(2009) 02 KL CK 0075

In the High Court Of Kerala

Case No : S.T. Rev. No. 257 of 2007

Kanam Latex Industries Pvt. Ltd. APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (2009) 2 KLT 927 : (2010) 27 VST 172

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

Bench : Division Bench

Advocate : Joseph Markose and Mathews K. Uthuppachan, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioner is engaged in manufacture and sale of surgical gloves both sterilized and non-sterilized, examination gloves, etc. Since the products are made of rubber the petitioner filed sales tax returns declaring its turnover of surgical gloves as taxable at eight per cent under entry 145 of the First Schedule to the Kerala General Sales Tax Act, 1963 (the KG ST Act). This entry provides for tax on surgical equipment and instruments, medical implants and injection needles. However, since the product is made of 100 per cent natural rubber, the assessing officer assessed the turnover under entry 125 of the First Schedule to the Act which provides for tax at 12 per cent on all rubber products and products of a mixture of rubber and synthetic rubber. The appeals filed by the petitioner at two levels were unsuccessful and hence this revision petition is filed raising the question of rate of tax on surgical gloves and examination gloves.

2. We have heard senior counsel Shri Joseph Markose appearing for the petitioner and the Government Pleader appearing for the respondent.

3. In order to appreciate the contentions raised we have to refer to the relevant entries, viz., 125 and 145 of First Schedule to the KGST Act which are extracted hereunder:

____ _______________________________ Sl. No. Description of goods Point of levy Rate of tax ____ ____ 125 Rubber products and products of mix- At the point of first sale 12% ture of rubber and synthetic rubber in the State by a dealer including tread rubber not elsewhere who is liable to tax mentioned in this Schedule or in the u/s 5. Fifth Schedule _______ ____ ________________________ 145 Surgical equipments and instruments, do. 8% medical implants and injection needles ____________________________________ ____

4. During hearing senior counsel appearing for the petitioner produced samples of products available in the market which go to establish that surgical gloves are made of rubber as well as synthetic materials like neoprene, poly-chloroprene, etc. Further it is also seen that besides sterilized surgical gloves, non-sterilized ones are also sold which could be used by the customer after sterilization in autoclave. The contention raised by the petitioner is that even though surgical gloves produced and sold by the petitioner are made of rubber it cannot be assessed under entry 125 because it falls in the description of surgical equipment under entry 145.

5. The Government Pleader, on the other hand contended that since the product is fully made of natural rubber, it falls under entry 125 because all rubber products not elsewhere mentioned are covered by entry 125. According to him those items which are excluded from 125 are other rubber products like tyres, tubes, flaps, etc., which are covered by other specific entries providing for tax on such rubber products.

6. The counsel for the petitioner has relied on the decision of this Court in State of Kerala Vs. Narayanan Nambiar, and that of the Supreme Court in Indo International Industries v. Commissioner of Sales Tax, Uttar Pradesh [1981] 47 STC 359 and contended that surgical gloves are used generally by surgeons and those engaged in surgery and, therefore it is a surgical equipment. Even though the decisions referred to are not exactly on the point arising in this case both the decisions support the petitioner because the literal meaning was not accepted by the Court for the purpose of deciding the rate of tax on the product involved. In the case decided by this Court the finding is that disposable syringe made of plastic is not an article of plastic but is a drug because drug includes disposable syringes as well. Similarly in the case decided by the Supreme Court the finding is that syringe is not a glassware but is an hospital equipment or apparatus.

7. Entry 145 provides for rate of tax among other things on all surgical equipments. Surgical equipments are such of the equipment used by surgeons and those associated with surgery. The dictionary meaning of "equipment" inch ides articles, clothings, etc., for a purpose. Surgical gloves is an essential equipment for surgeons, nurses, etc., engaged in surgery. Therefore, it is a

surgical equipment and so much so surgical gloves, whatever be the material with which it is made, falls under entry 125. It is to be seen that entry 125 excludes rubber products which are covered elsewhere in the First Schedule or in the Fifth Schedule. Therefore, if any rubber product falls under any other specific entry in the First Schedule or the Fifth Schedule, the same cannot be taken as covered by entry 125. Since the purpose of surgical gloves is for use by surgeons and those who are engaged in surgery, it is a surgical equipment falling under entry 145 of the First Schedule to the Act. Therefore, we hold that sterilized surgical gloves sold by the petitioner answer the description of surgical equipment taxable under entry 145 at eight per cent as against the assessment under entry 125 at 12 per cent. So far as non-sterilized surgical gloves are concerned there is specific instruction in the product cover that they are also made as surgical gloves and marketed as such but with instruction to sterilize it before use in autoclave. Instructions are seen printed in the cover. In other words, non-sterilized surgical gloves are also assessable as surgical equipment under entry 145. It is also worthwhile to note that along with surgical equipment under entry 145 medicines and drugs of all kinds, medicated bandages, surgical cotton, absorbent cotton, wool, I.P. bandage are all taxable at the same rate of eight per cent under entries 87 and 88 of the First Schedule. The legislative intention to provide uniform rate of tax at eight per cent on goods directly used in medical care is very clear from these entries.

8. The position with regard to examination gloves is different because these items are not earmarked as surgical gloves. It is used for the examination of patients and is not of the quality required for use as surgical gloves. The relative lower value reflects the quality of the item and so much so that examination gloves cannot be treated as surgical gloves. Since examination gloves are made of rubber the petitioner is liable to pay tax on this item as rubber product under entry 125 of the First Schedule to the KGST Act.

9. The S.T. revision is consequently allowed in part to the extent indicated above with a direction to the officer to revise the assessment of turnover of surgical gloves both sterilized and non-sterilized at eight per cent under entry 145 and retain the turnover of examination gloves at 12 per cent under entry 125 of the First Schedule to the KGST Act.