Deputy Commissioner of Sales Tax (Law)

Vs

N. Kannan Nair

Deputy Commissioner of Sales Tax (Law)

Vs

T. Anandan

Special Leave Petitions (Civil) Nos. 2867 of 1988 and 6556-57 of 1987

(Sabyasachi Mukharji, S. Ranganathan JJ)

08.04.1988

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Theses are petitions for leave to appeal under Article 136 of the Constitution from the decision of the High Court of Kerala. The revenue is the petitioner before the High Court. The respondent is the assessee. The respondent is a PWD contractor. He had undertaken certain contract works on behalf of the Public Works Department. He had executed agreements with the PWD for repair of roads. The question involved is, whether the materials used by the assessee for the said purpose can be taxed under purchase tax under Section 5-A of the Kerala General Sales Tax Act, 1963 (hereinafter called 'the Act'). The relevant provisions of Section 5-A(1), (a), (b), (c) and (3) of the Act are as follows :

> 5-A. Levy of purchase tax, - (1) Every dealer who, in the course of his business, purchases 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 Section 5, and either -
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> (a) consumes such goods in the manufacture of others goods for sale or otherwise; or
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> (b) disposes of such goods in any manner other than by way of sale in the State; or
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> (c) despatches them to any place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,
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> 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 that year at the rates mentioned in Section 5.
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> (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 Section 5, shall not be liable to pay tax under sub-section (1) if his

> total turnover for a year is less than twenty thousand rupees :
>
> Provided that where the total turnover of such dealer for the year in respect of the goods mentioned in clause (i) of sub-section (1) of Section 5 is not less than two thousand five hundred rupees, he shall be liable to pay tax on the taxable turnover in respect of those goods.
>
> (3) Notwithstanding anything contained in the foregoing provisions of this section, a dealer referred to in sub-section (1), who purchases goods, the sale of which is liable to tax under clause (ii) of sub-section (1) of Section 5, and whose total turnover for a year is not less than twenty thousand rupees but instead of paying the tax in accordance with the provisions of sub-section (1), pay tax at the rate mentioned in clause (i) of sub-section (1) of Section 7 in accordance with the provisions of that section.

2. The assessee was assessed on the purchase turnover of sand, bricks, etc. which were used for the execution of his work. The assessment was upheld by the Appellate Assistant Commissioner. In the second appeal preferred by the assessee, the Tribunal found that the assessee was a PWD contractor. He had obtained an amount of Rs. 1,01,372 as per bills from the Executive Engineer (Roads and Buildings). According to the assessing officer an amount of Rs. 27,684.13 was the purchase value of articles used by the assessee for the execution of these contracts and so the assessing officer had assessed this turnover to tax under Section 5-A of the Act. The Tribunal found that it was necessary under the said Section 5-A of the Act to have consumption of the commodity in the manufacture of another commodity, the goods purchased should be consumed, the consumption should be in the process of manufacture and the result must be the manufacture of other goods. Therefore, according to the Tribunal, when a PWD contractor was using some articles for consumption of a commodity for the manufacture of another commodity. This conclusion logically follows from the observations and ratio of this Court in Deputy Commissioner, Sales Tax (Law) v. Pio Food Packers (1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 23 SCR 1271 : (1980) 46 STC 63) where Pathak, J. as the learned Chief Justice then was held that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture within the meaning of Section 5-A(1)(a) of the Kerala General Sales Tax Act, 1963. He further observed at pages 1276 and 1277 of the report as follows : [SCC p. 178 SCC (Tax) p. paras 12 and 13]

> Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing, and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a commercially different commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere from in which the fruit is desired.

Learned counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within Section 5-A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of gods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale.

3. The Tribunal accepted the assessee's contentions and allowed the appeal. The High Court upheld the decision of the Tribunal and rejected the revision. Hence this petition for leave to appeal. We are unable to see any ground for interference. The position is clear from the decision of this Court in Pio Food Packers (1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 3 SCR 1271 : (1980) 46 STC 63) Packers. It was contended before us that if no manufacturing process was involved, the case would fall within the scope of Section 5-A(1)(a) of the Act because the statutory provisions spoke not only of goods consumed in the manufacture of other goods for sale but also goods 'consumed otherwise'.

4. Reliance for that was placed on the decision of this Court in Ganesh Prasad Dixit v. CST ((1969) 1 SCC 492 : (1969) 3 SCR 490 : (1969) 24 STC 343). It is, however, not possible to accept this contention.

5. In the decision of Pio Food Packers (1980 Supp SCC 174 : 1980 SCC (Tax) 319 : (1980) 3 SCR 1271 : (1980) 46 STC 63), it was observed that the clause, truly read, spoke of goods consumed in the manufacture of other goods for purposes other than sale. In the instant case, the user must be in the other commodity and the expression "consumed otherwise" must be so construed. This contention was specifically considered by this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam judgment delivered on March 14, 1988 (Dy. CST (Law), Board of Revenue (Taxes), Ernakulam v. Thomas Stephen & Co. Ltd., (1988) 2 SCC (Tax) 190).

6. In the aforesaid view of the matter, there is no ground to interfere with the order of the High Court. The special leave petitions fail and are accordingly dismissed.

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