
(2009) 09 KL CK 0109
In the High Court Of Kerala
Case No : S.T.R. No. 207 of 2009

Ashique Enterprises

APPELLANT

Vs

Asst. Commissioner

RESPONDENT

Date of Decision : 24-09-2009

Acts Referred:

Citation : (2009) 4 KLT 698 : (2011) 40 VST 126

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

Bench : Division Bench

Advocate : P. Raghunath and Premjit Nagendran, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the Revision filed by the assessee is whether the product "Roofit Mix" sold by the petitioner attracts tax at the rate applicable to "Cement including White Cement" under Entry 27 of the First Schedule to the K.G.S.T. Act at 15%. Petitioner's specific case is that the item does not fall under any of the Entries 1 to 176 of the First Schedule to the Act and therefore it is taxable under the residuary entry under Item 177 at the rate of 8% on the first sale in the State. We have heard Counsel appearing for the petitioner and Government Pleader for the respondents.

2. Government Pleader has taken the product description from the Website of the manufacturer, namely, Roofit Mix Industries Limited, wherein the product is described as follows:

These ready to use plasters consist of sand, cement, special additives and fillers in a premixed dry condition.

It is conceded by Counsel for the petitioner that the item is used as binding and filling materials while fixing asbestos roof and is also used for repair of concrete slab, mainly to prevent leakage of water. Going by the characteristics of the components that make the product, we are of the view that the item falls under

Entry 11 which provides as follows:

Asbestos sheets and products, cement products including products in combination with other materials not elsewhere mentioned in this Schedule.

Since cement is a component of the product and the same obviously being one of the active ingredients, it can safely be treated as a cement product falling under Entry 11 above referred. Though we accept the contention of Counsel for the petitioner that the product cannot be treated as cement as such, the contention of the petitioner that the item falls under the residuary entry is absolutely unacceptable because we have already noticed that the item falls under Entry 11. Residuary entry applies to items which are not covered by any of the specific entries. So much so, we allow the revision partly by declaring the item as falling under Entry 11 taxable at 12% and direct the assessing officer to modify the assessment by applying the rate as stated above.