(2009) 11 KL CK 0091

In the High Court Of Kerala

Case No : ST. Rev. No. 248 of 2009

Aroma Binding Unit APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 05-11-2009

Acts Referred:

Citation : (2010) 252 ELT 36 : (2010) 1 KLT 92

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.K. Devi, for the Appellant; No Appearance, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether notebook produced and sold by the petitioner out of paper locally purchased qualifies for second sale exemption. The assessing officer as well as the first appellate authority and the Tribunal held that even though paper is used for making notebook, notebook is a different product and so much so first sale of the same attracts tax under Entry 106(ii) of the First Schedule to the KGST Act. It is seen from the assessment that petitioner is granted set- off of tax paid on the local purchase of paper out of which notebooks are manufactured and sold by the petitioner in terms of Explanation to Entry 106(ii) of the First Schedule to the Act. We have heard counsel appearing for the petitioner and Government Pleader appearing for the respondent.

2. Counsel for the petitioner has relied on Annexure III letter by the Commissioner of Commercial Taxes stating that even though the scheme of Entry 106(ii) of the First Schedule is to levy tax on notebook and grant rebate of tax paid on the local purchase, Explanation to the Entry has become irrelevant by virtue of the decision of this Court in Kunnamkulam Book Co. v. State of Kerala 9 K.T.R. 400. In the first place Government Pleader pointed out that the judgment of this Court is rendered without reference to Explanation to Entry 106(ii) which was not there in the statute for the relevant year for which the assessment of the party was considered by this Court. Secondly Government Pleader referred to the

decision of the Supreme Court in Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries, , and contended that clarifications or letters issued by statutory authorities in conflict with statutory provisions have no existence in law. On the other hand, counsel for the petitioner submitted that several parties have got exemption based on Annexure III letter.

3. We are unable to accept the claim of the petitioner because even without the Explanation, in our view, notebook and paper out of which it is made, cannot be treated as one and the same item. Second sale exemption is available only to second sale of the same goods purchased within the State. Even though paper is predominant item in the making of notebook, it has got thick bond cover, and it is a value added product and by no stretch of imagination one can treat notebook with standard dimensions same as paper purchased in reams by the petitioner to make notebooks. Making of notebook involves the process of cutting of paper to sizes, stitching and binding the same together, and at the top of it, a cover is attached on which the name of the manufacturer, brand name, etc., are given. In our view even without explanation to Entry 106(ii) a note book is entirely a different product from the paper used for making it. However, we do not find any need to refer the matter to the Full Bench because after recasting of the Entry with Explanation, it is made clear that scheme of taxation provides for levy of tax on notebook as a new product made out of paper in Kerala and then to grant rebate of tax paid on paper purchased within the State.

4. Letter/clarification relied on by the petitioner has certainly brought out absurd consequences because the idea conveyed is that statutory provision should be overlooked because Court has taken a view contrary to statutory provision. As already stated, this Court had not considered the Explanation and inspite of the same the Commissioner has chosen to clarify against the statute. Letter/ clarification issued by the highest authority should be after detailed consideration of statutory provision on which clarification is issued. In this case, we notice that clarification is issued in an indifferent manner because decision referred to therein does not consider the Entry with explanation. We therefore direct the Commissioner to conduct enquiry in the matter and take remedial action and to make good the loss wherever possible on account of wrong clarification. We therefore dismiss the ST Revisions . The assessing officer will grant eligible rebate of tax based on the direction issued by the Tribunal.

G.P. will forward a copy of this order to Commissioner.

