

Deputy Commissioner Of Sales Tax ... vs Thomas Stephen & Co . Ltd. Quilon on 14 March, 1988

Equivalent citations: 1988 AIR 997, 1988 SCR (3) 248, AIR 1988 SUPREME COURT 997, 1988 (2) SCC 264, (1988) 1 KER LT 568, (1988) 34 ELT 412, (1988) 1 JT 631 (SC)

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:

DEPUTY COMMISSIONER OF SALES TAX (LAW), BOARD OF REVENUE (TAX

Vs.

RESPONDENT:

THOMAS STEPHEN & CO . LTD. QUILON.

DATE OF JUDGMENT 14/03/1988

BENCH:

MUKHARJI, SABYASACHI (J)

BENCH:

MUKHARJI, SABYASACHI (J)

RANGNATHAN, S.

CITATION:

1988 AIR 997 1988 SCR (3) 248

1988 SCC (2) 264 JT 1988 (1) 631

1988 SCALE (1) 569

CITATOR INFO :

RF 1988 SC 1133 (5)

D 1990 SC 196 (3,6)

F 1990 SC 781 (47)

ACT:

Kerala General Sales Tax Act, 1963 : s. 5A(I)-Cashew Shells and consumed stores used as fuel in the Kiln and maintenance Whether exempt from Tax-Consumption in process of manufacture resulting in other goods-Essentiality of.

HEADNOTE:

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Section 5A(1) of the Kerala General Sales Tax Act, 1963, requires a dealer to pay purchase tax on the taxable

goods purchased in circumstances in which no tax is payable, if he (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.

The assessee-company, a manufacturer and dealer in ceramics was sought to be assessed to tax under s. 5A of the Act for the assessment years 1974-75, 1975-76 and 1976-77 among other things for the purchase turnover of cashew shells and consumed stores, lime shells etc., purchased by it. The assessee contended that cashew shells were used by them as fuel for manufacturing products and, therefore, by virtue of notification S.R.O. 732/73 the purchase turnover of cashew shells was exempt from tax. In the alternative, it was contended that the purchases in question were not liable for levy of tax since none of the conditions prescribed in clause (a), (b) or (c) of s. 5A(1) of the Act were satisfied, and that lime shells and certain consumed stores had been used in the maintenance of the kiln and the factory, and were not taxable in view of the conditions prescribed in s. 5A.

The assessing authority and the First Appellate Authority brought these purchases to tax under s. 5A(1) of the Act. The Tribunal rejected the assessee's claim of exemption under the said notification. However, it held that these items were not taxable under s. 5A of the Act. It took the view that the cashew shells had been used only as fuel in the kiln for the manufacture of tiles and other goods and, hence, clause (a) of s. 5A(1) of the Act was not satisfied, there being no consumption of the

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cashew shells in the manufacture of other goods or otherwise, that there was no disposal of lime shells or the consumed stores which were used up for the maintenance of the factory and kiln and that there was also no consumption of those goods in the manufacture of other goods for sale or otherwise. The High Court upheld the decision of the Tribunal.

Dismissing the special leave petitions by the Revenue,
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HELD: 1. Goods used for ancillary purpose like fuel in the process of manufacture, do not fall within s. 5A(1)(a) of the Act. Consumption must be in the manufacture as raw-material or of other components which go into the making of the end product, to come within the mischief of the section. Cashew shells do not tend to the making of the end product. These had been used as fuel in the kiln and did not get transformed into the end product. These had not been used as raw material in the manufacture of the goods but only as aid in the manufacture of goods by the assessee. Cashew shells, therefore, do not attract levy of tax under the said

section. The same is the position with regard to the lime shells and consumed stores, which have been used only in the maintenance of the kiln and the factory and not used in the manufacture of the end product. [252E-G]

2. Disposal means transfer of title in the goods to any other person. The expression "dispose" means to transfer or alienate. Clause (b) of section 5A(1) requires that the goods in question should be transferred to some person otherwise than by way of sale. In the instant case, there was no evidence of transfer of cashew shells, the lime shells or the consumed stores at all. These were used by the assessee himself as fuel in the case of cashew shells for maintenance of kiln. Therefore, there was no disposal of the goods as known to law. Sub clause (b) of s. 5A(I) was, therefore, not applicable. [253G-H; 254A-B]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) Nos. 8747-49 of 1987.

From the Judgment and order dated 9.12.1986 of the Kerala High Court in TRC Nos. 152 to 154 of 1986 V.J. Francis for the Petitioner.

The Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is a petition for leave to appeal under Article 136 of the Constitution of India from the Judgment and order of the High Court of Kerala, dated December 9, 1986. The High Court by the impugned judgment dismissed the revision cases, which were brought at the instance of the revenue.

The assessee is a manufacturer and dealer in tiles, terra-cotta wares and ceramic. It was assessed to tax under Section 5A of the Kerala General Sales Tax Act, 1963, hereinafter called 'the Act' for the assessment years 1974- 75, 1975-76 and 1976-77 among other things on the purchase turnover of cashew shells and consumed stores, lime shells etc., purchased by the assessee-Company. These are in abundant supply in that area. These are used, as it appears from the judgment of the High Court and from the facts found by the Tribunal, as fuel in the kiln in the factory of the assessee for the manufacture of tiles and others. It was sought to be assessed to tax. The assessee contended that cashew shells were used by them as fuel for (emphasis supplied) manufacturing products referred to above and, therefore, by virtue of notification S.R.O. 732/73 the purchase turnover of cashew shells were exempt from tax. In the alternative, it was contended by the assessee that the purchases in question were not liable for levy of tax since none of the conditions prescribed in clause (a), (b) or (c) of Section 5A of the Act were satisfied.

The assessee had also purchased during the relevant years in question, lime shell and certain stores described as consumed which had been used in the maintenance of the kiln and the factory. These purchases were also claimed as non-taxable in view of the conditions prescribed in Clause

(a), (b) or (c) of Section 5A of the Act, being not satisfied. The assessing authority and the First Appellate Authority overruled the contentions of the assessee and brought these purchases to tax under Section 5A (1) of the Act.

The relevant provisions of Section 5A(1) of the Act and Clauses (a), (b) and (c) of the same are as follows:

"5-A. 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 the year at the rates mentioned in section 5."

In second appeal the Tribunal also did not accept this case of the assessee regarding non-taxability of the purchase turnover of the cashew shells under the said Notification. The Tribunal, however, held that the cashew shells had been used only as fuel in the kiln for the manufacture of tiles and other goods and, hence, Clause (a) of Section 5A(1) of the Act, was not satisfied, there being no consumption of the cashew shells in the manufacture of other goods or otherwise. The Tribunal was of the opinion that these were used for the manufacture. The Tribunal also held that there was no disposal of the lime shells or the consumed stores which were used up for the maintenance of the factory and kiln and that there was also no consumption of those goods in the manufacture of other goods for sale or otherwise. In this view of the matter the Tribunal held that these items were not taxable under Section 5A of the Act.

The revenue being aggrieved went to the High Court. The High Court upheld the decision of the Tribunal and rejected the revenue's contention.

The construction of Section 5A of the Act, came-up for consideration before this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers, [1980] Vol. 46 STC 63. That was a case dealing with pineapples sliced for being sold in sealed cans. It was held that there was no consumption of the original pineapple fruit for the purpose of manufacture and the case did not fall under Section 5A(1)(a) of the Act. It was further observed that although a degree of processing was involved in preparing pineapple slices from the original fruit, the commodity continued to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it.

On the construction of the section, this Court observed that section 5A(1)(a) of the Act envisaged the consumption of a commodity in the manufacture of another commodity (emphasis supplied). The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be manufacture of other goods. Pathak, J as the learned Chief Justice then was, at page 67 of the report observed as follows:

"The learned counsel for the revenue contends that even if no manufacturing process is involved, the case still falls within section 5A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale."

The cashew shells in the instant case, had been used as fuel in the kiln. The cashew shells did not get transformed into the end product. These have not been used as raw- materials in the manufacture of the goods. These have been used only as an aid in the manufacture of the goods by the assessee. Consumption must be in the manufacture as raw- material or of other components which go into the making of the end product to come within the mischief of the section. Cashew shells do not tend to the making of the end product. Goods used for ancillary purposes like fuel in the process of the manufacture, do not fall within section 5A(1)(a) of the Act. Cashew shells, therefore, do not attract levy of tax under the said section. The same is the position with regard to the lime shell and consumed stores, which have been used only in the maintenance of the kiln and the factory and not used in the manufacture of the end product. The revenue, therefore, was wrong in its contention on this aspect Support was sought to be obtained from certain observations of this Court in Ganesh Prasad Dixit v. Commissioner of Sales Tax.

Madhya Pradesh, [1969]3 SCR 490 at page 491 where this Court was dealing with the provisions of Madhya Pradesh General Sales Tax Act, 1959. There the expression used was 'either consumes such goods in the manufacture of the goods for sale or otherwise'. At page 495 of the report Shah, J. speaking for this Court observed as under:

"Mr. Chagla for the appellants urged that the expression or otherwise" is intended to denote a conjunctive introducing a specific alternative to the words for sale immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by s. 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that that is a reasonable interpretation of the expression "either consumes such goods in the manufacture of other goods for sale or otherwise". It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise."

These observations, in our opinion, have no relevance to the present facts of the case. Further this very contention was negatived, though without reference to Ganesh Prasad's case (*supra*) in the passage set out hereinbefore in Deputy Commissioner of Sales Tax v. Pio Food Products (*supra*). The expression consumption otherwise must in the context mean consumption of other goods for purposes other than sale.

Another contention raised before the High Court was that the goods had been disposed of otherwise than by way of sale within the State and, hence, liable to tax by virtue of section 5A(1)(b) of the Act. The question, therefore, is whether there is any disposal of these goods in any manner otherwise than by way of sale within the State. Disposal means transfer of title in the goods to any other person. The expression "dispose" means to transfer or alienate. It was formerly an essential word in any conveyance of land. See Jowitt "The Dictionary of English Law" and also Webster Comprehensive Dictionary (International Edn.)-Vol. 1, page

368. Clause (b) of the section requires that the goods in question should be transferred to some person otherwise than by way of sale. In this case, there was no evidence of any transfer at all, therefore, there was no 'disposal' of the goods as known to law. The High Court records that admittedly there was no transfer of the cashew shells, the lime shells or the consumed stores in this case. These were used by the assessee himself as fuel in the case of cashew shells for the maintenance of kiln. Sub-clause (b) of section 5A(1) was, therefore, not applicable. In the background of the facts of this case, the High Court, in our opinion, was right.

The petition for leave must fail and is rejected.

P.S.S.

Petitions dismissed.