

(2003) 07 KL CK 0006

In the High Court Of Kerala

Case No : T.R.C. No"s. 174 and 175 of 2003

Fibre Foam (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-07-2003

Acts Referred:

Citation : (2004) 138 STC 410

Hon'ble Judges : Kurian Joseph, J;G. Sivarajan, J

Bench : Division Bench

Advocate : Rajesh Nambiar, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Judgement

1. The matter arises both under the Kerala General Sales Tax Act, 1963 (for short, "the KGST Act) and under the Central Sales Tax Act, 1956 (for short, "the CST Act"). The same assessee under the said two enactments is the petitioner in both these cases. The assessment year concerned is 1991-92. The only question involved in both these revisions is as to whether the assessee is entitled to exemption from payment of sales tax under S.R.O. No. 432 of 1991 on the turnover of the goods manufactured and sold by the petitioner. The assessee is engaged in the manufacture of rubberised coir mattresses, pillows, cushions, bath mats, packing material, etc., in the name and style of Fibre Foam (P) Limited at Baliapattam, Cannanore. In the assessment for the year 1991-92 both under the KGST Act and under the CST Act assessee claimed exemption in respect of the sales turnover of rubberised coir products manufactured by it for the period from January 1, 1992 to March 31, 2002 under the Notification, S.R.O. No. 432/91. The assessing authority on the basis of a certificate dated February 23, 1997 issued by M/s. Intercontinental Marketing Corporation, Ernakulam, the sole selling agents of the petitioner, in which they have certified that they sold fibre foam products for Rs. 96,62,091 and remitted the tax due thereon, Rs. 5,23,820 before the Assistant Commissioner (Assessment), Sales Tax Office, Special Circle II, Ernakulam, held that the products manufactured by the

assessee is fibre foam which is specifically excluded from the benefits of the Notification S.R.O. No. 432/91. This was confirmed by the two appellate authorities including the Tribunal in the appeals filed by the assessee.

2. Sri. Rajesh Nambiar, learned counsel appearing for the petitioner submits that the commodity dealt with by the petitioner is nothing but rubberised coir products and that by virtue of the Notification S.R.O. No. 432/91, the sale of the said product is exempted from tax from April 1, 1991. The counsel further submitted that the assessee had collected tax at the rate applicable to rubberised coir products under entry 162 of the First Schedule to the KGST Act, as it stood at the relevant time for the period from April 1, 1991 to December 31, 1991 and remitted the same to the Department. The Counsel submitted that it is only for the purpose of showing that the tax was collected and remitted by the agents that the assessee had produced the certificate issued by their sole selling agents. The counsel also submitted that though the assessing authority had rejected the claim based on the Notification, S.R.O. No. 432/1991, he had assessed the turnover of the products of the assessee only at the rate applicable to rubberised coir products under Entry 162 of the First Schedule at 4 per cent. The counsel further pointed out that the purchase of rubber latex effected by the assessee was granted exemption under S.R.O. No. 585/80, which is available only for the purchase of raw materials used in the manufacture of rubberised products by small scale rubber industrial units. The counsel also submitted that the certificate issued by their sole selling agents relied on by the authorities only says that they had sold the products of the assessee, whose name is fibre foam. The counsel accordingly submitted that the authorities and the Tribunal were not justified in denying exemption under the Notification, S.R.O. No. 432/91 to the petitioner.

3. The learned Government Pleader appearing for the respondent on the other hand submits that the product of the assessee is fibre foam which is clearly established by the certificate issued by the assessee's sole selling agents, namely, M/s. Intercontinental Marketing Corporation. The Government Pleader further submitted that the assessee had not produced any evidence to establish that its product was not fibre foam. He also submitted that in the absence of any other evidence to show that the petitioner's product is not fibre foam as contended, the authorities and the Tribunal were justified in acting on the basis of the certificate issued by the sole selling agents.

4. The petitioner, it is stated, is engaged in the manufacture of rubberised coir products by using rubber and coir and therefore, its product is a rubberised coir product. During the relevant assessment year, rubberised coir product is covered by entry 162 of the First Schedule to the KGST Act. Taxable at the rate of 4 per cent. But for the exemption granted under the Notification, S.R.O. No. 432/ 91, there is no dispute that the petitioner's product is liable to be assessed under entry 162. In fact, after rejecting the claim for exemption made under the Notification S.R.O. No. 432/91, the assessing authority has levied tax on the product at 4 per cent under entry 162 of the First Schedule. Similarly, a

concessional rate of 3 per cent was granted in respect of the purchase turnover of rubber latex under S.R.O. No. 585/80 which was available only in respect of the purchase turnover of rubber latex used in the manufacture of rubber products. The assessing authority had granted the concessional rate of 3 per cent to the petitioner under the said notification. From the aforesaid conduct of the assessing authority, it would appear that the assessing authority himself had treated the product of the petitioner as rubberised coir product.

5. However, the question is not as to whether the product of the petitioner is a rubberised coir product. The real question is whether the product of the petitioner is fibre foam. This distinction is required to be drawn only because the Government in their Notification S.R.O. No. 432/91 had granted exemption only in respect of rubberised coir products other than fibre foam. It would appear that even the Government has understood fibre foam also as a rubberised coir product falling under entry 162 of the First Schedule to the KGST Act, but they wanted to make a separate treatment to fibre foam which is also a rubberised coir product for the grant of exemption and/or for denying exemption. It appears that the object of issuing the Notification S.R.O. No. 432/91 was mainly to promote SSI units in rubber industries. That is why fibre foam for which the major raw material is fibre is excluded from the benefit of the notification, S.R.O. No. 432/91. It is in those circumstances, the Government in the notification has clearly stated that the exemption granted under the notification is not available to fibre foam, which is also a rubberised coir product. Thus, the crucial question to be decided is not as to whether fibre foam is a "rubber product", but as to whether the product manufactured and sold by the assessee is "fibre foam". As already noted, the assessing authority and the Tribunal had relied on the certificate issued by the sole selling agents of the petitioner, namely, M/s. Intercontinental Marketing Corporation, appearing at page 441 of the assessment records which says that "on behalf of Fibre Foam (P) Limited, Baliapattam, have sold Fibre Foam Products for Rs. 96,62,091 (underlining Here italicised supplied). From the said certificate alone, it is not possible to say that the product of the assessee is fibre foam. It only says that "fibre foam products", in other words, the products of the assessee, are sold.

6. According to us, none of the authorities, including the Tribunal had addressed the question in the proper perspective. The assessing authority and the two appellate authorities, instead of searching for evidences in the form of correspondence, etc., should have verified the very product of the assessee with respect to which the exemption was claimed either by directing the assessee to produce the product before the assessing authority or before the appellate authorities. The appellate authorities could have even directed the assessing authority to conduct an inspection of the said product by visiting the petitioner's premises and find out as to what exactly was the product of the petitioner. On an inspection of the product of the petitioner, it could have been very well ascertained as to what is the major component of the product. In other words, whether the product is made substantially of fibre and the use of rubber was only

nominal or incidental. It is without resorting to the primary material, namely, the very product itself, all those authorities have considered the question as to whether the product of the petitioner is fibre foam. We make it clear that even if the petitioner's product will fall under the general category of "rubberised coir products", entry 162 of the First Schedule to the Act, if it is found that the product of the petitioner is fibre foam, then the exemption under the Notification, S.R.O. No. 432/91 cannot be granted to fibre foam. Since none of these authorities have addressed this question in the proper perspective, we set aside the orders of the assessing authority and the two appellate authorities on this issue and direct the assessing officer to pass fresh orders in accordance with law and in the light of the observations made in this judgment. The petitioner is entitled to produce all materials in support of his contention that the product is not fibre foam which is specifically excluded under the notification.

7. Before parting, we would refer to an incidental submission made by the Government Pleader on the basis of entry 111 of the First Schedule to the KGST Act inserted by the Kerala Finance Act, 1992 and the definition of "fibre foam" in the form of an explanation introduced in entry 111. According to us, the provisions of entry 111 and the explanation thereto inserted by the Finance Act, 1992 has no relevance for the purpose of deciding the question for the assessment year 1991-92. We also do not find any merit in the submission of the Government Pleader that the expression "fibre foam" is defined in the form of an explanation which has got retrospective effect, for the reason that the expression "fibre foam" was not available in any of the entries in the First Schedule for making the clarification during the relevant period.

8. Since the matter relates to the assessment year 1991-92, we direct the assessing authority to pass fresh orders as directed in this judgment within a period of three months from the date of receipt of a copy of this judgment. We make it clear that this issue is limited for the period from January 1, 1992 to March 31, 1992.