

(1987) 07 KL CK 0066**High Court Of Kerala****Case No:** T.R.C. No. 106 of 1985

Deputy Commissioner of Sales
Tax (Law), Board of Revenue
(Taxes)

APPELLANT**Vs**

M.M. Nagalinga Nadar and Sons

RESPONDENT**Date of Decision:** July 9, 1987**Acts Referred:**

- Kerala General Sales Tax Act, 1963 - Section 2(vi)(a), 2(viii)

Citation: (1988) 71 STC 171**Hon'ble Judges:** K.S. Paripoornan, J; K. Sreedharan, J**Bench:** Division Bench**Advocate:** Government Pleader, for the Appellant;**Final Decision:** Allowed

Judgement

K.S. Paripoornan, J.

The Revenue is the petitioner herein. The respondent is an assessee under the Kerala General Sales Tax Act. The matter relates to the assessment year 1974-75. In fixing the taxable turnover, the assessing authority included a turnover of Rs. 6,000 being the sale value of an old oil engine sold by the assessee. The objection raised by the assessee for not including the same in the taxable turnover was rejected. In appeal, this was confirmed by the Appellate Assistant Commissioner. In second appeal, the Appellate Tribunal adverted to the definition of the word "business" occurring in the Act before the amendment by Act 22 of 1974 and held that the sale in the instant case is of an old discarded machinery, which is a capital asset, and so the turnover coming under this head cannot be included in the sale turnover of the assessee. The Revenue has come up in revision.

2. We heard counsel for the Revenue, Mr. Nambiar. It is evident from para 3 of the order of the Tribunal dated 12th March, 1985 that the Appellate Tribunal adverted to

the definition of the word "business" occurring in Section 2(vi)(a) of the Kerala General Sales Tax Act as also the definition of the word "dealer" in Section 2(viii) of the Act before its amendment by Act 22 of 1974. Act 22 of 1974 came into force on 1st July, 1974. We are concerned with the assessment year 1974-75. The Appellate Tribunal has ignored the amended definition of the words "business" and "dealer". Ignoring the amendment which applies to the instant case and by advert to the definition of the words "business" and "dealer" as it occurred before the amendment, the Appellate Tribunal held that the sale of an old discarded oil engine, being a capital asset, is not includable in the taxable turnover. We are of the view that the decision of the Appellate Tribunal is erroneous. It failed to apply the amended definition of the words "business" and "dealer". Very drastic amendments have been made to these definitions by Act 22 of 1974. In the light of the amended definition of the words "business" and "dealer" in the Kerala General Sales Tax Act, the question has to be examined. In dealing with a similar definition contained in a similar Act, the Supreme Court had occasion to consider the matter in State of Tamil Nadu v. Burmah Shell Oil Storage and, Distributing Co. of India Ltd. [1973] 31 STC 426. This Court had occasion to exhaustively deal with the matter in T. R. C. No. 14 of 1985 (General Sea Foods v. State of Kerala [1988] 71 STC 130). In the said judgment, the earlier unreported judgment in T. R. C. No. 137 of 1981 and other cases have been adverted to. It was held that if the goods sold form integral part of Deputy Commissioner of Sales Tax v. Ruby Rubber Works Ltd. the assessee's goods or machinery or they were used in connection with the assessee's business it will be a case where the turnover relating to those goods can be brought to tax. The Appellate Tribunal had failed to advert to any one of these decisions.

3. We hold that the decision of the Appellate Tribunal is erroneous in law. We set aside the said decision, and order a remit of the matter to the Tribunal. The Appellate Tribunal will restore the appeal to file and consider the matter afresh, in the light of the amended definitions contained in the Kerala General Sales Tax Act and also in the light of our decision in T. R. C. No. 14 of 1985 (General Sea Foods v. State of Kerala [1988] 71 STC 130).

4. The T. R. C. is allowed. No costs.