(2009) 03 KL CK 0028

In the High Court Of Kerala

Case No : S.T. Rev. No. 219 of 2008

Microtrol Sterilization Services Pvt. Ltd.	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 25-03-2009

Acts Referred:

Citation : (2009) 25 VST 213

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.P. Sukumar, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in the sales tax revision filed by the assessee is whether the Tribunal was justified in sustaining the assessment on the value of ethylene oxide used in sterilisation of goods for others. The assessee is engaged in sterilisation of goods with ethylene oxide. In the course of assessment for the year 2003-04 the assessing officer noticed that substantial value of ethylene oxide brought from outside State on stock transfer was used up in the course of sterilisation work done by the assessee for various parties. He therefore assessed the contract receipts which includes value of ethylene oxide and service charges received as turnover for works contract. The assessee questioned the assessment on the ground that ethylene oxide in the process of sterilisation is lost and therefore there is no transfer of property involved in the sterilisation process and, therefore, the value of the ethylene oxide cannot be assessed as turnover on works contract. The assessment was confirmed in the first appeal and in second appeal by the Tribunal. Hence, this revision is filed against the Tribunal''s order.

2. We have heard Shri V.P. Sukumar appearing for the petitioner and the Government Pleader appearing for the respondent.

3. The counsel for the petitioner has relied on the decision of this Court in

Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M.K. Velu [1993] 89 STC 40(SC) and that of the Patna High Court in Pest Control India Ltd. v. Union of India [1989] 75 STC 188(SC) and contended that since ethylene oxide is lost in the course of sterilisation of goods, there is no sale of the same from the assessee to the customers and so much so there is no scope for levy of tax under works contract.

4. The Government Pleader on the other hand relied on the decision of this Court in Teaktex Processing Complex Limited v. State of Kerala [2004] 136 STC 435(SC) and that of the Bombay High Court in Commissioner of Sales Tax v. Matushree Textile Limited [2003] 132 STC 539(SC) and contended that turnover on sale of ethylene oxide is assessable. Section 5(1)(iv) which provides for levy of tax on works contract is as follows:

(a) In the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods at the rates and at the points specified against such goods in the First, Second or Fifth Schedule.

(b) In the case of transfer of goods involved in the execution of works contract (where the transfer is not in the form of goods but in some other form) specified in the Fourth Schedule, at the rate specified against such contract in the said Schedule.

5. Besides the above, Section 5C(1)(c)(iii) provides for cost of consumables used in the execution of works contract eligible for deduction in the determination of taxable turnover on works contract. It is obvious from the section and the provisions providing for determination of taxable turnover on works contract that sales tax is payable only on the value of goods that got transferred from the contractor in the execution of the works contract. Consumables are items which are lost in the course of execution of works contract. Even though consumables are lost to the contractor, it is not a gain for the awarder. In other words, they are used up in the process of executing the work. Sterilisation is a process by which goods are made free of germs and in order to retain the quality of goods, only packed commodities are subject to sterilisation with the use of ethylene oxide. The assessee''s representative present in court explained the sterilisation process as one involving the use of a compact airtight room wherein the goods to be sterilised in packed form are exposed to ethylene oxide for around six hours and then the said gas is allowed to escape after mixing with carbon dioxide at higher levels through chimney. Ethylene oxide is a toxic gas which is highly inflammable. After the duration of sterilisation, the gas is released to air after neutralising it with carbon-dioxide. Admittedly after sterilisation goods do not retain any trace of ethylene oxide which is completely released in the air. Therefore, there is no transfer of ethylene oxide from the assessee to the customers in the course of sterilisation of the goods. On the other hand, it is used up as a consumable in the service rendered by the assessee, the value of which is to be excluded in the determination of taxable turnover of works contract u/s 5C of the Act. The decision of the Patna High Court in the case of

application of pesticide and the other decisions of this Court in the case of fire works squarely apply to the facts of this case. The decisions cited by the Government Pleader will not apply to this case because those are cases involving dyeing work where the dye is transferred to the fabric supplied by the customer and is retained in the cloth. We are therefore unable to uphold the order of the Tribunal confirming the levy and demand of tax on the value of ethylene oxide used up in sterilisation work. We therefore allow the sales tax revision by reversing the order of the Tribunal confirming the assessment and by declaring that no tax is leviable on the value of ethylene oxide used in sterilisation work.

