(2002) 06 KL CK 0006

In the High Court Of Kerala

Case No : O.P. No. 15117 of 2002

Airdale Systems Pvt. Ltd. APPELLANT

Vs

Addl. Sales Tax Officer RESPONDENT

Date of Decision : 10-06-2002

Acts Referred:

Citation : (2002) 06 KL CK 0006

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : S.K. Devi and K.P. Pradeep Payyannur, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is challenging Exts. P1 and P4 assessment orders demanding entry tax for a car purchased by him in Kerala, and a computer, that too stated to be purchased in Kerala. I heard counsel for the petitioner and the Government Pleader. The petitioner has produced Ext. P2 invoice for the purchase of the car from an authorised dealer of Tata vehicles in Kerala. It is seen from Ext. P2 that that dealer, who is registered under the KGST Act, has collected sales tax at 10 per cent on the sale of the car to the petitioner. The tax under the Entry Tax Act is on import of the vehicle from outside Kerala. There is nothing to indicate in Ext. P1 that the petitioner has brought the car from outside Kerala. On the other hand, the petitioner has produced invoice to show that the car was purchased from a registered dealer in Kerala. The Officer appears to have proceeded on the basis that it is for the owner of the car to establish that the car has suffered Sales Tax in Kerala. I cannot agree with this proposition. Entry tax is payable only on import of the vehicle from outside Kerala. Unless there is a case that the party has imported the car from outside Kerala, the department cannot proceed for recovery of the amount. The other proposition of the Officer that there is no proof of payment of tax that has been collected by the dealer is also not tenable at all under the Entry Tax Act or under the Sales Tax Act. When a purchaser produced a bill issued by the dealer for sale of the car collecting sales tax, it is for the Officer to verify from the assessing officer with whom the selling dealer has registration as to whether the sales tax collected is remitted or not. It is not possible for the purchaser to prove that the tax collected is remitted by the selling dealer. Therefore, prima facie Ext. P1 is not tenable.

2. The other ground stated is that the petitioner has produced only a copy of the invoice and the explanation furnished by the petitioner that the original was with the finance company was rejected by the officer. There is no justification for demanding entry tax from the petitioner on this ground also. However it is open to the officer to verify the genuineness of the copy of the invoice produced by the petitioner by making enquiry with the selling dealer, who is also a registered dealer under the KGST Act, and through the Officer before whom the selling dealer is registered. Therefore, I find Ext. P1 is untenable and the same is vacated. So far as Ext. P4 is concerned, that order was passed for want of certain details in the invoice regarding purchase of computer. It is evident from the original proposal that the officer has substantially accepted the contention of the petitioner. Therefore I leave it to the petitioner to approach the appellate authority, if it has any grievance as against Ext. P4 on verification of factual position. The petitioner is either free to remit the tax amount of Rs. 678/- or otherwise contest the same in appeal. I make it clear that if the petitioner desires to file appeal as against Ext. P4, it is free to do so without payment of tax as a precondition for filing the appeal. If such an appeal is filed, the appellate authority will look into it and dispose of the same on merits.

O.P. is disposed of as above.

