(2011) 02 KL CK 0005

In the High Court Of Kerala

Case No : S.T. Rev. No. 154 of 2009

M. J. Sheela, Remya Agencies — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 09-02-2011

Acts Referred:

Citation : (2011) 46 VST 29

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : E.K. Nandakumar, for the Appellant;

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The short question raised in the revision filed by the assessee is whether the paper imported by them and sold under the name "Euro craft waste paper" falls under entry 102 of the First Schedule to the Kerala General Sales Tax Act, 1963 taxable at four per cent or whether the item falls under entry 106 of the same Schedule taxable at eight per cent. We have heard counsel for the petitioner and Government Pleader for the respondent.

2. The product sample is produced before us by counsel for the petitioner as well as by the Government Pleader. It is seen that the paper originally produced is craft paper capable of absorbing ink, moisture, etc. The petitioner''s case is that the paper imported was already used for the main purpose for which it is produced, that is, to remove the excess ink from currency while printing, and thereafter it is waste paper which can be used for packing of goods. The claim of the petitioner is that the item sold is used only for packing purposes and since the item is otherwise waste paper, it is taxable at four per cent. On the other hand, the contention of the Government Pleader is that mere use of the paper before import for removing excess ink from printed currency will not change the identity of the product from paper to anything else and so much so, the item falls under entry 106. The Tribunal upheld the claim of the Department by reversing

the first appellate authority''s order in favour of the assessee and it is against this order of the Tribunal the petitioner has come up with this revision before us.

3. Admittedly the item imported is paper and the question to be considered is whether by virtue of the first use of the item in the country of origin makes it waste paper. The paper involved is craft paper which is produced mainly to use as an absorbent paper to absorb moisture, excess ink in the course of printing. Samples of paper produced show that the same is used for removing excess ink in the course of printing currency in Europe. The case of the petitioner is that the paper after use has become waste paper and it loses its original identity as craft paper when used as an absorbent material in the printing of currency. Besides this, counsel for the petitioner submitted that item sold is only used as a packing material and since all waste paper used for packing falls under entry 102, the petitioner''s claim is tenable. We find force in the contention of counsel for the petitioner because all packing materials covered by entry 102 are given concessional rate at four per cent. It is common knowledge that waste paper is extensively used in packing and there is no controversy that the item imported and sold by the petitioner is not used as packing material by the purchasers. In fact, the paper is said to be rerolled and exported to India after using for removal of excess ink from currency and, therefore, the paper after its main use can be described only as waste paper which is fit for and is used for packing goods. The contention of the Government Pleader that physical identity of the paper is not lost in the course of use is substantially correct. However, the question to be considered is when does paper become waste paper. In our view, when the paper produced is already put to use for which it is made and is unfit for the same use again, it becomes waste paper. In other words, the reusability of the paper for other purposes like packing does not make it anything other than waste paper. Of course paper made as packing material by itself will not fall under entry 102 because only "waste paper" used as packing material falls under entry 102. In this case admittedly paper imported and sold by the petitioner was already used up for its primary and intended use for which it was specifically made, i.e., as an absorbent material for use in printing where excess ink in the course of printing currency is removed with the paper and so much so, it is waste paper, no matter it is capable of being used as packing material. On the above premises we uphold the claim of the petitioner that the item falls under entry 102 as waste paper and consequently allow the revision by reversing the order of the Tribunal and by restoring the order of the first appellate authority. However, since the Government Pleader expressed doubt about the factual position with regard to prior use, it is open to the Department to ascertain through inspection and examination as to whether the paper was used in the way stated by the petitioner prior to import and if not, to move this court for review of the judgment.

