

State of Kerala Vs. Millenium Polypackers

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Court : Kerala

Decided On : Dec-04-2008

Reported in : 2009(1)KLT49; (2009)24VST463(Ker)

Judge : H.L. Dattu, C.J. and; A.K. Basheer, J.

Acts : Kerala General Sales Tax Act, 1963

Appeal No. : ST.Rev. No. 262 of 2005

Appellant : State of Kerala

Respondent : Millenium Polypackers

Advocate for Def. : T.M. Sreedharan, Adv.

Advocate for Pet/Ap. : Government Pleader

Disposition : Petition dismissed

Judgement :

H.L. Dattu, C.J.

1. The Revenue calls in question the legality or otherwise of the order passed by Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A. No. 1022 of 2003 dated 29.7.2004. By the impugned order, the Tribunal has rejected the appeal filed by the Sate Government and has confirmed the order passed by the

first appellate authority in S.T.A. No. 363 of 2003 dated 25.6.2003.

2. The Revenue has raised the following questions of law for our consideration and decision. They are:

i) Whether the order of the Tribunal is sustainable in view of the decision of the Hon'ble Apex Court in Devi Dass Gopal Krishnan's case reported in 20 STC 430.

ii) Whether in the facts and circumstances of the case, the Tribunal is right in holding that there is no manufacturing process involved in converting plastic tubes into plastic bags and covers?

iii). Whether the process of converting the plastic tubes into plastic bags by the cutting and sealing machines and power amounts to manufacture?

3. The assessee is a dealer registered under the provisions of the Kerala General Sales Tax Act, 1963 (Act, for short) and is borne on the files of the Additional Sales Tax Officer-I, Aluva. He is a dealer in plastic bags and plastic covers. In the annual return filed for the assessment year 2000-01, the assessee had claimed exemption from payment of sales tax on the ground that the sale of plastics bags and plastic covers is a second sales, since the purchased plastic tubings has already suffered tax. The assessing authority has rejected the claim, primarily on the ground, that, what was purchased by the assessee was plastic tubings and the goods sold are plastic bags and covers by the assessee after side sealing by using machines and that activity would amount to manufacture and, therefore, the assessee cannot claim that he is a second dealer in the State and, therefore, not eligible for exemption from payment of tax under the Act.

4. The assessee was successful both before the first appellate authority and the Appellate Tribunal and that is how the Revenue is before us in this tax revision case.

5. The one and the only question that arises for our consideration is whether conversion of plastic sheets/tubings into plastic covers would amount to manufacture?

6. The expression 'manufacture' is not defined under the Act. Therefore, this expression has to be understood the way it is understood in commercial parlance and the way it is explained by the Apex Court. Now, let us see the activity of the assessee. He is a dealer in plastic bags and covers. He effects purchase of plastic sheets/plastic tubings. The sheets are cut into small sizes, stitched on either side by machines and effects sale of plastic covers/bags. In the returns filed, the sales turnover of plastic covers is claimed as non-taxable being second sales. The assessing authority's view is, that, conversion of plastic sheets into plastic covers/bags amounts to manufacture and therefore sales turnover would attract charging provisions. In our view, in a manufacture, the resultant product must be a different commercial commodity and merely because certain articles are known by different names it does not mean that they are different commercial commodities, if in fact, in order to constitute manufacturing, the original material must undergo a transformation so that a new and different article or product emerges. One of the important factors is the extent of the change that has been effected in the original material, since while every change in an article is the result of treatment of labour and manipulation, every change is not a manufacture; something more is necessary, and the application of labour must be carried out to such an extent that the articles suffers a species of transformation and a new and different article emerges. The word 'manufacture' has various shades of meaning and in the context of sale tax legislation, if the goods to which some labour is applied remained essentially the same article, it cannot be said that the final product is the result of manufacture. The process of stitching the loose ends of packing sheets which can also be used as packing material into packing bags and covers does not bring into existence any different commercial commodity than the original one. There is no essential difference between plastic tubings/sheets and packing covers. Therefore, it cannot be said that the process involved in conversion of plastic sheets into plastic bags would involve any manufacturing activity. Reference can be made to the decision of the Apex Court in the case of Collector of Central Excise v. Bakelite Hylam Ltd. : 1997(91)ELT13(SC) . In the said case, the contention of the Department was that industrial laminates and glass epoxy laminates cannot be considered as Electrical Insulators because these sheets are required to be cut in the requisite shape and holes have to be punched in these

before they could be fitted as insulators. The Apex Court while answering whether, the aforesaid activity would amount to manufacture, has stated, that, mere cutting or punching of holes does not amount to manufacture . The industrial laminates and glass epoxy laminates have insulating properties and are used as electrical insulators and they cannot be taken out of the category of electrical insulators merely because they have to be cut to the requisite shape or a few holes may be required to be punched in them in order that they fit into electrical instrument/appliance. The Supreme Court in Sterling Foods v. State of Karnataka 63 STC 239, has observed that the test which has to be applied for the purpose of determining whether the commodity subjected to processing retains its original character and identity is, as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded commercially and in trade, as the same original commodity. It is not every processing that brings about change in the character and identity of a commodity. The nature and the extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps different kinds of processing at each stage, with each process suffered, the original commodity experience a change, but it is only when the change or series of changes take the commodity to the point when commodity can no longer be regarded as the original commodity, but instead is recognised as a new and distinct commodity, that it can be said that a new commodity, distinct from the original, has come into being.

7. With the available facts before us, the only conclusion that can be reached is, that, while processing plastic sheets/tubings into plastic covers/bags, no new commercially different commodity would emerge and therefore, there is no manufacture as such and since purchase of plastic sheets has already suffered tax, the sales turnover of plastic covers/bags is a second sale and therefore, not liable for payment of tax under the Act.

8. In view of the above discussion, the questions of law framed by the Revenue requires to be answered against the Revenue and in favour of the assessee. Accordingly, revision petition requires to be rejected and it is rejected. There is no order as to costs.

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