

(2009) 11 KL CK 0017
In the High Court Of Kerala
Case No : S.T. Rev. No. 246 of 2009

Godrej and Boyce Mfg. Co. Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 9

Citation : (2010) 1 KLT 978

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

Bench : Division Bench

Advocate : Bobby John and Tomson T. Emmanuel, for the Appellant; Mohammed Raffiq, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The first question raised by the assessee pertains to fate of tax on wireless transmission projectors marketed by the assessee. The assessee's claim is that the item is an electronic system taxable at the rate of 8% under item 55 of the First Schedule of the Kerala General Sales Tax Act, 1963 (for short "the K.G.S.T. Act") or at least under the residuary entry of the First Schedule i.e., item No. 177 where the rate of tax is the same. On the other hand, the assessing officer completed the assessment treating the item as projector taxable at the rate of 12% under Item 32 of the First Schedule. Counsel produced leaflets showing the description of the project. It is seen from the same that the projector is manufactured by the Panasonic company and the petitioner is only the marketing agency. The projector is described as wireless transmission projector, which is used for projecting data from a computer on a screen in an enlarged form. The contention of counsel is that the system is an electronic equipment and so much so, Entry 55 is the relevant entry for assessment of the item. However, Government Pleader submits that Entry 55 specifically excludes electronic equipment falling under specific entries. We are in agreement with this argument because item is admittedly a projector and it is specifically covered by Entry 32 along with the other items like cinematographic equipments, cameras etc. Even electronic projectors and cameras etc. are also therefore covered by

Entry 32 as those items are specifically covered by the said Entry. Counsel for the petitioner relied on Entry 1.17 of Schedule VI of Notification S.R.O. No. 1728/93 to substantiate his contention that projectors are electronic equipments because the Government has covered 16 mm projectors in the said notification wherein the tax payable is only 4%. However, the projector referred to therein is a projector used for projecting 16 mm film as against the normal projectors used for projecting 35mm films. The petitioner's equipment is not projecting any film and therefore, it is not a 16 mm projector, but is a unique equipment used for reproduction of computer images in enlarged form. So much so, the Tribunal rightly found that the item is assessable at the rate of tax at 12% and hence, we dismiss the S.T. Revision on this question.

2. The next question pertains to the decision of the Tribunal on the claim for exemption on the value of stock transfer. Here, we notice that the Tribunal has only remanded the matter to the assessing officer for reconsideration with reference to the stock register. We do not find any question of law arising on this issue and consequently, decline to consider this question.

3. The third question raised is against the disallowance of exemption claimed on price variation. The petitioner was engaged in marketing of project or through distributors. Therefore, price variation is nothing, but discount or trade margin passed on to the dealers. In order to be eligible for deduction, the petitioner has to grant discount in the invoices itself for granting it as a deduction in terms of Rule 9(a) of the K.G.S.T. Rules. The rule stipulates that in order to qualify for deduction, it should be proved that the purchaser has paid sale price less amount of discount allowed. This presupposes that the deduction available is only trade discount allowed in invoices and not on credit note given later. So much so, we find no merit in the challenge against the Tribunal's order. The S.T. Revision on the third issue is also dismissed.

4. Even though the petitioner has raised a question pertaining to short credit of tax paid, we notice that the Tribunal has not considered the claim. We think, there is no need for the Tribunal to consider the question because the petitioner can always produce proof of payment for the officer to verify the payment and give credit for the actual payment of tax in the assessment order. We direct the officer to grant credit for the entire amount of tax payment after verifying the proof of payment of tax produced by the petitioner. The Sales Tax Revision Case stands disposed of as above. The assessing officer is directed to rectify the mistake on this issue if an application in this regard is filed along with proof of payment within one month from the date of receipt of a copy of this judgment.