

DY. COMMISSIONER OF SALES TAX (LAW)
BOARD OF REVENUE (TAXES)

v.

PADINJARAKARA AGENCIES

January 21, 1985

[P. N. BHAGWATI AND RANGANATH MISRA, JJ.]

Kerala General Sales Tax Act, Item 71 of First Schedule—Liability to "purchase tax" as last purchase, when arises—Rate of tax enhanced after a certain date—Goods in stock acquired prior to such date and sold subsequently in inter-state trade or commerce—Whether revised rate of tax applicable.

The respondent-assessee had made certain purchases before 30th June, 1974 and sold them subsequently in the course of inter-state trade or commerce. The rate of purchase tax under Item 71 of the First Schedule to the Kerala General Sales Tax was increased from 3% to 5% with effect from 1st July, 1974. The High Court held that the purchases made by the respondent prior to 30th June, 1974 were taxable at the rate of 3%.

Dismissing the appeal to this Court,

HELD : The assessee could not be made liable to tax on the purchases made by it prior to 30th June, 1974, unless the purchases acquired the quality of being last purchases in the State. In the instant case there can be no doubt that the assessee became liable to pay tax on the purchases made by it prior to 30th June, 1974, as soon as it became determined through subsequent to 30th June, 1974, that these purchases were last purchases inside the State and were subsequently exigible to tax. Since the purchases took place before 30th June, 1974, the assessee would be liable to be taxed at the rate of 3% which was prevailing at the time when the purchases were made. [852F-H; 853B]

State of Madras v. T. Narayanaswami Naidu & Anr., [1967] 3 S.C.R. 622, referred to.

Seaso Rubbers v. State of Kerala, 48 S.T.C. 256, approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4160 of 1985.

A From the Judgment and Order dated 25.6.1984 of the Kerala High Court in T.R.C. No. 19 of 1984.

V. J. Francis for the Appellant.

T. M. Ansari, Markose Vellapally and D. N. Misra for the Respondent.

B

The Judgment of the Court was delivered by

BHAGWATI, J. The sole question which arises for determination in this appeal is as to what is the rate at which the goods which had been purchased earlier and which were in stock with the assessee on 30-6-74 were assessable to purchase tax when the purchases were found to be last purchases as a result of events which took place subsequent to 30.6.1974. This question has become material since the rate of purchase tax was increased from 3% to 5% with effect from 1st July, 1974. Now it is not disputed in the present case that the purchases of goods effected by the assessee prior to 30-6-74 were last purchases within the State because the goods purchased which were in stock on 30-6-74 were subsequently sold by the assessee in the course of inter-state trade or commerce which means that they were not sold within the State and hence the assessee was clearly the last purchaser within the State and as such was liable to pay purchase tax under Item 71 of the First Schedule to the Kerala General Sales Tax Act. Equally it is clear that the assessee could not be made liable to tax on the purchases made by it prior to 30th June 1974, unless the purchases acquired the quality of being last purchases in the State. It was pointed out by this Court in *State of Madras v. Shri T. Narayanaswami Naidu & Anr.*⁽¹⁾ when the assessee "files a return and declares the stock in hand, the stock in hand cannot be said to have been acquired by last purchase because he may still during the next assessment year, sell it or he may consume it himself or the goods may be destroyed, etc. He would be entitled to claim before the assessing authorities that the character of acquisition of the stock in hand was undermined; in the light of subsequent events it may or may not become the last purchase inside the State." There can therefore be no doubt that the assessee in the present case became liable to pay tax on the purchases made by it prior to 30th June, 1974, as soon as it became determined though subsequent to 30th June 1974, that these purchases were last purchases inside the State and were consequently exigible to tax.

H

(1) [1967] 3 S.C.R. 622.

But the question remains as to what is the rate at which the assessee was liable to be taxed in respect of these purchases. Since the purchases took place before 30th June 1974, the assessee would, in our opinion, liable to be taxed at the rate prevailing at the time when the purchases were made and since the rate at the time was 3% of the sale price, the High Court was right in taking the view that the purchases made by the assessee prior to 30th June 1974 were taxable at the rate of 3%. We may point out that a similar view has been taken by the Kerala High Court in *Seaso Rubbers v. State of Kerala*⁽¹⁾. We find ourselves in agreement with the reasoning adopted by the Full Bench of the High Court in that case.

We accordingly reject the appeal but with no order as to costs.

M.L.A.

Appeal dismissed