(2007) 07 KAR CK 0044

In the Karnataka High Court

Case No : S.T.A. No. 2928 of 2004, affirmed

Mahalasa Agencies, Mangalore APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 03-07-2007

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 5(3)(A)

Citation : (2009) 67 KarLJ 539

Hon'ble Judges : N. Ananda, J;V. Gopala Gowda, J

Judgement

N. Ananda, J.-Though the matter is listed for admission, by consent of both sides the same is taken up for final disposal.

2. This revision petition is at the instance of the assessee. Assessee is engaged in the business of diagnostic kits, surgical equipments, Borocil glasswares. The contention of the assessee that HIV kits manufactured by it falls under Entry 5 of Second Schedule of Part M of the Karnataka Sales Tax Act, 1957 has not been accepted by the Tribunal. Therefore, the assessee is before us.

3. Learned Counsel for the assessee referring to the order of Clarification and Advance Ruling Authority dated 18-11-2006 has contended that Clarification and Advance Ruling Authority has held the HIV kits are akin to medical and pharmaceutical preparations falling under Entry 5 of Second Schedule of Part M of the KST Act. Learned Counsel further submits that considering the nature of products and having regard to the various authorities, the Clarification and Advance Ruling Authority, has held that the diagnostic kits are nothing but medicinal and pharmaceutical preparations. Therefore, HIV kits manufactured by the assessee has to be classified under Entry 5 of Second Schedule of Part M. The Tribunal without considering all these aspects and without hearing the learned Counsel for the assessee has held that the HIV kits manufactured by the assessee would fall under Entry 21 of Second Schedule of Part S.

4. Learned Counsel for the revenue has submitted that the order passed by Clarification and Advance Ruling Authority on 18-11-2006 has nothing to do with

the facts of this case. The Tribunal was not bound by the order of the Clarification and Advance Ruling Authority. The Tribunal considering the goods enumerated under Entry 21 of Second Schedule has held that the HIV kits would fall under Entry 21 of Second Schedule of Part S. Therefore, Appellate Tribunal was justified in passing the impugned order.

5. We have gone through the orders passed by the Tribunal and also the relevant entries. In Entry 21 of Second Schedule of Part S, we find reference to ''medical kits'' amongst other surgical and dental instruments. Learned Counsel for the assessee has not been able to demonstrate that HIV kits manufactured by the assessee are something different from medical kits. Even going by the user theory, it is not in dispute that HIV kits are used for diagnosing heart attacks and HIV. Therefore, the contention of the assessee that it falls within Entry 5 of Second Schedule of Part M which relates to ''medicinal and pharmaceutical preparations'' cannot be accepted.

6. For these reasons, we do not find any reasons to interfere with the impugned order. Therefore, we answer the questions raised by the assessee in the negative and accordingly dismiss the revision.