Court in the earlier round vide decision in *Tropical Plantations Ltd. v. State of Kerala* [2001] 9 KTR 68, the Special Government Pleader appearing for the respondent contended that the judgment of this Court was against the petitioner, though not on this issue and this Court has not considered the matter in detail. He further submitted that after the Supreme Court set aside the said judgment of this Court, the petitioner cannot rely on the very same judgment on this issue. On going through the judgment we find that this Court has disposed of the issue in the following lines:

We do not agree with the reasoning given by the Tribunal based on the decision of the Supreme Court in *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, . There the question was whether the sale of tree should be treated as capital receipt and not taxable as agricultural income.

6. From the above, we do not think this Court has considered or decided the issue in the correct perspective. On the other hand, since they otherwise found the petitioner ineligible for exemption, they did not consider the question in detail at all. They have not considered as to what is the meaning of "agricultural produce". In any case, since this judgment now stands set aside by the Supreme Court with direction to the Tribunal to decide all the issues afresh, the Tribunal was justified in considering the matter afresh and therefore the issue before us is whether the Tribunal was justified in holding that old standing rubber trees sold by the petitioner is not "agricultural produce" as claimed by the petitioner. It is seen that the Tribunal has relied on the decision in *Commissioner of Agricultural Income Tax, Kerala Vs. Kailas Rubber and Co. Ltd.*, to hold that sale proceeds of unyielding rubber trees are capital receipts and not taxable as agricultural income. Even though the Supreme Court was not considering the sales tax liability on sale of old and unyielding rubber trees, their decision is squarely applicable herein because the Supreme Court clearly held that sale proceeds of old and unyielding rubber trees is not agricultural income which means that trees sold are not "agricultural produce". In fact, it is pertinent to note that the petitioner has not accounted the sale proceeds as income from sale of agricultural produce which would have led to liability for Income Tax under the Kerala Agricultural Income Tax Act, which the petitioner is not conceding. Therefore there is self-contradiction in the stand of the petitioner themselves inasmuch as they do not concede any income from sale of old and unyielding rubber trees as income on sale of agricultural produce, but at the same time, they contended for the purpose of sales tax that old and unyielding rubber trees sold are agricultural produce. Besides this we are of the view that rubber trees do not constitute agricultural produce though trees are planted, nursed and

grown up by the planter in a systematic manner, because agricultural produce is the crop received from the tree, that is latex extracted from rubber trees for 20 to 25 years after the trees start yielding. In fact, rubber tree is only the income-generating apparatus and the agricultural produce therefrom is rubber obtained in the form of latex. Various agricultural produce like mango, orange, apple, etc., are obtained from trees which are planted, nursed and protected by the farmers. The trees or the timber extracted on cutting of such trees cannot be called as agricultural produce and as held by the Supreme Court the income obtained on sale of the tree is capital receipt. Therefore the petitioner's main contention that old and unyielding rubber trees is "agricultural produce" entitled to exemption from turnover u/s 2(xxvii) of the Act is untenable and the same is rejected.

7. The next question to be answered based on the decision of the Supreme Court is whether sale of standing rubber trees under contract of cutting and removal amounts to sale of goods. "Goods" as defined u/s 2(xii) include among other things all growing crops, grass or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. Further, Explanation 1 to Section 2(xxi) states that transfer of the property in the following goods namely, tea, coffee, rubber, cardamom or timber, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, by a person who produces the same, shall be deemed to be sale for the purposes of this Act. Again Explanation (IB) states that a transfer of property in trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale by the person entitled to make such transfer, whether in the course of trade or business or otherwise, for cash or for deferred payment or other valuable consideration, shall be deemed to be a sale for the purposes of this Act.

8. From the above definition clauses it is clear that sale of standing trees of spontaneous growth attracts sales tax. If sale includes agreement for cutting and removal of trees spontaneously grown, we do not know why agreement for cutting and sale of planted trees is not "sale" within the meaning of the Act. In fact, when timber sale by planters is visualised under Explanation 1 to Section 2(xxvii), the same will take in sale of standing trees as well. In this view of the matter, we hold that consideration received under agreement for cutting and removal of standing trees is for sale of goods.

9. The last question raised is whether the old and unyielding rubber trees answer the description of timber referred to in Clause (ii) of Explanation 1 to Section 2(xxvii) of the Act. We do not find any significance for this issue because since rubber trees or the wood extracted therefrom answers the description of "goods" it is liable to tax unless the petitioner establishes that it is "agricultural produce" which only is entitled to exemption. In fact the petitioners are well aware of this position and consequently from the very beginning onwards they canvassed the position that rubber trees is "agricultural produce". It is only when this is turned down, the petitioner raised the argument that it is not timber only, to mislead the

authorities. So long as both soft wood and hard wood fall within the definition of "goods" exclusion is possible only if the petitioner proves that the goods are "agricultural produce" which we have already found against the petitioner. In any case, since the petitioner has raised the contention that rubber trees is not "timber" we have to consider the same for the sake of it. No doubt rubber wood as such is not hard wood fit for making furniture or for use in house construction, though of late, it is used for such purposes after chemical treatment. However, the question to be considered is whether the timber in the context in which it is used in the Explanation to the turnover contained in Section 2(xxvii) takes in only hard wood suitable for furniture making or for construction of house or the like. As already mentioned while granting exemption to all agricultural and horticultural produce, the Legislature has specifically brought to tax tea, coffee, rubber, cardamom or timber. We have also taken note of the fact that "goods" under the definition includes trees of spontaneous growth. These provisions have to be considered with reference to the practice followed by planters. In fact timber used for house construction and for making furniture is hard wood obtained from trees such as teak, rosewood, etc. These trees have long maturity period of above 30 years and are therefore not generally planted by farmers to take timber as a crop. On the other hand, trees planted to generate yield which is agricultural produce like rubber, mango, cashew, etc., are cut after they become unyielding and the wood obtained therefrom-hardwood or soft wood-are also sold. In our view timber referred to in the exclusion clause of definition of "turnover" takes in all kinds of trees planted and sold later after the trees become old and unyielding. In this view of the matter, we hold that even though rubber wood is not hard wood as such which cannot be used for construction purpose or for making furniture except after chemical treatment for its durability, it is timber covered by the definition clause. However, we are of the view that this finding has no significance for deciding the petitioner's claim for exemption which will be available only if old and unyielding rubber trees sold by the petitioner is agricultural produce which issue is already held against the petitioner.

10. In view of the above findings, we dismiss the revision cases.