
(2001) 03 KL CK 0063
In the High Court Of Kerala
Case No : T.R.C. No. 275 of 2000

Mas Storage Systems (P.) Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-03-2001

Acts Referred:

Citation : (2001) 122 STC 552

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : K.I. Mayankutty Mather and S. Amina, for the Appellant; V.V. Asokan, Govt. Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—This tax revision case is filed against the order in T.A. No. 226 of 2000 of the Sales Tax Appellate Tribunal, Additional Bench I, Ernakulam. The revision relates to the assessment year 1994-95.

2. The assessee is engaged in the business of dealing in slotted angles and shelving panels. While completing the assessment, the assessing authority had imposed tax at the rate of 12.5 per cent on the sales turnover of slotted angles stating that it is an item covered by entry 58 of the First Schedule to the Kerala General Sales Tax Act, 1963, and rejected the claim of the assessee that the item would fall only under entry 68 or entry 82 of the First Schedule to the Act. According to the assessee, the assessee had not effected sales of items such as slotted angles, shelving panels and nuts and bolts together and assembled to form furniture. Further, the assessing authority also allowed the claim for exemption in respect of the sales turnover of slotted angles to export oriented units as prescribed under SRO No. 1727 of 1993. Another contention of the petitioner was that the claim for exemption under Rule 9(b)(i) was also rejected by the assessing authority. Against that, an appeal was preferred before the appellate authority. The appellate authority dismissed the appeal. Appeal filed before the Tribunal was also dismissed.

3. From the order of the Tribunal, the following findings emerge. Slotted angles will be deemed to be furniture as per Explanation to entry 58. So far as the exemption claimed under the notification is concerned, it was rejected on the ground that the goods sold by them cannot be said to be used for manufacture of elerezins. So far as the contention with regard to Rule 9(b)(i) is concerned, the Tribunal relied on a decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Motor Industries [1983] 53 STC 48(SC) and held that the petitioner is not entitled to exemption under Rule 9(b)(i) of the Act. Regarding the contention of entry 58, it is stated that as per entry 58 of the First Schedule furniture of all kinds other than those coming under entry 59 of the First Schedule is taxable at 12.5 per cent. Entry 59 relates to furniture made of bamboo or ratten. As per the explanation to entry 58, slotted angles, when assembled form furniture or rack be deemed to be furniture for the purpose of that entry. The contention of the petitioner is that he has sold only slotted angles separately. Slotted angles were not assembled at the time of sale. So, according to him, what is sold is not furniture. But the authorities took the view that since they are of capable of being used as furniture, it can be deemed to be furniture and hence, it comes under entry 58. Entry 58 deals with furniture excepting those furniture which come under entry 59. There is no case that slotted angles will come under furniture. So, the question to be looked into is whether the slotted angles will come under entry 58. Slotted angles and panels separately sold, are not known or understood as furniture made of iron or steel. It is true that slotted angles and panels can be used to make a rack or ladder, which may be called an item of furniture. According to us, the Explanation only says that slotted angles when assembled form furniture is only to make sure that sales of other things made of slotted angles also are deemed to be furniture. But according to us, mere sale of slotted angles cannot be said to be furniture. We are supported in our view by this Court in Godrej & Boyce Mfg. Co. (P) Ltd. v. State of Kerala [1991] 83 STC 474(ker).

4. The next contention is with regard to Rule 9(b)(i). What the petitioner says is that the appellate authority has taken the view that the petitioner is not entitled to the benefit of Rule 9(b)(i). This is because the exemption of sales tax for sales return was denied on the ground that it was in two different financial years. Learned counsel for the petitioner says that as a matter of fact, he has got records to show that the goods were returned within the time-limit. In the decision reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Motor Industries Co. [1983] 53 STC 48 (SC), it is held as follows : "Under Rule 9(b)(i) the deduction in respect of "sales return" has to be allowed in the assessment relating to the financial year in which the sales of the returned goods had taken place and even where assessment for that year is completed, the department has to comply with the demand for adjustment or refund by making necessary rectification in the order of assessment, provided that other conditions are satisfied, as that is the inevitable consequence of Rule 9(b)(i) which allows deduction of the value of the goods returned within three

months from the date of their delivery from the total turnover of that financial year. But such a deduction cannot be claimed in the assessment proceedings for the financial year subsequent to the financial year in which the sales took place". According to the assessee in this case, the goods were returned after the financial year, but within three months. According to us, this is a matter which the Tribunal should look into again. So far as the exemption for export unit is concerned, we do not find any point to interfere.

5. In the result, the order of the Tribunal with regard to its finding that slotted angles sold is furniture and hence, it is liable to be assessed under entry 58 and so also the finding regarding Rule 9(b)(i) are set aside. The Tribunal is directed to reconsider this matter afresh, as expeditiously as possible.

Tax revision case is disposed of as above.

Order on C.M.P. No. 3873 of 2000 in T.R.C. No. 275 of 2000 dismissed.