

Associate Agencies Vs. State of Kerala

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Court : Kerala

Decided On : Jun-09-2004

Reported in : [2006]144STC185(Ker)

Judge : Cyriac Joseph and; K.K. Denesan, JJ.

Acts : Central Sales Tax Rules

Appeal No. : S.T. Rev. No. 188 of 2004

Appellant : Associate Agencies

Respondent : State of Kerala

Advocate for Def. : Georgekutty Mathew, Government Pleader

Advocate for Pet/Ap. : K.B. Mohamed Kutty and; K.M. Firoz, Advs.

Judgement :

Cyriac Joseph, J.

1. The revision petitioner is a dealer in gold jewellery. The assessment of the petitioner for Central sales tax for the year 2000-2001 was completed by the assessing authority as per his order dated September 20, 2002. The true copy of the assessment order dated September 20, 2002 has been produced as annexure A. In the said assessment order the assessing authority rejected the contention of

the assessee that what was sold by him in inter-State sales was bullion and hence he was liable to pay Central sales tax only at the rate of 1 per cent and further that since the rate of tax was below 4 per cent he was not required to furnish the 'C' form. The assessing authority held that what was sold by the assessee in the inter-State sales was jewellery and not bullion. Aggrieved by the assessment order the petitioner filed an appeal before the appellate authority contending that the rate of tax applicable was only 1 per cent. As per annexure J order dated June 18, 2003, the appellate authority held that what was sold inter-State by the assessee would come under bullion taxable at the rate of 1 per cent and directed the assessing authority to modify the Central sales tax assessment for the year 2000-2001. Against the said order of the appellate authority State of Kerala filed appeal-T.A. No. 434 of 2003 before the Sales Tax Appellate Tribunal. The Tribunal by its order dated February 25, 2004 allowed the appeal and set aside the order of the Appellate Assistant Commissioner (appellate authority) and restored the order of the assessing authority. Aggrieved by the order of the Tribunal the assessee has filed this revision petition. The only question that arises for consideration is whether the commodity sold inter-State by the assessee was bullion or gold jewellery. If it was bullion, the assessee was liable to pay Central sales tax only at the rate of 1 per cent. If it was not bullion but gold jewellery, the assessing authority was right in fixing the rate of Central sales tax at 10 per cent in the absence of C form prescribed under the Central Sales Tax Rules.

2. We have heard Sri K.B. Mohammed Kutty, learned counsel for the appellant and have considered the facts and circumstances of the case and the statutory provisions.

3. In annexure A assessment order the definite finding of the assessing authority was that the commodity sold inter-State by the assessee was gold jewellery. The assessing authority rejected the contention of the assessee that what was sold by him was bullion and not gold jewellery. The assessing authority pointed out that in all the monthly returns relating to inter-State sales the assessee had clearly written that he was dealing in inter-State sale of jewellery. According to the assessing authority if the assessee was selling bullion, he could have written that in the monthly returns filed by him. It was also pointed out that the rate of tax admitted as

per the monthly returns filed by the assessee was 4 per cent and the entire tax at the rate of 4 per cent was also paid by the assessee. According to the assessing authority if the assessee was effecting inter-State sales of bullion, he was required to admit a tax rate of 1 per cent and to pay the tax at 1 per cent. It was also pointed out that the assessee had effected inter-State sales of Rs. 44,34,350 (rupees forty-four lakhs thirty-four thousand three hundred and fifty only), but he had not declared the goods at the border check-post even once. All the sales were effected without declaring at the border sales tax check-post. Declaring the goods at the check-post would have revealed the real nature and identity of the goods. It was further pointed out that according to common practice when a customer came to a jewellery shop he brought his old gold jewellery for sale or exchange. According to the assessing authority there was no practice of the customer selling bullion.

4. But the appellate authority did not agree with the view taken by the assessing authority. On the basis of the assertions made by the assessee, the appellate authority held that what was purchased by the assessee from the customers was only melted gold or raw gold and that what was sold inter-State by the assessee was the said melted gold or raw gold which falls under the description of bullion. The appellate authority accepted the version of the assessee that the raw gold sold by the assessee was carried by train or flight to his sole customer at Hosur (M/s. Titan Industries Limited) and therefore there was no occasion for the assessee to declare the goods at the sales tax check-post. The appellate authority also accepted the submission of the assessee that in the monthly returns, by an inadvertent mistake, the goods sold were shown as gold jewellery instead of bullion and that revised returns were subsequently filed.

5. In the appeal filed by the State before the Appellate Tribunal, the contention of the State was that the assessee purchased old gold jewellery and not bullion from the customers and what was sold inter-State by the assessee was the said old gold jewellery. Therefore, the question to be considered by the Tribunal was whether the assessee had purchased from the customers 'old gold jewellery' or 'bullion' and whether what was sold inter-State by the assessee was 'gold jewellery' or 'bullion'. The Appellate Tribunal found that what was purchased by the

assessee from the customers was nothing but old gold ornaments though it was melted after the purchase was over. According to the Appellate Tribunal, melting was a subsequent event after the purchase was over. However, apart from the assertion of the assessee, the Appellate Tribunal has not pointed out any material to come to the conclusion that the old gold ornaments purchased by the assessee were melted after such purchase. Curiously, there is also no clear finding by the Tribunal that what was sold inter-State by the assessee was such melted gold. Instead of examining and finding whether what was sold inter-State was bullion or gold jewellery, the Tribunal stopped with the finding that 'what was purchased by the respondent-dealer from its customers were not pure gold but only old gold ornaments'. There is apparent contradiction in the order of the Tribunal. The last sentence in paragraph 5 of the order of the Tribunal reads thus : 'It is therefore proved that what is purchased by the respondent from its customers are nothing but old gold ornaments, though it is melted after the purchase is over'. In paragraph 6 also the Tribunal has held as follows : 'What is purchased by the respondent in this case is old gold ornaments brought for exchange. Hence it cannot be said that what is purchased is raw gold'. But in paragraph 8 (wrongly numbered as 6) the Tribunal has held as follows :

these evidences clearly show that what was purchased by the respondent-dealer from its customers were not pure gold but only old gold ornaments. In view of the above facts, the assessing authority is perfectly justified in treating the commodity as old gold ornaments different from bullion and in assessing the inter-State sales turnover at ten per cent in the absence of C form.

Thus, though the Tribunal appears to have accepted that old gold ornaments purchased by the assessee were melted after the purchase was over, the Tribunal has further proceeded on the assumption that the commodity sold inter-State was old gold ornaments different from bullion. Even assuming that the old gold ornaments purchased by the assessee were melted after the purchase was over and that such melted gold was sold inter-State by the assessee, the Tribunal has not considered whether such melted gold falls under the description of bullion or not. It is true that the Tribunal has referred to the decision of the honourable Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue

(Taxes), *Ernakulam v. G.S. Pai & Co.* [1980] 45 STC 58 which held that 'ornaments and other articles of gold purchased by the assessee with a view to melting them and making new ornaments or other articles out of the melted gold did not fall within the nature of bullion and specie'. The Tribunal appears to have proceeded on the basis that when old gold ornaments are purchased with a view to melting them for making new gold ornaments or other articles out of the melted gold and when such melted gold is sold inter-State for making new ornaments or other articles, the melted gold sold inter-State does not fall within the nature of bullion. But there is no meaningful discussion or clear finding or proper reasoning on the question whether such melted gold falls within the nature of bullion or not. The confusion is compounded by the finding of the Tribunal that what was purchased by the assessee was old gold ornaments and not bullion and the absence of a clear finding as to whether the commodity sold inter-State was bullion or not.

6. In the above circumstances, we are of the view that the entire matter deserves to be reconsidered afresh by the Tribunal. Hence the impugned order dated February 25, 2004 of the Appellate Tribunal in T.A. No. 434 of 2003 is set aside. The Appellate Tribunal is directed to reconsider the matter afresh and pass appropriate orders in accordance with law and in the light of the observations contained in this judgment.

7. The sales tax revision is disposed of in the above terms.

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