State of Kerala Vs. M.T. Aboobacker

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Court : Kerala

Decided On : Dec-19-2001

Reported in : [2002]126STC108(Ker)

Judge : S. Sankarasubban and; C.N. Ramachandran Nair, JJ.

Acts : Kerala General Sales Tax Act, 1963 - Sections 5

Appeal No. : T.R.C. No. 157 of 2001

Appellant : State of Kerala

Respondent : M.T. Aboobacker

Advocate for Pet/Ap. : Georgekutty Mathew, Government Pleader

Judgement :

S. Sankarasubban, J.

1. This T.R.C. is filed by the State of Kerala against the decision of the Sales Tax Appellate Tribunal, Additional Bench, Ernakulam, in T.A. No. 479 of 2000. The facts of the case are as follows :

The revision relates to the assessment year 1994-95, Assessee is a dealer in stainless steel kitchen sink. Dispute in this case relates to its rate of tax. According to the assessee, it would fall under entry 149 of the First Schedule to the Kerala

General Sales Tax Act, 1963 (hereinafter referred to as 'the Act') and according to the department, it would fall under entry 125 of the Act. If it falls under entry 125 of the Act, tax will be levied at 12.5 per cent while if it falls under entry 149 of the Act, the tax will be levied at 10 per cent. The assessing authority completed the assessment treating the stainless steel kitchen sink as an item falling under entry 125. Copy of the assessment order is produced as annexure A. The first appellate authority confirmed the order. The matter was taken before the Tribunal. The Tribunal took the view that the above item would fall only under entry 149. In coming to the conclusion, the Tribunal placed reliance on a clarification issued by Centre for Taxation Studies.

2. Learned Government Pleader submitted that the interpretation given by the Tribunal is not correct. Entry 125 is with regard to stainless steel products. Entry 149 is with regard to water supply and sanitary equipments and fittings, water meter, its spare parts and accessories. Learned Government Pleader submitted that what is sold is stainless steel product and hence, tax liable to be deduced is at 12.5 per cent.

3. The assessee's contention before the authorities is that even though it is stainless steel product, it comes under the specific entry. Entry 149 is regarding water supply and sanitary equipments and fittings, water meter, its spare parts and accessories. If the products mentioned are under entry 149, then tax will be levied as per that entry.

4. Entries 125 and 149 are as follows :

Sl. No.Description of goodsPoint of levyRate of tax (per cent)

125.Stainless steel rods and sheets and stainless steel productsAt the point of first sale in the State by a dealer who is liable to tax under section 512.5%149.Water supply and sanitary equipments and fittings, water meter, its spare parts and accessoriesAt the point of first sale in the State by a dealer who is liable to tax under section 510%

Learned Government Pleader brought to our notice a decision of this Court reported in N.R. Somasundaran Nair v. State of Kerala [1999] 112 STC 214 ; (1999) 7 KTR 55. The question there was with regard to the meaning of the words 'sanitary fittings'. Sanitary fittings are those which are meant for use in lavatories, urinals or bath-rooms. Water storage tanks made of plastic as the common experience shows are not used only in lavatories, urinals and bathrooms. They are used even to store potable water and other purposes and therefore it cannot be said that water storage tank made of plastic are sanitary fittings within the meaning of entry 217. The word 'sanitary' means the conditions that affect health especially with regard to dirt and infection, free from or designed to obviate influences deleterious to health. The word 'sink' is a basin or box of porcelain, etc., with outflow pipe, especially with water supply in kitchen, etc., for washing up. According to us, the meaning has to be understood as in the common parlance. Kitchen sink is used mainly for washing vessels, etc. The Appellate Tribunal followed certain clarifications issued by the Centre for Taxation. It took the view that steel product is a general entry, while sanitary ware is a special entry and hence, steel sinks would come under sanitary fittings. Learned Government Pleader submitted that the view taken by the Tribunal is not correct. Counsel brought to our notice a judgment of the Supreme Court in State of U.P. v. Indian Hume Pipe Co. Ltd. [1977] 39 STC 355, wherein it was held that by sanitary fittings, we only understand such pipes or materials as are used in lavatories, urinals or bath-rooms of private houses or public buildings. The Supreme Court reiterated the above observations in interpreting the Kerala General Sales Tax Act in the decision reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. G.S. Pai & Co. [1980] 45 STC 58 (SC) ; (1979) KLT 871, which are as follows :

"..........sanitary fittings', according to the popular sense of the term, mean such pipes or materials as are used in lavatories, urinals or bath-rooms of private houses or public buildings. The G.I. pipes sold by the assessee would, therefore, fall within the description of 'sanitary fittings' only if it can be shown and the burden of so doing would be on the revenue, that they were meant for use in lavatories, urinals or bath-rooms.......If the G.I. pipes were heavy and intended to be laid underground for carrying supply of water from one place to another, they would obviously not be 'sanitary fittings'.......Moreover, the words 'water supply.....fittings' do not occur in isolation, but they are used in juxtaposition of the words 'sanitary fittings', The entire expression 'water supply and sanitary fittings' is one single expression and the words 'water supply..... fittings' must receive colour from the immediately following words 'sanitary fittings'.'

The above decision was followed by a division Bench of this Court reported in N.R. Somasundaran Nair v. State of Kerala [1999] 112 STC 214 ; (1999) 7 KTR 55, when it dealt with water storage tanks and held that water storage tanks are not sanitary fittings. In G.S. Pai's case [1980] 45 STC 58, the Supreme Court further held that water supply fittings do not occur in isolation, but they are used in juxtaposition of the words 'sanitary fittings'. The entire expression 'water supply and sanitary fittings' is one single expression and the words 'water supply......fittings' must receive colour from the immediately following words 'sanitary fittings'.

5. In the light of the above, we are not able to uphold the order passed by the Tribunal. Hence, we set aside the order of the Tribunal and restore the order passed by the assessing authority.

T.R.C. is disposed of as above.