(2002) 04 KL CK 0053

In the High Court Of Kerala

Case No : O.P. No. 9610 of 2002 (R)

Power Best Electrical (P) Ltd. APPELLANT

Vs

Managing Director, Kerala Feeds Ltd. and Others RESPONDENT

Date of Decision : 09-04-2002

Acts Referred:

Citation : (2002) 128 STC 496

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : K. Latha, for the Appellant;

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioner is a contractor engaged in supply and erection of electrical items for respondents 1 and 2 who are public sector undertakings. According to the petitioner, the sales "to the purchasers are entitled to concessional rate of sales tax under S.R.O. No. 1728/93 as modified by S.R.O. No. 1091/99, if declarations are issued by them in terms of the annexure attached to the notifications. The petitioner has requested for such declarations and according to the petitioner, buyers who are entitled to avail concessional rate should issue the declarations for the petitioner to claim concessional rate of sales tax on the sales made by the petitioner to respondents 1 and 2. However, respondents 1 and 2 have orally declined to grant such declarations. The petitioner prays for direction to respondents 1 and 2 to issue certificates in the format of declaration contained in the notification.

2. The contract for supply and installation admittedly is for an all inclusive contract price agreed between the parties which includes sales tax also. Therefore, the liability to pay sales tax is on the contractor, the petitioner herein. When there is no provision to avail concessional rate in the contract, it has to be assumed that the tax loaded in the contract is full rate of tax. This makes it clear that the supplier shall pay tax at full rate and not at concessional rate. The

benefit of concessional rate of tax is granted to the purchasers and it is for the purchasers to claim such benefit. If they want to avail the concessional rate they should make such a provision in the tender conditions so that tax at concessional rate is loaded when contract price is quoted and agreed. When there is no such agreement between the parties, the petitioner cannot compel the purchasers to issue declaration for availing concessional rate of tax. It is not known as to why the purchasers did not choose to issue declaration or did not want to avail concessional rate when quotation was called for. It cannot be assumed that purchasers being public sector undertakings are unaware of the benefits available to them under the notification. Probably the items purchased are not for use in "manufacture" and therefore they may run the risk of penalty if the declarations are issued as claimed by the petitioner. At least there may be a doubt in the minds of the buyers as to their eligibility to issue declarations for the transaction. Therefore, the petitioners cannot compel such unwilling parties to issue declarations and run the risk of penalty. In the circumstances and in view of want of provision for issuing declarations in the contract between the parties, I do not think that the petitioner is entitled to, as a matter of right, claim concessional rate on sales to the purchasers. Moreover, as already found, when full rate of tax is loaded in the contract price, the petitioner will be unjustly enriched by concessional rate because there is a deemed collection at full rate of tax, when agreed price is collected.

The original petition is dismissed.