(2006) 06 KL CK 0067

High Court Of Kerala

Case No: TRC No. 209 of 2001

State of Kerala		APPELLANT
	Vs	
Cochin Shipyard Ltd.		RESPONDENT

Date of Decision: June 30, 2006

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Section 5, 5(1), 5(2), 5(3), 5(4)

Citation: (2006) 3 KLT 380 : (2006) 148 STC 332

Hon'ble Judges: V. Ramkumar, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: Georgekutty Mathew, Government Pleader for Taxes, for the Appellant; Antony Dominic and A.K. Jayasankar Nambiar, for the Respondent

Final Decision: Allowed

Judgement

K.S. Radhakrishnan, J.

This Tax Revision Case arises out of the order passed by the Sales tax Appellate Tribunal, Additional Bench, Ernakulam in T.A. No 651 of 1992. The assessee is a public sector undertaking, Cochin Shipyard Limited, engaged in the design, construction and supply of ocean going vessels. The company is registered as a dealer under the Kerala General Sales Tax Act, 1963. For the assessment year 1981-82 the assessee declared a total and taxable turnover of Rs. 41,95,586.36 which consists mainly of sale of waste materials like steel scrap and other scrap items and used as unserviceable articles. On examination of the books of accounts it was noticed by the assessing authority that the assessee had paid water charges amounting to Rs. 3,92,111.53 during 1981-82, the water was consumed by the assessee otherwise than by way of sale and that the return filed by the assessee had not shown the amount under taxable item though the same is liable to tax u/s 5A of the Act.

2. Aggrieved by the order of the assessing authority, assessee took up the matter in appeal before the Deputy Commissioner (Appeals). Appeal was dismissed. Assessee then took up the matter in appeal before the Tribunal. The appeal was partly allowed by the Tribunal. Tribunal based on the decision of this Court in Deputy Commissioner of Sales Tax v. Thomas Stephen & Co. Ltd. 1987 (1) KLT 161 : (1987) 66 S.T.C. 34 SC) took the view that the water consumed in the manufacture of goods did not go into the making of the end product, but it was used for auxiliary purposes like washing vessel etc. and there was no transfer or disposal of the goods as known to law. Following the decision in Thomas Stephen''s case, supra (1987) 66 STC 34 SC the Tribunal held that the water charges amounting to Rs. 3,92,112/- paid by the assessee is not exigible to tax u/s 5A of the Act. Assessing authority was therefore directed to exclude the amount from levy of tax u/s 5A of the Act. Aggrieved by the same State has come up in this revision.

3. Sri Georgekutty Mathew, learned Government Pleader submitted that the order of the Tribunal cannot be sustained since the decision in Thomas Stephen''s case has subsequently been overruled by the apex court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, . Further the learned Government Pleader submitted that going by the decision in Assistant Commissioner (Intelligence) v. Nandanam Construction Company (1999) 7 KTR 651 even if water is used not for manufacturing process it is exigible to purchase tax under Section5A of the Act.

4. Sri Anil D. Nair counsel for the assessee, on the other hand, contended that only if water is used for the manufacture of end product with the same be exigible to tax and would fall u/s 5A. We may extract Section 5A for easy reference.

5 A. Levy of purchase tax:--(1) Every dealer who, in the course of his business, purchase from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under this Act, in circumstances in which no tax is payable under Sub-sections (1), (3), (4) or (5) of Section 5 and either,--

(a) consumes such goods in the manufacture of other goods for sale or otherwise; or

(b) uses or disposes of such goods in any manner other than by way of sale in the State, or

(c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State or commerce; shall, whatever be the quantum of the turnover relating to such purchase for a year, pay tax on the taxable turnover relating to such purchase for the year sat the rates mentioned in Section 5.

(2) Notwithstanding anything contained in Sub-section (1), a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods, the sale of which is liable to tax under Section5, shall not be liable to pay tax under Sub-section (1) if

his total turnover for a year is less than two lakh rupees.

Apex Court had occasion to consider the scope of Section 6A(ii)(a) of the Kerala General Sales Tax Act 1963 in Nandanam Construction Company''s case, supra. Overruling the decision of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, the Apex Court held as follows:

We are concerned in this case only with Clause (a) of Sub-section (ii) of Section 6-A, that is, either consumption of such goods in the manufacture of other goods for sale or otherwise. Clause (ii) of Section 6-A of the Act postulates levy of tax on purchase of goods from a person other than a registered dealer for consumption or disposal or despatch of goods outside the State. So the scheme of Clause (ii) of Section 6-A of the Act is that when the goods cease to exist in the original form or cease to be available in the Slate for sale or purchase, the purchasing dealer of such goods is liable to tax if the seller is not or cannot be taxed. To our mind, it appears that the object of Section 6-A(ii) (a) of the Act is to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise. If the view in Pio Food Packers (supra) is accepted the result would be that the expression "otherwise" will qualify the expression "sale" and not the expression "manufacture", which appears to us to be erroneous on a plain construction of the provision. The intention of the Legislature, it appears to us, is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. Once the goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and, therefore, the correct meaning to be attributed to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Therefore, while agreeing with the view in Ganesh Prasad Dixit (supra) on this aspect, we overrule to this extent the view expressed in Pio Food Packers (supra).

The principle laid down by the Apex Court in Nandanam Construction Company''s case is to be applied for interpreting Section 5-A(1)(ii). It has been clearly stated by the apex court that the intention of the legislature is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. The court held that once goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and therefore the correct meaning to be attributed to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Even if water is consumed otherwise Section 5-A of the Act would apply. That being the legal position, we are of the view that water charges paid by the petitioner is exigible to purchase tax under Section5A of the Act even if

not consumed for making of the end product since he has consumed it otherwise. Revision is allowed and the order passed by the Tribunal would stand set aside. Consequently the order passed by the assessing authority is restored.