

(2004) 02 KL CK 0018
In the High Court Of Kerala
Case No : W.A. No. 422 of 1999 (C)

TVS Srichakra Ltd.

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 03-02-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 245, 246, 269
Rubber Act, 1947 — Section 12, 12(1)
Rubber Rules, 1955 — Rule 33, 33A, 33B, 33D(1)

Citation : (2004) 2 ILR (Ker) 592 : (2008) 11 VST 748

Hon'ble Judges : K. Thankappan, J; J.B. Koshy, J

Bench : Division Bench

Advocate : C.K. Thanu Pillai and S. Shaina, for the Appellant; S. Soman, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Koshy, J.—Appellant-company is engaged in the manufacture of tyres, tubes and flaps for motor vehicles and is having the factory for the manufacture of these items in Tamil Nadu. The appellant is having sales depots throughout India. It is also having a purchase depot at Thiruvananthapuram for the purchase of rubber from the Kerala State. After purchase it is transferred to the head office at Madurai for the manufacture of the products. Government by Notification S.R.O. No. 767 of 98 exempted dealers other than manufacturers in including rubber cess in the turnover for the purpose of purchase tax for a limited period. Item 41 of the above exemption notification reads as follows:

----- 41.
Dealers Part of the turno- 1. The rubber purchased was sold inter- other than
ver being the State or transferred to the principal out- manufac- element of cess
side the State or to a branch outside not turers and payable under being a
manufacturing unit of the con- planters, the Rubber Act, signor. in the purchase
2. The exemption shall be in respect of turnover of goods purchased for the

period up to and rubber. including 18th December, 1997. 3. Tax, if any, already paid shall not be refunded.

2. According to the appellant, since the exemption is not granted to manufacturers, it is discriminatory. It is further stated that manufacturer in the first column means manufacturer in the State. If the manufacturing is done outside the State, exemption will be applicable and therefore the first condition in column three is also discriminatory.

3. Rubber cess is equivalent to excise duty and is tax on manufacturer. The rubber cess is charged as per Section 12 of the Rubber Act, 1947. Section 12 of the Rubber Act reads as follows:

12. Imposition of new rubber cess.--(1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be levied as a cess for the purposes of this Act, a duty of excise on all rubber produced in India at such rate, not exceeding (two rupees) per kilogram of rubber so produced, as the Central Government may fix.

(2) The duty of excise levied under Sub-section (1) shall be collected by the Board in accordance with Rules made in this behalf either from the owner of the estate on which the rubber is produced or from the manufacturer by whom such rubber is used.

4. The Supreme Court in State of Kerala Vs. Madras Rubber Factory Ltd., overruling the Full Bench decision See Madras Rubber Factory Limited Vs. State of Kerala, of this Court held that the incidence of excise duty is directly relatable to manufacturer but its collection can be deferred to a later stage as a measure of convenience. As per Rules 33(e), 33A, 33B and 33D(1) of the Rubber Rules, 1955 the excise duty even though payable by the manufacturer can be collected at a later stage. The apex court also held that the incidence of excise duty will start from the date of production and therefore the incidence is a part of the price of the goods purchased. The Supreme Court in paragraph 21 of the judgment held as follows:

21. In our opinion, therefore, the incidence of duty is directly relatable to the production of rubber. The character of levy is not altered merely because the payment of duty is deferred till the purchase of the rubber by the manufacturer. The character of levy is on the production of the rubber and the duty paid should, therefore, be deemed to be part of the price that the producer had paid for the goods purchased. Neither a provision for deferred payment nor the liability cast on the manufacturer of rubber goods for payment of the duty to facilitate easy collection, can alter the duty as being one on the production of rubber as provided by Section 12(1) of the Rubber Act and such duty even though paid later, will be a part of the price of goods purchased and would, therefore, form part of the producers turnover.

5. Therefore, on the basis of the Supreme Court decision the cess also can be included in the purchase turnover for dealers, ultimate manufacturers, etc. But duty was demanded earlier only from the manufacturers, the ultimate user of the goods. But on the basis of the Supreme Court decision when demands were placed on dealers there were representations which resulted in exhibit P3 exemption. Explanatory note of exhibit P3 itself states as follows:

In State of Kerala Vs. Madras Rubber Factory Ltd., , the honourable Supreme Court held, reversing the decision of the honourable High Court of Kerala in Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes) v. Bata India Limited [1986] 62 STC 436 SC, that rubber cess, even though it is paid by the manufacturers subsequent to their purchase of rubber, form part of the purchase value of rubber and so was includible in the purchase turnover of rubber. As such cess payable on rubber under the Rubber Act can be included in the sale price of rubber from the point of sale by the planter onwards, retrospectively. But in respect of traders in rubber, Government had not taken any steps so far to include the amount of cess payable as per the Rubber Act in the purchase turnover or in the sales turnover of such dealers/traders and so they were not anticipating any liability. The dealers had therefore no occasion at any time to believe that at some point of time they may be made liable for purchase tax on the rubber cess element. Government consider that immense hardship will be caused to such dealers/traders due to the implementation of the above decision with retrospective effect. Government have therefore decided to grant exemption in respect of the tax payable by traders (other than manufacturers and planters) on the part of the turnover of rubber being the element of cess payable under the Rubber Act, for the period prior to the pronouncement of the judgment of the honourable Supreme Court and to collect purchase tax on the rubber cess element from the date of order of Supreme Court only.

The above notification is intended to achieve this object.

6. Therefore, it can be seen that dealers who were not manufacturers were exempted for the period up to and including December 18, 1997. But, for exemption, dealers also would be liable to pay purchase tax including cess in the purchase turnover in view of the decision of the apex court. But, in this notification dealers were exempted as earlier demands were made only on manufacturers.

7. Contention of the appellant is that he is a manufacturer in Tamil Nadu. The manufacturer in the first column means only manufacturer in Kerala State and therefore, he is entitled to exemption, otherwise it would be discrimination. Admittedly, the appellant is a manufacturer. The State is not levying tax merely because he is not a manufacturer in the State violating Articles 245, 246, 269, etc., of the Constitution of India. The goods were produced in Kerala. It was purchased by the appellant in Kerala. On the basis of the Supreme Court decision, the rubber cess forms part of the purchase turnover. Only dealers other than manufacturers were exempted as per the notification. Manufacturer as such

is a class. Trader as such is a class. Therefore, there is no discrimination within the class and it cannot be stated that such classification is discriminatory. The counsel submitted a decision of the Karnataka High Court in Biological E. Ltd. v. State of Karnataka [1997] 104 STC 234 SC, where it was held that there is no difference between a dealer who is a manufacturer and an ordinary dealer, considering the fact of that case. Here question is entirely different. Earlier purchase tax was demanded only from the manufacturer or the ultimate user and not from the dealer. But, the Supreme Court made clear that rubber cess can be included in the purchase turnover after rubber is removed from the estate as incidence of tax is at the time of production. Since dealers were not demanded with the duty, dealers who were not manufacturers were given exemption till the date of the Supreme Court decision. It is not a case of discrimination. Apart from that, merely if the manufacturers in Kerala have to pay purchase tax inclusive of the cess and manufacturers who are outside the State are not liable to pay the same will amount to discrimination. Here all the manufacturers are liable to pay duty. Only the dealers who are not manufacturers were exempted till the date of apex court's decision because until the apex court's decision Government as well as dealers were under the belief that mere dealers who are not manufacturers need not include incidence of cess in the purchase turnover. Dealers include a manufacturer also. But, cess was demanded from manufacturers only. Therefore, only those dealers who are not manufacturers are exempted till the date of apex court's decision. It is a relaxation given by the Government. Burden is on the person who claims exemption. Since appellant is not a mere dealer, but also a manufacturer, the benefit is not applicable to it. Merely because manufacturing is done outside the State, appellant cannot be given the above exemption violating the mandate of Article 14. We fully agree with the learned single judge. The appeal is dismissed.