(2007) 10 KL CK 0058

In the High Court Of Kerala

Case No : TRC. No. 47 of 1999

DDY. Commissioner (L) Commercial Taxes — APPELLANT

Vs

Associated Rice Mills Stores — RESPONDENT

Date of Decision : 18-10-2007

Acts Referred:

Citation : (2007) 10 KL CK 0058

Hon'ble Judges : H.L. Dattu, C.J;K.T. Sankaran, J

Bench : Division Bench

Advocate : Raju Joseph, Spl. Govt. Pleader Tax, for the Appellant; K.C. Balagangadharan, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, C.J.—The only question that arises in this petition for our consideration and decision is the rate of tax payable in respect of the sales turnover of V belts and transmission belts.

2. The assessment year in question is 1990-1991.

3. The assessee is a registered dealer under the provisions of the Kerala General Sales Tax Act and Central Sales Tax Act. He is a dealer in Huller spares, bell bearings, V belts, transmission belts etc. For the assessment year 1990-91 the assessee had filed its annual returns. The assessing authority after rejecting the return so filed, has proceeded to pass best judgment assessment. In the return filed, the assessee had claimed that the transmission belts are cotton fabrics, and therefore, they would fall under Entry 7 of Third Schedule to the Kerala General Sales Tax Act and in so far as V belts are concerned, the stand of the assessee is that though it contains 65% of rubber, the same cannot be treated as rubber product which would fall under Entry 7 of the Fifth Schedule.

4. The reasoning and conclusion of the assessing authority as well as the first appellate authority is that the goods dealt by the assessee are rubber products and they would fall under Entry 7 of Fifth schedule to the Kerala General Sales

Tax Act, and accordingly, had passed an order treating the sales turnover of the assessee relating to these items as taxable at second point sale in the hands of the assessee.

5. The assessee, being aggrieved by the order so passed by the assessing authority as well as the first appellate authority had carried the matter in appeal before the Tribunal in T.A. No. 40 of 1993. The Tribunal by its order dated 15th October, 1998 has allowed the assessee''s appeal and in that has observed as under:

I have heard both sides. The only question that emerges for consideration in this second appeal is whether V belt and transmission beltings are rubber products or not. The assessing authority as well as the first appellate authority held the goods to be rubber products. According to the appellant transmission beltings are cotton fabrics coming under entry 7 of the 3rd Schedule to the KGST Act as major constituant of the same is Cotton which constitute 65%. Similarly according to the appellant though V Belt contain 65% Rubber the same cannot be treated as rubber products which fall under entry 7 of the 5th Schedule to the KGST Act. It is seen that the issue has been decided by this Tribunal in Appeal No. 657/91 dt.15th February, 1997 in the case of the same appellant. As per the order of Tribunal in T.A. No. 657/91 dated 15-2-97 the transmission beltings was found to be cotton fabrics falling under entry 7 of the 3rd Schedule and V belt was found to be a rubber product falling under entry 7 of the 5th Schedule. In the light of the earlier decision of the Tribunal in the case of the same appellant mentioned above, I also hold that transmission beltings fall under entry 7 of 3rd Schedule and V belt falls under entry 7 of the 5th Schedule. The second appeal is therefore partly allowed.

6. Aggrieved by the said order passed by the Tribunal, the State is before us, in this tax revision case.

7. The questions of law raised in this revision petition for our consideration and decision reads as follows:

(i). Is the Tribunal correct in law in holding that transmission belts are "cotton fabrics" falling under entry 7 of the 3rd Schedule to the KGST Act?

(ii). Is not on a proper interpretation V Belts and transmission belts would fall only under entry 7 (rubber products) under the 5th Schedule to the KGST Act?

8. Before answering the questions of law raised by the Revenue, we intend to note that the Tribunal while disposing of TA. No. 40 of 1993 for the assessment year 1990-91 has relied upon the orders passed by the Tribunal in TA. No. 657 of 1991 dated 15th February, 1997 for the assessment year 1989-90.

9. The State has accepted the orders passed by the Tribunal in the sense, that the State has not preferred any appeal against the orders passed by the Tribunal in T.A. No. 657 of 1991 dated 15th February, 1997.

10. At this stage, it would be relevant to notice the observations made by the Apex Court in the case of Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta, . In the said decision the Apex Court has observed as under:

In view of the judgments of this Court in Union of India and Others Vs. Kaumudini Narayan Dalal and Another, ; Commissioner of Income Tax Vs. Narendra Doshi, and Commissioner of Income Tax Vs. Shivsagar Estate, , the principle established is that if the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause.

11. The concept of ''just cause'' has been explained by the Apex Court in a subsequent decision.

12. The assessee in TA. No. 657 of 1991 is the very same assessee in T.A. No. 40 of 1993. The assessment year in T.A. No. 657 of 1991 is 1989-90. The Tribunal, after detail consideration of the issues involved in that case, had come to the conclusion that the transmission belts are cotton fabrics and would fall under Entry 7 of Third schedule to the Kerala General Sales Tax Act. That decision of the Tribunal is accepted by the Revenue. In the subsequent order, the Tribunal, following its earlier decision had allowed the assessee''s appeal.

13. In the revision petition filed, the Revenue has not stated what is the ''just cause'' which prompted them to prefer a revision petition against an order passed by the Tribunal against the same assessee for the subsequent year. In the absence of such an explanation, we cannot entertain this revision petition filed for the sole reason that the Revenue has accepted the decision rendered by the Tribunal in the assessee''s own case for the previous assessment year. In that view of the matter, without going into the merits or demerits of the case and following the principles laid down by the Apex Court in the case of Berger Paints India Ltd. Vs. Commissioner of Income Tax, Calcutta, , this revision petition requires to be rejected and it is rejected.

Ordered accordingly.

