# Greenex Polymers Vs. State of Kerala

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**SooperKanoon Citation** : sooperkanoon.com/732039

**Court** : Kerala

**Decided On :** Aug-27-2002

**Reported in** : [2003]130STC184(Ker)

**Judge** : S. Sankarasubban and; K. Padmanabhan Nair, JJ.

**Acts** : Kerala General Sales Act, 1963 - Sections 5(3); Kerala General Sales Rules, 1963 - Rule 28

**Appeal No.** : T.R.C. Nos. 182 and 183 of 2002

**Appellant** : Greenex Polymers

**Respondent** : State of Kerala

**Advocate for Def.** : S. Soman, Govt. Pleader

**Advocate for Pet/Ap.** : S.K. Devi,; P.K. Maya Devi,; M. Raj Mohan,;

**Disposition** : Petition allowed

**Judgement** :

**S. Sankarasubban, J.**

1. These T.R.Cs. are filed against the com-mon order passed in T.A. Nos. 144 and 145 of 1999 on the file of the Kerala Agricultural Income-tax and Sales Tax Appellate Tribunal, Additional Bench, Palakkad. The assessment years in question

are 1994-95 and 1995-96 respectively. The petitioner is the assessee. It is an SSI unit, represented by its partner. The petitioner is manufacturing PVC flexible pipes and garden hose. The petitioner conceded a turnover of Rs. 57,92,953.45 and claimed exemption for the entire turnover under the SSI exemption for the year 1994-95 and Rs. 50,96,026.99 for the year 1995-96. The assessing authority completed the assessment on best of judgment rejecting the return and accounts and fixed the total turnover at Rs. 58,00,750 and Rs. 51,35,250 respectively. The main reason for the estimation is that the petitioner has not maintained manufacturing account.

2. The assessing authority, while completing the assessment levied tax at 7 per cent on the purchase turnover of raw materials purchased using form 18 declarations under Section 5(3) of the Kerala General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') being differential tax. Actually the petitioner is liable to pay the tax assessed, but for the SSI exemption it was not paid. The petitioner had purchased the raw materials for using it in the manufacture of products and the purchased raw materials were actually used also. The assessing authority had no case that the petitioner had not used the raw materials purchased using form 18 declarations for the manufacture. As per Section 5(3)(ii) of the Act, the differential tax can be levied only when the raw materials purchased, availing the concessional rate were not used for the purpose for which the declaration was furnished. The assessee preferred appeals before the first appellate authority. The appeals were dismissed. Appeals before the Tribunal were also dismissed. Hence these revisions.

3. The main question argued before us is that the reasoning of the authorities is not correct in holding that the petitioner is liable to pay differential tax. Under Section 5(3)(i) of the Act, a concession is given on the purchase of raw materials used for the manufacture of finished goods. Reasoning of the authorities is that by virtue of the exemption the assessee is not liable to pay tax. This reasoning is not correct.

4. Section 5(3) of the Kerala General Sales Tax Act is relevant here, particularly Section 5(3)(ii) of the Act, which is as follows :

'Where any dealer, after purchasing any goods by furnishing a declaration as mentioned in the second proviso to Clause (i), fails to make use of the same for the purpose for which the declaration was furnished, he shall be liable to pay the tax that would have been payable by him, had the declaration not been furnished, less the tax, if any, paid by him and the same shall be levied and collected as if it is a tax due from him.'

Here there is no case that the raw materials were not used for the purpose for which they were purchased. The next question is regarding the liability to pay tax. The case of the department is that since there was an exemption notification, there is no liability and hence, the proviso will not apply. We cannot accept this argument. The assessment orders to the above extent are set aside. T.R.Cs. are allowed.

Order on C.M.P. No. 3055 of 2002 in T.R.C. No. 182 of 2002 dismissed.