

Dy. Commissioner of Sales Tax (Law), Board of Revenue (Taxes)

Vs

Padinjarakara Agencies

Civil Appeal No. 4160 of 1985

(Ranganath Misra, P. N. Bhagwati JJ)

21.01.1985

JUDGMENT

BHAGWATI, J. -

1. The sole question which arises for determination in this appeal is as to what is the rate at which the goods which had been purchased earlier and which were in stock with the assessee on June 30, 1974 were assessable to purchase tax when the purchases were found to be last purchases as a result of events which took place subsequent to June 30, 1974. This question has become material since the rate of purchase tax increased from 3% to 5% with the effect from July 1, 1974. Now it is not disputed in the present case that purchases of goods effected by the assessee prior to June 30, 1974 were last purchases within the State because the goods purchased which were in stock on June 30, 1974 were subsequently sold by the assessee in the course of inter-state trade or commerce which means that they were sold within the state and hence the assessee was clearly the last purchaser within the state and as such was liable to pay purchase tax under item 71 of the First Schedule to the Kerala General Sales Tax Act. Equally it is clear that the assessee could not be liable to tax on the purchases made by it prior to June 30, 1974 unless the purchases acquired the quality of being last purchases in the state. It was pointed out by this court in *State of Madras v. T. Narayanaswami Naidu* ((1967) 3 SCR 622 : AIR 1968 SC 194 : (1968) 21 STC 1) when the assessee "files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still during the next assessment year, sell it or he may consume it himself or the goods may be destroyed etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock in hand was undetermined; in the light of subsequent events it may not become the last purchase inside the State". There can therefore be no doubt that the assessee in the present case became liable to pay tax on the purchases made prior to June 30, 1974, as soon as it became determined through subsequent events to June 30, 1974, that these purchases were last purchases inside the State and were consequently exigible to tax.

2. But the question remains as to what is the rate which the assessee was liable to be taxed in respect of these purchases. Since the purchases took place before June 30, 1974, the assessee would, in our opinion, be liable to be taxed at the rate prevailing at the time when the purchases were made and since the rate at the time was 3% of the sale price, the High Court was right in taking the view that the purchases made by the assessee prior to June 30, 1974 were taxable at the rate of 3%. We may point out that a similar view has been taken by the Kerala High Court in *Season Rubbers v. State of Kerala* ((1981) 48 STC 256). We find ourselves in agreement with the reasoning adopted by the Full Bench of the High Court in that case.

3. We accordingly reject the appeal but with no order as to costs.

</html