(1964) 05 KL CK 0008

In the High Court Of Kerala

Case No : T.R.C. No. 41 of 1963 from T.A. No. 915 of 1961 of the Sales Tax Appellate Tribunal, Trivandrum

West Coast Weaving Establishments APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-05-1964

Acts Referred:

Citation : (1964) KLJ 604 : (1964) 15 STC 898

Hon'ble Judges : M.S. Menon, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : M.I. Joseph, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Madhavan Nair, J.—This petition has arisen out of an assessment of sales tax on the value of packing materials used in consigning handloom fabrics in the course of inter-State trade. The order of assessment by the Assistant Sales Tax Officer, Cannanore, reads :

The accounts of the West Coast Weaving Establishment, dealers in handloom cloth, Chovva, for the year 1959-60 were checked and it was found that they have sold handloom cloth for Rs. 3,51,393-23 to parties outside the State of Kerala during the above year. These are inter-State sales coming under the purview of the Central Sales Tax Act, 1956. Under the Act only the sales of handloom cloth are exempt from levy of tax and not the containers....They have purchase packing materials for Rs. 4,174-64 during the year. In the absence of separate accounts showing the sale of containers it was proposed to assess the dealers on the above amount under the Central Sales Tax Act...The dealers...stated that...nothing is charged separately towards cost of packing materials and that the packing materials used in packing the cloth are neither capable of being resold or consumed by their customers....The containers are not eligible for any exemption. The value of cloth received is inclusive of the value of containers also. I therefore overrule the objections and finally determine their net turnover for 59-60 under Central Sales Tax Act at Rs. 4,174-64 and finally assess them on the above turnover.

2. The assessee''s appeal before the Additional Appellate Assistant Commissioner and second appeal before the Appellate Tribunal did not succeed. He therefore seeks a revision by this Court.

3. The assessee has declared that it has not charged its consignees for the packing of the goods consigned to them. Its assertion that the materials used for packing have no resale value is not challenged by the department, which states only that the price of the cloth must in the circumstances be deemed to include the price of its "containers" as well. We think it absurd to call as "containers" the materials in which bundles of cloth are packed in the usual course of trade. It is a well known courtesy observed by traders that goods purchased are wrapped or packed before they are delivered to the customers and they charge nothing extra for such wrapping or packing-the case of containers made of metal, glass etc., being quite different. The inference of the Sales Tax Authorities that the price of cloth sold included the cost of its packing is not based on any evidence, nor is it warranted by the circumstances of this case. Unless there be a "sale" of the packing materials, directly or indirectly, to the consignees, tax cannot be attracted. The definition of "turnover" in the Act makes clear that only the sale price of goods sold would attract sales tax. There having been no sale of the packing materials the assessment concerned has no sanction of law and has to be discharged. We do so, and allow this petition with costs, rupees one hundred.