
(2001) 01 KL CK 0049
In the High Court Of Kerala
Case No : T.R.C. No's. 371, 372 of 2000

Geo Motors Pvt. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-01-2001

Acts Referred:

Citation : (2001) 2 ILR (Ker) 1

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : C.N. Ramachandran Nair and Anil D. Dair, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—These two T.R.CS. are filed against the common order in T.A. No. 1056 of 1990 of the Kerala Sales Tax Appellate Tribunal, Additional Bench - II, Ernakulam. The assessment years are 1984-85 and 1985-86. The assessee is the revision petitioner and it is the appellant before the Tribunal.

2. The dispute raised in this case is whether the cost of spares replaced by the petitioner/appellant during the warranty period forms part of the petitioner's turnover and is liable to tax. The petitioner is the agent for automobile manufacturers like Hindustan Motors Limited. The petitioner gets new motor vehicles from the factory and sell the same in the State of Kerala. The new vehicles are covered by warranty for specified period. During the warranty period if any spare parts have to be replaced, the petitioner, as the agent of the manufacturer, makes replacement free of charge to the owners of the vehicles. The value of such spare parts replaced by the petitioner during the warranty period is reimbursed by the manufacturer by issuing credit notes. The spare parts are purchased in bulk and replacement is made from out of such stock held by the petitioner. After replacement, the petitioner makes the claim to the manufacturer, who issues the credit notes.

3. The petitioner submits that the transaction does not constitute "sales" within

the meaning of the Kerala General Sales Tax Act (hereinafter referred to as "the Act"). It is only a free replacement for customer. The manufacturer issues credit notes for the value together with excise duty and sales tax thereby cancelling the original sale made to the petitioner in respect of the item replaced. Therefore, there is only a sale cancellation between the manufacturer and the petitioner. Further, it is contended that for the vehicles sold in Kerala, the petitioner has already suffered tax at the point of first sale. Every component part of the car or other vehicles should be taken to have suffered tax at the point of first sale, when replacement is made it is in respect of an item which has already suffered tax at the point of first sale. According to the Revenue, the Petitioner has purchased the spare parts from outside the State by issue of C Forms. The value of spares used for replacement during the warranty period free of charge cannot be treated as sales and included in the taxable turnover, even if the purchase of such spare was effected from outside the State by issue of C Forms.

4. The Assessing Authority was of the view that the petitioner has been making purchase purely for replacement and the value of the goods replaced are reimbursed by the manufacturer by issue of credit notes. The Assessing Authority took the view that exemption cannot be allowed. The Appellate Tribunal was of the view that the petitioner has transferred the property in the spare parts replaced to the customer. The transfer was effected in the course of the trade or business. The petitioner also received the consideration for the transfer of property in goods by way of reimbursement from M/s Hindustan Motors. Hence, all the elements of sale are present in the transaction.

5. We heard learned counsel for the petitioner Sri. C.N. Ramachandran Nair and learned Government Pleader Sr. V.V. Ashokan.

6. We are of the view that the transaction in question cannot be said to be a sale. The petitioner is the agent of automobile manufacturers and the spare parts are given on the basis of the warranty for replacement. It may be true that the petitioner had purchased the spare parts by giving C Forms. But so far as the purchase of spare parts is concerned, it is purely for replacement and not for sale. It is further seen that credit notes are issued by the manufacturer reducing the sale value. Learned counsel for the petitioner brought to our notice a decision of the Delhi High Court reported in Commissioner of Sales Tax Vs. Prem Nath Motors (P) Ltd., . In the above decision, the Court observed as follows: "Now, the warranty was to replace the defective part or parts free of cost. When a part is replaced in accordance with the stipulation or warranty, it becomes a part of the car and the property in it stands transferred to the buyer/customer. No separate consideration for the part so transferred is specified. No dealer can reasonably be expected to enter into such a stipulation or warranty which might result in the transfer of the property in the part or parts replaced without consideration for the transfer. In the circumstances, the only reasonable inference is that the consideration for the part or parts that might be replaced under the warranty was not separately specified, because it was included in the price fixed and paid

for the car at the time of its sale. In other words, the transfer of the property in the part or parts replaced in pursuance of the stipulation or warranty is a part of the original sale of the car for the price fixed and received from the buyer/consumer. The price so fixed and received was a consolidated price for the car and the parts that may have to be supplied by way of replacement in pursuance of the warranty." We agree with the above reasoning of the Delhi High Court.

7. In the result, the order of the Appellate Tribunal is set aside and we direct to give exemption to the turnover of the spare parts, which were given for replacement.