SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Cinzac Technical Services Vs. State of Kerala

Cinzac Technical Services Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/729885

Court : Kerala

Decided On : Jun-29-2009

Reported in : (2009)25VST165(Ker)

Judge : C.N. Ramachandran Nair and; C.K. Abdul Rehim, JJ.

Acts : Central Sales Tax Act, 1956 - Sections 6(2)

Appeal No. : S.T. Rev. No. 150 of 2009

Appellant : Cinzac Technical Services

Respondent : State of Kerala

Advocate for Def. : K. Vinod Chandran, Government Pleader

Advocate for Pet/Ap. : Arikkat Vijayan Menon,; Harisankar V. Menon and; Meera V

Disposition : Appeal dismissed

Judgement :
ORDER

C.N. Ramachandran Nair, J

1. The question raised in the revision filed by the assessee pertains to disallowance of exemption claimed under Section 6(2) of the Central Sales Tax

Act 1956, in respect of sale of a boiler to an industry in Kerala. The assessing officer noticed that the LR contained the ultimate consumer's name and address. Consequently the petitioner's case that it is a sale arranged in transit and made through endorsement of title to goods was rejected. In the two level appeals the finding of the officer is confirmed.

2. Counsel appearing for the petitioner contended that the appearance of address of the consumer or even identification of the consumer by the original consignor, which is the manufacturer in this case, does not justify local assessment in Kerala. According to the counsel the transaction should be treated as inter-State sale from outside Kerala by the original consignor and therefore even after denial of exemption claimed under Section 6(2) of the CST Act the assessee cannot be assessed. We are unable to accept this contention because in the first place when El form is issued from the consignor from outside, obviously they do not account it as a sale to the consumer and it is treated as inter-State trade by the consignor to the petitioner to whom El form was issued. The petitioner admits that El form obtained from the consignor is produced by the petitioner and C form issued by the ultimate consumer is also produced by them. Therefore, the first transaction is accounted as an inter-State sale between the consignor and the petitioner. The next question to be considered is whether the second transaction between petitioner and the buyer is an inter-State sale under Section 6(2). On facts LR obtained by the consignor contained the address of the ultimate purchaser and therefore it is clear that the subsequent sale is a pre-arranged one between the petitioner and the ultimate purchaser and thereafter petitioner placed the order with the outsider-manufacturer for manufacture and supply of the boiler. Boiler is an equipment manufactured against orders and necessarily manufacturer should be informed about the requirements of the customer. Further it is covered by guarantee and warranty for limited periods. In the first place, we do not think sale of goods in transit can be applied to supply of equipment of this type which is made to order for the customer. The petitioner obviously acted as an agent or as a dealer in between manufacturer and ultimate consumer. Since the petitioner has no agency it is a case of purchase and sale which in the absence of proof of a second inter-State sale under Section 6(2) has to be necessarily assessed as a local sale under the KGST. Consequently the ST Rev. is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com