

(1987) 06 KL CK 0044

High Court Of Kerala

Case No: T.R.C. No. 46 of 1987

Madras Rubber Factory Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: June 29, 1987

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Section 2(xxi)

Citation: (1988) 1 ILR (Ker) 69 : (1987) KLJ 1177 : (1987) 67 STC 183

Hon'ble Judges: K.S. Paripoornan, J; K. Sreedharan, J

Bench: Division Bench

Advocate: S.A. Nagendran, for the Appellant; T. Karunakaran Nambiar, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

K.S. Paripoornan, J.

The petitioner is an assessee under the Kerala General Sales Tax Act. The Revenue is the respondent. The matter relates to the assessment year 1977-78. In assessing the petitioner, the assessing authority added the value of the goods returned to the assessee by certain purchasers without taking delivery, by holding that they are sales attracting levy of sales tax, under the provisions of the Kerala General Sales Tax Act. The said turnover amounts to Rs. 2,84,802.10. In appeal, the Deputy Commissioner (Appeals) held that the sale was not complete in respect of those goods. He deleted the addition. The Revenue filed a second appeal before the Sales Tax Appellate Tribunal, as T. A. No. 838 of 1986. The Appellate Tribunal held that Rule 9(b)(ii) of the Kerala General Sales Tax Rules is inapplicable. The Appellate Tribunal further negated the plea of the assessee that the amount represented unfructified sale. In negating the said plea, reference was also made to the provisions contained in the invoice. Even so, the Appellate Tribunal held that the purchasing party placed an order with the assessee and the act of despatch of goods through a public carrier implies acceptance of contract and the point of sale

of goods by the assessee. It was opined that it may be true that as per the conditions in the invoice, the assessee has got the right to recall the goods or to consider the property in the goods to be assessee's own to enforce the conditions in the invoice. But, these conditions are not in keeping with the provisions of the Kerala General Sales Tax Act where a sale emanates at the point of appropriation of goods as per a previous contract. The assessee has come up in revision.

2. We heard counsel for the petitioner, Mr. S.A. Nagendran, as also counsel for the Revenue, Mr. Nambiar. Counsel for the Revenue, Mr. Nambiar, stressed Section 2(xxi), explanation (4)(a)(i) of the Kerala General Sales Tax Act. Counsel submitted that the sale shall be deemed to have taken place in the case of specific or ascertained goods at the time the contract of sale or purchase is made. In this case, the moment the goods were despatched in pursuance to the contract, to the various purchasers the sale is complete. There was an appropriation of the goods to the purchaser. It shall be deemed that the sale has taken place in this State and so the levy of sales tax was justified. On the other hand, counsel for the assessee laid stress on the condition appearing in the invoice to the effect that the property in the goods will remain with the company until payment of the invoice amount is received by the company either direct from the purchaser or from the company's bankers against retirement of documents of title to the goods. The Appellate Tribunal wholly misunderstood Section 2(xxi), explanation (4) to hold that there was an appropriation outright in this case. There was no such appropriation. Since there was no appropriation and that the condition in the invoice is not fulfilled, no sale took place to make the tax levied exigible.

3. On hearing the rival contentions of the parties, we are inclined to accept the plea of the assessee. The definition of the word "sale" in Section 2(xxi) read along with-explanation (4) will apply only if there is no contra indication in the context. The matter is very plain. It is evident from a perusal of the various invoices that the assessee has stipulated that the property in the goods will remain with the company until payment of the invoice amount is received by the company either direct from the purchaser or from the company's bankers against retirement of documents of title to the goods. The above clause shows that the appropriation, if any, is conditional. It is evident that this condition was not fulfilled. On this basis, there is no escape from the position that the sale did not fructify. If that be so, there was no sale exigible to tax. The assessing authority as well as the Appellate Tribunal were in error in holding that such unfructified sale will be exigible to tax. The Deputy Commissioner (Appeals) was justified in holding that the sale was not complete in respect of such goods which were refused by various consignees. In this view of the matter, we hold that the Appellate Tribunal was in error in its reasoning and conclusion in holding that there was an appropriation of goods, as contained in the Kerala General Sales Tax Act to attract sales tax.

We reverse the decision of the Appellate Tribunal in T. A. No. 838 of 1986. This tax revision case is allowed.