

A.B. Ismail Vs. State of Kerala

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Court : Kerala

Decided On : Jun-13-1978

Reported in : [1978]42STC217(Ker)

Judge : V.P. Gopalan Nambiyar, C.J. and; M.P. Menon, J.

Appeal No. : T.R.C. No. 130 of 1977

Appellant : A.B. Ismail

Respondent : State of Kerala

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : M. Hyder Ali Khan, Adv.

Disposition : Petition allowed

Judgement :

V.P. Gopalan Nambiyar, C.J.

1. The assessee in this tax revision challenges the view of the Sales Tax Appellate Tribunal regarding the assessability to sales tax of the turnover of a meat-vendor at Trichur in respect of his transaction. The nature of the transaction, the circumstances under which the question arose and the contentions raised, have been described in the order of the Tribunal thus :

Here, it is admitted by the appellant that he is purchasing goats and sheep for slaughtering them. It is not disputed that live-stock will be goods within the meaning of the Kerala General Sales Tax Act. According to the assessing officer, when the appellant is killing these goats and sheep, the appellant is consuming them for the manufacture of other goods for sale within the State, for, according to him, when a live goat is cut and killed, what is produced is not a live goat, but only lifeless mutton. So, the officer has taken the view that in the business of the appellant, there is a manufacturing process, but, as stated above, according to the appellant, he is only processing live goat or sheep into mutton by killing them and cutting them into pieces and he is not doing anything more than processing the mutton.

2. The question therefore for consideration before the Tribunal and before us is whether the meat-vending, in the circumstances thus described, would attract Section 5A of the Kerala General Sales Tax Act, which is as follows :

5A. 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-

(a) consumes such goods in the manufacture of other goods for sale or otherwise ;
or

(b) disposes of such goods in any manner other than by way of sale in the State;
or

(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,

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.

(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-five 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-five thousand rupees but not more than thirty thousand rupees may, at his option, instead of paying the tax in accordance with the provisions of Sub-section (1), pay tax at the rate mentioned in Sub-section (1) of Section 7 in accordance with the provisions of that section.

The ingredients of Clause (1)(a) of the section and the scope of these ingredients fell for elaborate discussion in a recent decision of a Division Bench of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers [1978] 41 S.T.C. 364. All the authorities were surveyed in that decision with respect to the three ingredients involved in the section, viz., (1) the 'consumption' of the goods; (2) process of 'manufacture' involved and (3) the production of 'other goods'. In the light of the provisions of the section and the decisions referred to, the question before us would be : whether there is a 'consumption', followed by a 'manufacture' of 'other goods' when goats and sheep are slaughtered for sale in the market and sold as mutton or meat. We have given the matter our careful attention; and we have again given careful consideration to the elaborate arguments in regard to the processes involved in the transaction and their effect in the light of the provisions of the section-especially as one of us was not a party to the earlier Division Bench ruling. We are clearly of the view that the Tribunal was not correct in the view that it took and that it cannot be said that there was a 'consumption' resulting in the 'manufacture' of 'other goods' within the meaning of the section. We do not wish to survey the decisions which were referred to in the recent Division Bench judgment to which reference has been

made. We think at least four of those decisions are particularly appropriate.

3. The first of these is the decision of the American Supreme Court in *Anheuser-Busch Brewing Association v. United States* 207 U.S. 556. The question there was whether a chicken killed and dressed after plucking its feathers and throwing out its entrails and kept in cold storage was a different or 'manufactured' product; or whether the operations had resulted in the production of a 'manufactured' product. After examining the matter, the court observed in an instructive judgment that a chicken killed and dressed is still a chicken. Removal of its feathers and entrails only made it ready for the market and cannot be said to turn the dressed chicken into a 'manufactured' product. The reasoning is apposite.

4. The second decision is of this court in *Joseph v. State of Kerala* [1967] 20 S.T.C. 261, which ruled that prawn pulp made out of raw prawns was not 'other goods' and no 'consumption' or 'manufacture' was involved in making prawn pulp.

5. The third of the cases which we consider appropriate is the *Pulpally Devaswom's* case [1977] 40 S.T.C. 350. There it was held that the spontaneously grown trees of the assessee cannot be said to have been 'consumed' for the 'manufacture' of 'other goods' when they were cut into logs, transported and sold. The felling and transport of the trees were only the minimal processes for rendering them marketable.

6. Besides these judicial decisions, which should very much turn the scale in the assessee's favour, on the generally accepted principle of construction in such matters again, we think, that the assessee should be in a position of vantage. In the commercial sense, viz., in the sense known to the commercial world, we do not think it can be said that the meat exposed for sale in the market after cutting or slaughtering goats or sheep can be said to have been 'manufactured' after 'consuming' the goat or sheep. The meat exposed for sale is still of goat or sheep, in the same way as dressed chicken is still chicken, or the sliced, canned and packed pineapple is still pineapple prepared from the raw fruit after the minimal process for making it marketable. To use the technical or commercial expression seen employed in the judicial decisions-it is only a case of 'meat on hoof' having been prepared as 'meat' or 'dressed meat' for the purpose of sale in the market.

('Meat on hoof' seems only to be the commercial expression for the live animal.) We are of the opinion that the conclusion and the reasoning of the Tribunal cannot be supported. We allow this tax revision case, set aside the orders of the Appellate Tribunal and the other authorities and hold that the assessee is not assessable to sales tax under Section 5A of the Act. There will be no order as to costs.

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