

Chloroplasts Vs. State of Kerala

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Court : Kerala

Decided On : Aug-19-2011

Judge : C.N. Ramachandran Nair & P.S. Gopinathan

Appeal No. : S.T.Rev.No.84 of 2011

Appellant : Chloroplasts

Respondent : State of Kerala

Judgement :

C. N. Ramachandran Nair, J.

1. Question raised is whether the Sales Tax Appellate Tribunal was justified in confirming the rate of tax applied i.e. 12% on the turnover of PVC pipes sold by the petitioner under brand name during the year 2003-2004. We have heard counsel for the petitioner and Government Pleader for the respondent.

2. Admittedly appellant got PVC pipes manufactured in their brand name "Sakthiman" from a SSI unit which claimed exemption from sales tax based on the declaration in Form No. 25D issued by the petitioner stating that petitioner is paying tax on sale of the products in the brand name which is the point of levy by virtue of operation of S.5(2) of the Act. S.5(2) itself was introduced to the statute to levy tax on wholesale market price of the goods when sold by the brand name holder. Petitioner also concedes their liability under S.5(2) as deemed first seller of goods being brand name holders selling goods after purchase from SSI units who

manufactured the goods in the brand name of the petitioner. However, the only claim made by the petitioner is that concessional rate is availed at 8% under SRO 1091/99 which grants reduction of tax as provided under Entry 11 of the Second Schedule to the said notification. Relevant entry is as follows:

Table

3. The claim made by the petitioner is that even though the rate of tax on PVC pipes under the relevant entry of the First Schedule to the KGST Act is 12%, petitioner is entitled to concessional rate at 8% as their purchase is from SSI Unit. However, Government Pleader submitted that what is required is not purchase from SSI unit but such SSI unit should issue Annexure - IV Form prescribed under the very same notification which clearly states that concessional rate is available only for purchase made during the period the SSI unit was enjoying sales tax exemption under SRO 1729/93. What we notice is that the condition for granting concessional rate is production of declarations in Annexure IV obtained from the SSI unit from which petitioner purchased the goods. Admittedly petitioner has not obtained Annexure IV. On the other hand, petitioner issued Form No. 25D to the SSI unit which is the Form prescribed under S.5(2) of the KGST Act for the dealer making sales to the brand name holder to claim exemption. Clause 6 of the notification above clearly indicates that but for Form No. 25D issued the selling SSI unit would have been entitled to concessional rate of tax at 8% as against the Schedule rate of 12%. Even though counsel for the petitioner contended that the object of Entry 11 is to grant the same concessional rate of tax available to SSI unit to the brand name holder also, we are unable to accept this contention because concessional rate is available for the brand name holder purchasing and selling goods from SSI units only if the manufacturing SSI unit was enjoying sales tax exemption under SRO 1729/93. In other words, when the SSI unit ceased to be entitled to sales tax exemption, the concessional rate will not be available under the above notification to the brand name holder who purchases and sells the goods under brand name making them liable for payment of tax under S.5(2) of the Act.

4. Even though counsel for the petitioner contended that necessity of Annexure - IV Form declaration in terms of the above provision of the notification was not considered by any of the authorities and petitioner should be given an opportunity to obtain and produce the same, we do not think there is any scope for it because the very fact that SSI unit has obtained Form No. 25D from the petitioner proves beyond doubt that but for the declaration obtained and produced by them, they would have been liable to pay tax on the products sold to the petitioner, no matter petitioner happens to be liable under S.5(2) by virtue of the sale by them under brand name. In other words, the declaration 25D provided is only a mechanism to ensure assessment, levy of tax on sale by the brand name holder which is declared as deemed first sale under the provision so that the previous seller is not liable to pay tax. The only conclusion possible is that the SSI unit that was manufacturing and selling the goods under brand name to the petitioner would be outside the period of exemption provided to them under notification SRO 1729/93 and so much so, they were ineligible to issue declaration in Annexure IV to the above notification. Consequently petitioner was rightly declined concessional rate under notification SRO 1091/2009. We, therefore, dismiss the S.T. Revision case.

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