

PETITIONER:
DEPUTY COMMISSIONER OF SALES TAX (LAW)

Vs.

RESPONDENT:
N. KANNAN NAIR & ORS.

DATE OF JUDGMENT 08/04/1988

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
RANGNATHAN, S.

CITATION:
1988 AIR 1133 1988 SCR (3) 489
1988 SCC Supl. 367 JT 1988 (2) 141
1988 SCALE (1) 768

ACT:
Kerala General Sales Tax Act, 1963-Section 5A(1)(a)-
P.W.D. contractor-Undertakes contract for repair of roads-
Materials like sand, bricks etc. used by assessee-Whether
assessable to purchase tax.

HEADNOTE:

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The respondent-assessee a P.W.D. contractor had undertaken certain contract works on behalf of the Public Works Department for repair of roads.

The assessee was assessed on the purchased turnover of sand, bricks etc. which were used for the execution of the work. The assessment was upheld by the Appellate Assistant Commissioner.

In the second appeal preferred by the assessee the Tribunal found that it was necessary under s. 5A of the Kerala General Sales Tax Act, 1963 to have consumption of the commodity in the manufacture of another commodity, the goods purchased should be consumed, the consumption should be in the process of manufacture and the result must be the manufacture of other goods, and held that when a P.W.D. contractor was using articles for constructing a sea wall or repairing public roads there was consumption of a commodity for the manufacture of another commodity and allowed the appeal.

The High Court upheld the decision of the Tribunal and rejected the revision preferred by the Revenue.

In the Special Leave Petitions to this Court, it was contended on behalf of the Petitioner-Revenue, that if no manufacturing process was involved, the case would fall within the scope of s. 5A(1)(a) of the Act because the statutory provisions spoke not only of goods consumed in the manufacture of other goods for sale but also goods 'consumed otherwise'.

Dismissing the Special Leave Petitions.

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HELD: Section 5-A (1)(a) speaks of goods consumed in the
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manufacture of other goods for purposes other than sale.

[493F]

In the instant case, the user must be in the other commodity and the expression 'consumed otherwise' must be so construed. When a P.W.D. contractor is using articles for constructing or repairing a public road there was consumption of a commodity for the manufacture of another commodity. [493F]

Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. Pio Food Packers, [1980] 3 S.C.R. 1271; Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh, [1969] 3 S.C.R. 490 and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Thomas Stephen & Ors. Ltd., SLP(C) Nos.8747-49/1987, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 2867 of 1988 etc.

From the Judgment and Order dated 1.7.1987 of the Kerala High Court in T.R.C. No. 33 of 1985.

V.J. Francis for the Petitioner.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. These are petitions for leave to appeal under Article 136 of the Constitution from the decision of the High Court of Kerala. The revenue is the petitioner before the High Court. The respondent is the assessee. The respondent is a P.W.D. contractor. He had undertaken certain contract works on behalf of the Public Works Department. He had executed agreements with the P.W.D. for repair of roads. The question involved is, whether the materials used by the assessee for the said purpose can be taxed under purchase tax under Section 5A of the Kerala General Sales Tax Act, 1963 (hereinafter called 'the Act'). The relevant provisions of Section 5A(1), (a), (b), (c), (2) and (3) of the Act are 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:

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(a) consumes such goods in the manufacture of other foods 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 interstate 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 subsection (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 section (1) if his total turnover for a year is less than (twenty 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 these goods.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a dealer referred to in subsection (I), who purchases goods, the sale of which is liable to tax under clause (ii) of sub-section (I) of Section 5, and whose total turnover for a year is not less than (twenty thousand rupees) but not more than twenty-five thousand rupees may, at his option instead of paying the tax in accordance with the provisions of sub-section (I), pay tax (at the rate) mentioned in clause (i) of sub-section (I) of section 7 in accordance with the provisions of that section."

The assessee was assessed on the purchase turnover of sand, bricks, etc. which were used for the execution of his work. The assessment was upheld by the Appellate Assistant Commissioner. In the second appeal preferred by the assessee, the Tribunal found that the assessee was a P.W.D. Contractor. He had obtained an amount of 492

Rs.1,01,372 as per bills from the Executive Engineer (Roads and Buildings). According to the assessing officer an amount of Rs.27684.13 was the purchase value of articles used by the assessee for the execution of these contracts and so the assessing officer had assessed this turnover to tax under Section 5A of the Act. The Tribunal found that it was necessary under the said Section 5A of the Act to have consumption of the commodity in the manufacture of another commodity, the goods purchased should be consumed, the consumption should be in the process of manufacture and the result must be the manufacture of other goods. Therefore, according to the Tribunal, when a P.W.D. Contractor was using some articles for constructing a Sea Wall or repairing a public road, there was consumption of a commodity for the manufacture of another commodity. This conclusion logically follows from the observations and ratio of this Court in Deputy Commissioner, Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. Pio Food Packers, [1980] 3 S.C.R. 1271, where Pathak, J. as the learned Chief Justice then was held that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture within the meaning of section 5A(1)(a) of the Kerala General Sales Tax Act, 1963. He further observed at pages 1276 and 1277 of the report as follows:

"Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the can employed to contain it. It is not as if the higher price is claimed because it is a different commercial commodity. It is said that pineapple slices appeal to a different sector of the trade

and that when a customer asks for a can of pineapple slices he has in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired.

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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 Tribunal accepted the assessee's contentions and allowed the appeal. The High Court upheld the decision of the Tribunal and rejected the revision. Hence this petition for leave to appeal. We are unable to see any ground for interference. The position is clear from the decision of this Court in Pto Food Packers (supra). It was contended before us that if no manufacturing process was involved, the case would fall within the scope of Section 5-A(1)(a) of the Act because the statutory provisions spoke not only of goods consumed in the manufacture of other goods for sale but also goods 'consumed other wise'.

Reliance for that was placed on the decision of this Court in Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh, [1969] 3 S.C.R. 490. It is, however, not possible to accept this contention.

In the decision of Pto Food Packers (supra), it was observed that the clause, truly read, spoke of goods consumed in the manufacture of other goods for purposes other than sale. In the instant case, the user must be in the other commodity and the expression "consumed otherwise" must be so construed. This contention was specifically considered by this Court in S.L.P. (Civil) Nos. 8747-49 of 1987-Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam, judgment delivered on 14th March, 1988.

In the aforesaid view of the matter, there is no ground to interfere with the order of the High Court. The Special Leave Petitions fail and are accordingly dismissed.

N.V.K.

Petitions dismissed.

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