

**(1993) 10 KL CK 0038**

**In the High Court Of Kerala**

**Case No : T.R.C. No"s. 63 and 64 of 1993**

Lamina Suspension Products (P) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

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**Date of Decision :** 25-10-1993

**Acts Referred:**

**Citation :** (1994) 95 STC 459

**Hon'ble Judges :** K.S. Paripoornan, J;K.P. Balanarayana Marar, J

**Bench :** Division Bench

**Advocate :** N. Muraleedharan Nair, for the Appellant; V.C. James, Government Pleader, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

K.S. Paripoornan, J.—The common petitioner in both the revisions is an assessee under the Kerala General Sales Tax Act. It is a private limited company. We are concerned with the assessment years 1987-88 and 1988-89. Common question of law arises for consideration in both the revisions. The assessee is an automobile dealer. The assessments for the above two years were reopened u/s 19(1) of the Kerala General Sales Tax Act. It was so done by the officer on the ground that the assessment records revealed that the turnover of fasteners was assessed only at 6 per cent. But, they are assessable at 15 per cent as coming within entry 125 of the First Schedule to the Kerala General Sales Tax Act. The objection of the assessee, that the turnover of fasteners was assessable only at 6 per cent, was repelled. The assessments were made as proposed by the assessing authority. In appeals the assessments were affirmed. In second appeal, the Sales Tax Appellate Tribunal, by a common order dated April 30, 1992, upheld the assessments made on the fasteners and held that the turnover of fasteners will come under entry 125 of the First Schedule to the Kerala General Sales Tax Act. It is thereafter the assessee has filed the above revisions assailing the common order passed by the Sales Tax Appellate Tribunal rendered in T.A. Nos. 382 and 383 of 1991 dated April 30, 1992.

2. We heard counsel for the revision-petitioner/assessee, Mr. K. Muraleedharan Nair and also counsel for the respondent/Revenue--Senior Government Pleader Mr. V.C. James.

3. The only plea urged before us by counsel for the revision-petitioner is that the fasteners sold by the assessee is only a product coming under entry 99 of the First Schedule to the Kerala General Sales Tax Act and so taxable only at 6 per cent. Reliance is placed on the Bench decision of this Court in *New Prasanthi Automobiles Co. v. State of Kerala* [1993] 91 STC 565 ; (1992) 2 KLT 713.

4. On the other hand, counsel for the Revenue submitted that fasteners marketed by the assessee is an automobile product and they were rightly assessed as covered by entry 125 of the First Schedule to the Kerala General Sales Tax Act, at 15 per cent.

5. Counsel for the assessee very much highlighted that the fasteners sold by it are only nuts and bolts, which are used for variety of purposes and the fact that the assessee (automobile dealer) has sold nuts and bolts will not make it as an automobile product. It is for highlighting the said plea, reliance was placed on the Bench decision of this Court in *New Prasanthi Automobiles Co. case* [1993] 91 STC 565 ; (1992) 2 KLT 713.

6. We are of the view that the matter has not received proper attention at the hands of the statutory authorities. The reported decision in *New Prasanthi Automobiles Co. case* [1993] 91 STC 565 ; (1992) 2 KLT 713 is distinguishable. In that case, the assessee was a dealer in automobile spare parts and also a dealer in hardwares, rubber goods and tractor parts. It is seen from the original records in T.R.C. Nos. 163 and 164 of 1991 [*New Prasanthi Automobiles Co. v. State of Kerala* [1993] 91 STC 565 (Ker)], that the assessing authority has proceeded on the ground that the sales turnover of nuts and bolts in the said case (fasteners) is liable to tax at 15 per cent and 10 per cent respectively. In other words, the assessing authority himself proceeded on the ground that the nuts and bolts marketed by the assessee are fasteners. In this case, we find that the notice u/s 19 of the Kerala General Sales Tax Act, available at page 275 of the files, mentions that the turnover of fasteners was wrongly assessed at 6 per cent as against 15 per cent. The reply of the assessee was that the fasteners supplied by them are used for general purposes. There is no whisper in the reply to the pre-assessment notice, that fasteners are nuts and bolts. Such a plea is made for the first time in the memorandum of appeal filed before the first appellate authority. In ground No. 3, the assessee has stated that the officer erred in treating fasteners as auto spares. According to him, fasteners are nothing but nuts and bolts. This is the plea taken up in appeal. Such a plea was not specifically taken up before the assessing authority. The Deputy Commissioner (Appeals) noticed the said plea and held that the assessing authority has correctly held that the fasteners marketed by the assessee are generally used as automobile parts and the assessee was not able to prove otherwise. In second appeal, the Sales Tax Appellate Tribunal adverted to the

plea of the assessee, in paragraph 3 of its order, to the effect that the fasteners (bolts and nuts) are usually put to innumerable uses, and they cannot be considered to be automobile parts. In para 4 of the order, the Appellate Tribunal has stated thus :

".....But when we consider the bolts and nuts sold by the appellant they appear to be in the nature of parts of the vehicle or engine or chassis even though some of them may have general uses too. Some of the bolts and nuts may certainly have technical specifications applicable to motor vehicles or engines. From the assessment order, we find that the items of fasteners were specifically designed for automobiles and the same cannot be utilised for any other general purpose. In the assessment order for both the years, it is mentioned by the assessing authority that "U" bolts were classified by the dealer as item 125 of the First Schedule. It was also mentioned that main customers are automobile spares dealers and automobile body builders. When these facts are taken into account, the fasteners sold by the assessee can only be regarded as parts of motor vehicles or motor bodies. The appellant dealer did not establish before us that the fasteners sold by them were capable of use as items of multi-purpose use....."

7. A perusal of the orders of the statutory authorities shows that the fasteners marketed by the assessee was treated as automobile parts falling within entry 125 of the First Schedule to the Kerala General Sales Tax Act. But, what are the fasteners, that were marketed by the assessee, is not clear. The assessee has taken up a plea, for the first time before the first appellate authority, that they are only "nuts and bolts". That aspect has not been properly borne in mind ; nor a finding specifically entered on that score. It is only after finding out as to what are the fasteners that are sold by the assessee, the question as to whether it will fall within entry 125 of the First Schedule to the Kerala General Sales Tax Act, will arise for consideration. There is only an assertion by the assessee that the fasteners sold by it are only nuts and bolts. The statutory authorities have not specifically found that it is so. That is a matter on which the fact-finding authority should apply its mind. Then only other aspects will arise for consideration--whether the goods so sold will come within entry 125 of the First Schedule to the Kerala General Sales Tax Act or will be taken in by any other entry. The taxability or otherwise of the goods marketed by the assessee will have to be decided after reckoning as to how the goods marketed are popularly or generally known. On these aspects, the Appellate Tribunal has not applied its mind. The decisions of the statutory authorities are far from satisfactory on this score.

8. Therefore, we are of the view that the Appellate Tribunal has not adjudicated the question that arose before it according to law or from a proper perspective. We, therefore, set aside the common order of the Sales Tax Appellate Tribunal dated April 30, 1992 and order a remit of the matter to the Appellate Tribunal for a proper consideration in accordance with law. We should reiterate that the first duty of the Appellate Tribunal is to find out what is the fastener that was

marketed or sold by the assessee. Only after finding the exact specification or item of goods that was sold by the assessee, the further question will arise whether it will fall under entry 125 of the First Schedule to the Kerala General Sales Tax Act or in any other entry. We make this position clear.

9. The tax revision cases are allowed. The appeals (T.A. Nos. 382 and 383 of 1991) will be heard by the Sales Tax Appellate Tribunal again on this aspect of the matter and orders will be passed as expeditiously as possible.

10. Counsel for the assessee submitted that pending the revisions in this Court revenue recovery proceedings were taken for recovery of a sum of Rs. 30,080 and wheel drums belonging to the petitioner have been attached and kept in the village office. We have set aside the order of the Sales Tax Appellate Tribunal and remit has already been ordered. The concerned Sales Tax Officer (assessing authority) shall, on furnishing sufficient security for the sum of Rs. 30,080 to his satisfaction, take appropriate steps to see that the goods attached are released to the assessee.

Issue photostat copy of this judgment to counsel for the parties, on usual terms.