

State of Kerala

Vs

Tropical Plantation Ltd. and Others

Civil Appeals Nos. 2428-2449 of 1997

(S. P. Bharucha, V. N. Khare JJ)

26.11.1998

ORDER

1. Earlier judgments of the Kerala High Court took the view that rubber trees were not timber [sic see (1989) 73 STC 336, 340 (para 5) were timber] and were, therefore, subject to the levy of sales tax under the Kerala General Sales Tax Act, 1963. When the later of these two judgments was brought before this Court by way of a petition for special leave to appeal, this Court, while dismissing the petition, observed that it would "be open to the petitioner in future years to place adequate materials to establish that rubber trees did not constitute timber...". In the present matters the respondent-assessees placed such material before the Kerala Sales Tax Appellant Tribunal and relied upon the afore-quoted observation. The Tribunal took the view that it was bound by the earlier judgments and, therefore, did not consider this material. The respondent-assessees moved the High Court in tax revision cases. The High Court considered the material and reached the conclusion that standing rubber trees were not timber and, therefore, not exigible to sales tax under the provisions of the said Act.
2. There can be no doubt that, in the circumstances, the Tribunal should have considered the materials that were placed before it and should have decided, as a matter of fact, whether rubber trees were timber. That error should have been cured by the High Court by remanding the matters to the Tribunal to consider the material and arrive at a finding thereon. It should not have considered that material itself; the final fact-finding body being the Tribunal, the finding as to whether rubber trees were timber should have been left to be decided by the Tribunal.
3. We think, in the circumstances, that it is appropriated to set aside the judgments and orders under appeal and remand the matters to the Tribunal. The Tribunal shall not consider itself bound by the earlier judgments of the Kerala High Court. It shall consider such materials/evidence as are placed before it by the assessees and by the Revenue and shall decided, based thereon, whether rubber trees are timber for the purposes of the levy of sales tax under the said Act. The Tribunal shall give to the parties the opportunity to produce additional material/evidence. It shall decided the matters within six months from today.
4. The appeals are allowed accordingly. No order as to costs.