(2010) 06 KL CK 0124

In the High Court Of Kerala

Case No : O.T.A. No. 4 of 2010

Lion Dates Impex Pvt. Ltd. APPELLANT

Vs

Deputy Commissioner RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:
Kerala Value Added Tax Act, 2003 — Section 94

Citation : (2010) 3 KLT 1027 : (2011) 43 VST 53

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Jeena Joseph, G.D. Panicker and Gisa Susan Thomas, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The challenge is against the clarification issued by the Commissioner u/s 94 of the K.V.A.T. Act, declaring processed oats as an item falling under Item 49 of Third Schedule to the Act. Counsel for the appellant contended that oats is covered by Item 12 of First Schedule to the Act which provides among other things oats under the head-coarse grains. Government Pleader has produced Notes on Chapter 10 under the Customs Tariff Act which specifically states as follows:

The Chapter does not cover grains which have been hulled or otherwise worked. However, rice, husked, milled, polished, glazed, parboiled or broken remains classified in heading 1006.

We notice that though con as a coarse grain is also covered by Exemption Clause 12 of First Schedule, conflake is in Entry 49(3) of Third Schedule to the Act. The Legislative intention is clear from the different treatment, the products are given from coarse grains. Therefore grains in the coarse form only are covered by the Exemption Clause 12 of Third Schedule. We have considered the very same argument raised by counsel in this case in the decision in M/S. Thomson Paper Products v. Commissioner of Commercial Taxes 2008 (3) KLT 254. We find that Commissioner has taken the view consistent with what we have taken in the above decision. Consequently following our judgment above referred, we uphold the order of the Commissioner and dismiss the OTA. Tax necessarily has to be demanded in accordance with Commissioner''s clarification. Demand has to be modified in line with the Commissioner''s order. If the appellant has collected more tax, the assessing officer will deal with such collection in accordance with statutory provisions. We make it clear that we have-not dealt with incidence of tax with regard to processed oats sold under brand name because that is not an issue decided in the impugned order of the Commissioner.

