(2013) 12 KL CK 0022

In the High Court Of Kerala

Case No : O.T. Appeal No. 2 of 2012

ABS Industries APPELLANT

Vs

Authority of Issue Clarification RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Citation : (2014) 1 KLT 908 : (2014) 68 VST 520

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Judgement

A.M. Shaffique, J.—The appeal is filed by a registered dealer under the Kerala Value Added Tax Act, 2003 (hereinafter referred to as "the Act") challenging an order passed by the respondent u/s 94 of the Kerala Value Added Tax Act, clarifying that the rate of tax of concrete cover blocks manufactured by the appellant is taxable at the rate of 12.5 per cent as per entry 10(3)(a) of SRO No. 82/2006. According to the appellant entry 10(3)(a) has no application as the commodity manufactured by the appellant is not pre-fabricated structural components for building or civil engineering as stated in the said entry. According to the appellant the product manufactured by them is a concrete cover block or spacer which is used in between the steel rods and the concrete supporting structure to enable concrete mixture to conveniently reach below the steel rods. The appellant relies upon entry 18 of the Third Schedule to indicate that the product is cement bricks and therefore only four per cent tax is payable.

2. Heard the learned counsel for the appellant and the learned Government Pleader appearing on behalf of the respondent.

3. The short question to be considered is whether the cement block manufactured by the appellant is covered by entry 10(3)(a) of SRO No. 82/2006 taxable at the rate of 12.5 per cent or does it come under entry 18(5) of the Third Schedule, attracting only four per cent tax.

4. The Department has relied upon entry 10(3)(a) on the premise that it is a pre-

fabricated structural component for building or civil engineering. On a perusal of the photograph produced at annexures B and C, it could be seen that this is a small concrete block which is used in between the steel structure and the shutter to enable the steel structure to be few inches above the shutter level so that if different blocks are placed in different places it will maintain a uniform level for the steel to be placed within the concrete slab. Taking into consideration the nature of product it can only be considered as a small-scale activity and cannot be categorized as a prefabricated structural component for building. In fact even without this concrete block, the level of the steel can be maintained by other methods, either by placing a stone or piece of wood or some other material that will be embedded in the concrete.

5. Now coming to the relevant entries, entry 10(3)(a) reads as under:

6. Entry 18 of the third schedule reads as under: 7. As already indicated the product in question, if it falls under entry 18, there is no question of it falling under entry 10(3)(a).

8. Entry 18 relates to hollow bricks and other type of bricks, roofing tiles, etc., and specific entries are provided for bricks, blocks, therapeutic goods, etc. The learned senior counsel appearing for the appellant specifically referred to cement bricks, including hollow bricks which is entry 18(5). Hollow bricks are apparently used for constructing walls. The entry also takes care of blocks, cement bricks. Cement bricks again can be used for constructing walls and this product can be termed as a cement brick, though not used for construction of walls. It is used for the purpose of providing a space in between steel structure and the shutter. When flooring tiles are included in the above entry, we are of the view that the above item can possibly come under entry 18(5) of the Third Schedule. Under these circumstances, we are of the view that the appeal is to be allowed and it is declared that the commodity dealt with by the appellant falls under entry 18(5) of the Third Schedule to the KVAT Act. We set aside the clarification issued by the respondent and allow the appeal.