

## KERALA HIGH COURT

Asst Commr Salestax

Vs

Janatha Expeller Co

(Kochu Thommen, J.)

11.07.1986

### JUDGEMENT

#### **Kochu Thommen, J.**

- ( 1. ) THE Revenue is the appellant in this Writ Appeal. Respondents herein are the petitioners in O. P. No. 3977 of 1978 THEy are registered firms doing business mainly in coconut oil and cakes. THEy are registered dealers under the Kerala General Sales Tax Act, 1963 as well as under the Central Sales Tax Act, 1956. THEy purchase copra locally, crush the same in their mills and thereafter sell coconut oil and cake within the State as well as outside the State. Petitioners state that the inter State turnover of coconut oil and cake is assessable only at one percent, of the sale price of the goods sold, on the basis of notification, SRO no. 117 of 1966 dated 8-3-1966, promulgated by the Kerala Government under s. 8 (5) of the Central Sales Tax Act. It is their case that the inter State sales turnover of coconut oil and cake are not exigible to tax under the Kerala additional Sales Tax Act, 1978 f Act 20 of 1978 ). By that Act, the tax payable under the Kerala General Sales Tax Act, 1963 was increased by ten percent of such tax from April, 1978 and by fifteen per cent from 16-3-1983. THE respondent in the Original Petition (the assessing authority) issued notices to the petitioners to pay additional sales-tax from the month of April. 1978 onwards as evidenced by Exts P2 to P11. Petitioners challenged Exts. P2 to P11 notices as unauthorised and illegal. THEy prayed for the issue of a writ of certiorari to quash Exts. P2 to P11 notices and also for the issue of a writ of mandamus directing the respondent to forbear from realising any amount demanded as per Exts. P2 to P11. It is stated that the "additional sales-tax" under Kerala Act 20 of 1978 is not exigible in the case of "inter State sales". Kochu Thommen, J. accepted the petitioners' plea and quashed Exts. P2 to P11. THE Original Petition was allowed. THE Revenue has come up in appeal. THE judgment under appeal is reported as *Janatha Expeller Co. v. Asst. Commissioner*<sup>1</sup>

( 2. ) WE beard counsel for the Revenue-appellant, Mr. T. Karunakaran Nambiar, Senior Government Pleader and counsel for the respondents, mr. S. A. Nagendran. The sole argument of the learned Government Pleader to sustain Exts. P2 to P11 notices, demanding additional sales-tax under Kerala act 20 of 1978, was based on S. 8 (2a) of the Central Sales Tax Act. Counsel

contended that as per S. 2 of the Kerala Additional Sales Tax Act, 1978, tax payable under the Kerala General Sales Tax Act, 1963 shall be increased by "ten" percent of such tax, (till it was increased to 15 percent by ordinance in 1983 ). Under S. 8 (2a), the tax payable by a dealer on his turnover relating to inter state sales, shall be exempt from tax generally or subject to tax generally at a rate which is lower than 4 percent, similar to the provisions of or same as the Sales-tax law of the appropriate State. Counsel contended that the learned judge was in error in ignoring the significance of s. 8 (2a), in holding that additional tax levied under Act 20 of 1978 has no application to the instant case. We are unable to accept this submission. In brief, the scheme for the levy of sales-tax under the Central Sales-tax Act, 1956 relating to inter state sales, seems to fall under five categories: (i) Inter-state sales by a dealer to the Government or to a registered dealer, of the description of the goods referred to in S. 8 (3) shall be at 4 per cent, provided the conditions prescribed in S. 8 (4) are satisfied. (S. 8 (1) ). (ii) Tax payable by a dealer on his turnover of inter-state sales, not falling under sub-s. (1) of S. 8 of "declared goods" shall be at twice the rate applicable to the sale or purchase of such goods inside the appropriate State (S. 8 (2) (a) ). (iii) Tax payable relating to inter state sales of other goods, (other than declared goods) and not falling under sub-s. (1) of S. 8, shall be at ten per cent or at the rate applicable for sales inside the appropriate State, whichever is higher. (S. 8 (2) (b) ). (iv) Notwithstanding anything contained in S. 8 (1) or s. 8 (2) (b), if the goods are sold inter-state, the sale or purchase of which is under the General Sales Tax Law of the State exempt from tax generally or subject to a rate generally at a rate lower than 4 per cent, it shall be either exempt from tax or the tax under Central Sales Tax Act shall be levied at the lower rate, as it is obtained in the "state". (S. 8 (2-A) ). (In this connection, it is clear that if the rate of tax under the State law is less than 4 per cent, the inter-state tax will, by virtue of sub-s (2-A) of S. 8, even in cases covered by S. 8 (2) (b), (transactions relating to goods other than declared goods), not exceed the state rate.) (v) Notwithstanding anything contained in S. 8 (1) to 8 (4) of the Act, the State Government may, in public interest and subject to such conditions as may be specified by it, exempt any person from payment of tax regarding the inter-State sales, or levy a rate lower than that specified in s. 8 (1) or (2) . (S. 8 (5) ). S. 8 (5) of the Central Sales Tax Act enables the State government to either, totally exempt from tax the inter-state sales or to levy a lower rate of tax. In the instant case, it is common ground that the state Government in exercise of the powers vested in it under S. 8 (5) of the central Sales Tax Act, passed SRO No. 117 of 1966 with effect from 1-4-1966, to the effect that in respect of coconut oil and cake sold in the course of inter state trade or commerce, tax shall be calculated only at 1 per cent of sale price. It is common ground that the said notification is still in force. Kochu thommen, J. held that S. 8 (5) of the Act, confers a "positive power" in the State Government to reduce the rate of tax or remove the tax altogether, in respect of notified goods sold in inter state trade or commerce. It is a different situation from S. 8 (2a) of the Act and it operates independently. On a total evaluation of the different sub-sections of S. 8, the learned judge held that the assessing authority has no power to enhance the tax leviable under S. 8 of the Central Act. Secondly, additional tax levied under Act 20 of 1978 has no application, whatever to the provisions of S. 8 of the Central Act. We are of the view that the learned judge was justified in his conclusion, to hold that the additional tax levied under Act 20 of 1978 has no

application to the instant case for more reasons than one. ( 3. ) THE Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978) itself states, that "the tax payable under the Kerala General Sales tax Act, 1963 shall be increased by 10 per cent of such tax" (at the relevant time ). "sales Tax" is levied and payable regarding inter-state sales under the Central Sales Tax Act. Going by the strict letter of S. 2 of Act 20 of 1978, it seems, that in the instant case, since the tax is payable under the Central Sales Tax Act, the levy of additional tax under Act 20 of 1978, is not attracted. Learned Government Pleader concedes that 'inter state' sales are taxable only under S. 8 of the Central Sales Tax, Act, 1956. The only plea of the learned Government Pleader to sustain the levy of additional tax under Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978), on the "inter state" sales, is based on the legal effect flowing from S. 8 (2-A) of the Central Sales Tax Act. We are of the view, that reliance placed by the revenue on S. 8 (2-A) of the Central Sales Tax Act is entirely misplaced. In para 3 supra, we have briefly analysed the scheme relating to levy of tax under the central Sales Tax Act. Broadly, there are five different situations or categories. S. 8 (2-A) of the Central Sales Tax Act is in the nature of proviso to S. 6 (1a) and S. 8 (1) and (2) (b) of the Central Sales Tax Act. Notwithstanding anything contained in S. 6 (1a), or S. 8 (1) or S. 8 (2) (b) of the Act, the tax payable under the Central Sales Tax Act by a dealer on his inter-State turnover shall, in certain cases, be the tax levied for the sale or purchase, within the state. S. 8 (2a) states that tax payable under the Central Sales Tax Act by a dealer on his turnover, which under the sales-tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than 4 percent, shall be, either 'nil' or calculated at a lower rate. We shall quote the relevant portions of S. 8 (2-A): "2-A. Notwithstanding anything contained in sub-s. (1-A) of S. 6 the tax payable under this Act by a dealer, on his turnover, the sale or, . . . . . the purchase of which is, under the Sales-tax law of the appropriate State exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate. " In our opinion, all that S. 8 (2-A) provides is that the tax payable under the Central Sales Tax Act, will be, at the rate levied for the sale or purchase of the identical goods under the Sales Tax Law of the appropriate State, subject to other conditions specified therein. In other words, the levy of tax under the Central Act will follow, the levy of tax on the sale or purchase, of the goods, under the State law. The Act, by which the tax is levied, for the sale or purchase of the goods, under the State law, on the specified commodity, alone it relevant or should be looked into. This seems to be the plain meaning of the words used in S. 8 (2-A) of the Central Sales Tax act. The eye need look no further. S. 8 (2-A) of the Central Sales Tax Act deals with a situation different, from the one contemplated by S. 8 (5) of the Central sales Tax Act. The field of operation of S. 8 (2a), and S. 8 (5) of the Central act, are distinct and different. In the circumstances, we hold that the levy of additional tax under S. 2 of the Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978) is not exigible at all to a case where tax is payable under S. 8 (5) of the Central Sales Tax Act. We are also of the view, that even in cases where tax is exigible under S. 8 (2-A) of the Central Sales Tax Act for the inter-state sales, Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978) has no application. ;

## Cases Referred.

1(1982 KLT 267- (1982) 49 STC 216 )