

Mohammed Kunju Abdul Kadir Vs. the Sales Tax Officer and ors.

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Court : Kerala

Decided On : Jun-10-1957

Reported in : [1957]8STC689(Ker)

Judge : M.S. Menon, J.

Appeal No. : O.P. No. 75 of 1956(k)

Appellant : Mohammed Kunju Abdul Kadir

Respondent : The Sales Tax Officer and ors.

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : T.S. Krishnamoorthi Iyer, Adv.

Disposition : Petition dismissed

Judgement :

M.S. Menon, J.

1. The petitioner, a dealer in tobacco-'A' Licensee-was assessed to sales tax for the assessment year 1952-53 on a net turnover of Rs. 3,30,253-11-0 and directed to pay a sales tax of Rs. 28,850-10-3. The said turnover was inclusive of a sum of Rs. 77,555-7-0 which represented the excise duty payable to the Central Government by the Warehouse Licensee and which he collected from the petitioner when he sold the goods to him.

2. The only question for decision in this petition is whether the petitioner is entitled to have the said sum deducted in calculating his net taxable turnover. The provision which is invoked in support of the contention is Rule 7 (1)(i) of the Travancore-Cochin General Sales Tax Rules, 1950, which provides that in determining the net turnover 'the excise duty, if any, paid by the dealer to...the Central Government in respect of the goods sold by him' shall be deducted from his gross turnover.

3. It is impossible to say that the sum of Rs. 77,555-7-0 paid by the petitioner to the Warehouse Licensee along with the price of the tobacco purchased by him is excise duty paid by him to the Central Government. The liability to pay excise duty is not of the petitioner but of the person who produces, cures or manufactures any excisable goods, or who stores such goods in a. warehouse. This is clear from the Central Excise Rules, 1944, which provides:

Every person who produces, cures or manufactures any excisable goods, or who

stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such person as may be designated in, or under the authority of these Rules, whether the payment of such duty or duties is secured by bond or otherwise'. (Rule 7).

4. In the light of what is stated above this petition must fail and should be dismissed. Order accordingly.

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