(2010) 01 KL CK 0137

In the High Court Of Kerala

Case No : O.T.A. No. 1 of 2010

P.C. Ajaya Kumar APPELLANT

Vs

Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 20-01-2010

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

Citation : (2010) 34 VST 158

Hon'ble Judges : V.K.Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.N.D. Namboothiri, for the Appellant; K.B. Pradeep, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The appeal is filed against the clarification issued by the Commissioner u/s 94 of the Kerala Value Added Tax Act, 2003, hereinafter called "the Act" clarifying that the appellant''s product which is the plastic cover used in the manufacture of electronic choke is a commodity falling under entry 103 of S. R. O. No. 82 of 2006 taxable at 12.5 per cent. We have heard counsel appearing for the appellant and the Government Pleader for the respondent.

2. The contention of counsel for the appellant is that the product is similar to the items referred to in entry 174(1)(a) of List A of the Third Schedule to the KVAT Act, which is a follows:

Plastic containers for audio or video cassettes, cassette tapes, floppy discs and similar articles.

3. According to the counsel the item is covered by the above entry under the residuary category "similar articles". However, the Government Pleader submitted that "similar articles" referred to therein can always be articles similar to the first three items specified in the entry. The items covered are "plastic containers for audio or video cassettes, cassette tapes and floppy discs".

Admittedly the containers referred to in the specific items are plastic containers used to pack audio or video cassettes, cassettes tapes and floppy discs. On the other hand, the item manufactured by the appellant is cover for electronic choke which is an integral part of the choke and without it the manufacture of choke is not complete. In fact, the cover provides for ventilation, space for leads for giving electric connection and attachments for fixing the choke after its manufacture to the tubelight frame. So much so the appellant''s product is a component or part of choke used by the companies in the manufacture of chokes. We therefore reject the appellant''s contention that the item falls under the residuary category of entry 174(1) (a) of List A of the Third Schedule to the Act.

4. The next question to be considered is whether the items falls under entry 103 of S. R. O. No. 82 of 2006 as held by the Commissioner. Entry 103 of Notification S. R. O. No. 82 of 2006 is the residuary entry which takes in goods which are not covered by any of the entries of any of the Schedules to the Act or any other entry covered by the very same notification. The Government Pleader submitted that the item may fall under entry 33(8) of Notification S. R. O. No. 82 of 2006 because parts of choke coils (chokes) are covered under HSN Code No. 8504.90.90 of the Central Excise Tariff Act. We do not think there is any need to consider this question because so long as the rate of tax is 12.5 per cent, it is immaterial whether the item falls under entry 33(8) or residuary entry 103 of the very same notification.

5. Consequently the appeal is dismissed.

