

(1987) 07 KL CK 0073

High Court Of Kerala

Case No: T.R.C. No. 84 of 1987

Deputy Commissioner of Sales
Tax

APPELLANT

Vs

Prakash Traders

RESPONDENT

Date of Decision: July 1, 1987

Acts Referred:

- Insecticides Act, 1968 - Section 3

Citation: (1986) 2 ILR (Ker) 573 : (1987) 67 STC 239

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

Bench: Division Bench

Advocate: The Government Pleader, for the Appellant;

Final Decision: Dismissed

Judgement

K.S. Paripoornan, J.

The Revenue is the petitioner herein. The respondent is a dealer in copper-sulphate. We are concerned with the assessment year 1979-80. The respondent contended that he is a second seller of copper-sulphate and so his sales are not liable to be taxed. Under item 65 of the First Schedule pesticides and plant protection chemicals were taxable at the relevant time at the point of first sale in the State by a dealer who is liable to tax u/s 6 of the Kerala General Sales Tax Act (in short the Act) at 4 per cent. According to the respondent, copper-sulphate is a pesticide coming within entry 66 of the First Schedule. Notwithstanding the said plea, the turnover relating to copper-sulphate was assessed in the hands of the respondent. The assessment was confirmed in appeal. The Appellate Tribunal accepted the plea of the respondent that copper-sulphate is a pesticide coming within Schedule I, entry 56 of the Act as it stood at the relevant period, and the sales by the respondent being the second sale, it is exempt from tax. The Revenue has come up in revision.

2. We heard counsel for the Revenue, Mr. Nambiar. It was argued that the Appellate Tribunal was in error in holding that copper-sulphate is a pesticide and that the second sale of copper-sulphate by the respondent-assessee is not liable to be taxed. We are unable to agree. A pesticide is a substance for killing pests. It is a substance used to destroy plant or animal that is harmful to man.

Pesticides are classified according to the type of organisms they attack; for example, substances that kill insects are known as insecticides; agents that kill fungi are known as fungicides.(Encyclopedia Americana, Vol. 21, page 656)

As per Section 31 of the Insecticides Act, 1968, insecticide is defined to include any substance specified in the Schedule. Copper-sulphate is an item listed in the Schedule for the purpose of Section 3(e) of the Act. The Appellate Tribunal has also stated that the order issued by the Government of Kerala, Taxes (B) Department; No. G. O. Rt. 443/83/TD dated 15th July, 1981, has clarified that all insecticides are pesticides. In the Random House Dictionary of the English Language, copper-sulphate has been specified at page 322 as : "blue vitriol". At page 163 of the dictionary "blue vitriol" has been specified as :

a salt, occurring in large transparent, deep-blue triclinic crystals, appearing in its anhydrous state as a white powder : used chiefly as a mordant, insecticide, fungicide, and in engraving. Also called blue copperas, blue stone, copper sulfate, cupric sulfate.

In the light of the above, we have no hesitation to hold that the Appellate Tribunal was justified in holding that copper-sulphate is a pesticide as specified in the First Schedule, entry 55 of the Act. On this basis, the 2nd sales by the respondent will be eligible for exemption. The Appellate Tribunal was justified in holding so.

No interference is called for with the decision of the Appellate Tribunal. This revision is without merit. It is dismissed in limine.