(1994) 05 KL CK 0002

In the High Court Of Kerala

Case No : O.P. No. 2223 of 1992

Dynamic Industrial and Cleaning Services (P) Ltd. APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 24-05-1994

Acts Referred:

Constitution of India, 1950 — Article 366
Kerala General Sales Tax Act, 1963 — Section 2

Citation : (1994) 05 KL CK 0002

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : U.K. Ramakrishnan, for the Appellant; S. Vijayan Nair, Government Pleader for Respondent 1 and C.M. Devan and Antony Dominic, for Respondent 2, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The Petitioner which is a private limited company is engaged in the business of cleaning of boilers in plants like thermal power stations and fertiliser complexes. It carries out the work of cleaning the boilers and accessories, using chemicals like citric acid, hydrochloric acid and the like after determining the precise type of cleaning agent to be used in the particular plant, by inspection or laboratory tests. The Petitioner employs its own machinery, labour and material for carrying out the work. The chemicals used are consumed in the process of cleaning and removing the impurities in the plants. No goods are produced or come into existence, and the work does not involve transfer of any goods to the owner of the plant. It is on these premises which are undisputed, that the Petitioner objects to the levy and collection of tax under the Kerala General Sales Tax Act, 1963 (the Act), by the Respondents, as if there is a taxable sale under Explanation 3A to Section 2(xxi) of the Act. The said Explanation which was introduced into the Act after the Constitution (Fortysixth Amendment) Act, 1982, introducing Clause 29A to Article 366 of the Constitution reads :

Explanation 3A : A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be a sale.

2. A bare perusal of above Explanation is sufficient to show that transfer of property in goods (whether as goods or in some other form) is the sine qua non for its application. The mere execution of a works contract does not by itself attract liability for tax under the Act unless it is accompanied by transfer of property in goods, involved in the execution of the contract. The emphasis is on the transfer of property in goods- Builders Association of India and Others Vs. Union of India (UOI) and Others, at page 396 (S.C.). When goods used in the process of executing a works contract are consumed in the process, as in the case of the chemicals used by the Petitioner or fuel and power, there is no transfer of any goods from the contractor to the awarder of the contract, attracting liability to tax. I draw inspiration for this conclusion from the decision of this Court in Deputy Commissioner of Sales Tax v. Thomas Stephen and Company Ltd. 1987 (1) KLT 161 (para 5), which was affirmed by the Supreme Court in Deputy Commissioner v. Thomas Stephen and Company Ltd. 1988 (1) KLT 568 (para 12).

3. The chemicals are being used by the Petitioner only in aid of the work undertaken by it, as a cleaning agent for cleaning the boilers in the plant and they are extinguished'' in the process. They are not transferred to the awarder in any form, either as, goods or otherwise. The work is more or less a labour contract, in which the Petitioner utilises the chemicals just as it uses any other item of its machinery or fuel or power in the performance of the work. There is no transfer of property in goods and no sale liable for tax under Explanation 3A.

The writ petition is therefore allowed with the declaration that the works undertaken by the Petitioner as above mentioned are not liable to levy of tax under the Act.

There will be no order as to costs.

