

(1989) 09 KL CK 0044

High Court Of Kerala

Case No: T.R.C. No's. 106, 107 and 108 of 1989

P. Mytheen Kannu

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision: Sept. 8, 1989

Acts Referred:

- Kerala General Sales Tax Act, 1963 - Section 5
- Kerala General Sales Tax Rules, 1963 - Rule 32(14)

Citation: (1990) 78 STC 328

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

Bench: Division Bench

Advocate: Jose Joseph, for the Appellant;

Final Decision: Dismissed

Judgement

K.S. Paripoornan, J.

These three revisions are filed against the common order passed by the Sales Tax Appellate Tribunal dated March 1, 1989. The matter relates to the assessment years 1984-85, 1985-86 and 1986-87. The petitioner is a dealer in ayurvedic herbs and oils. He supplied ayurvedic herbs and oils on contract basis to the Government Ayurveda College Pharmacy, Trivandrum, during the above three years. He did not file form No. 25 declarations to prove that he was not the last purchaser of the said goods in the State. He was assessed to tax. The petitioner contended that he was not a dealer in the said goods. He was only collecting these materials through workers. Alternatively, it was contended that the petitioner could not be treated as the last purchaser of the said goods in the State. He did not file form No. 25 declarations to show that he was not the last purchaser of the said goods in the State. On these premises and holding that form No. 25 declaration is mandatory to avail of the exemption, the petitioner was assessed to tax on the turnover representing the supply of said goods. The said assessments were upheld by the sales tax appellate authorities. It is against the said order that the petitioner has come up in revisions.

2. The sole question that is urged before us is that the filing of declaration in form No. 25 as provided by Rule 32 (14) of the Kerala General Sales Tax Rules, 1963, is only directory and not mandatory. It was further argued that the decision of this Court in *Rehmath Trading Co. v. Sales Tax Officer* [1980] 46 STC 25 , holding that the provisions contained in Rule 32(14) of the Kerala General Sales Tax Rules and filing of form No. 25 declaration are mandatory requires reconsideration. We are unable to accept this plea. The decision of the learned single Judge in *Rehmath Trading Co. v. Sales Tax Officer* [1980] 46 STC 25 (Ker), holding that the filing of form No. 25 as also the provisions contained in Rule 32 (14) of the Kerala General Sales Tax Rules are mandatory was upheld by a Bench in an unreported decision since reported at page 324 supra. decision of this Court in W.A. No. 132 of 1980, dated December 4, 1985. The Division Bench held that Rule 32 (14) is mandatory and the filing of necessary declaration form is essential in order to avail the exemption claimed. In the light of the Bench decision of this Court we are of the view that the plea of the revision petitioner that the Appellate Tribunal erred in holding that the filing of form No. 25 declaration is mandatory, cannot be accepted. The Appellate Tribunal was justified in holding so. We see no merit in these revisions. We dismiss the revisions. There shall be no order as to costs.