(2009) 10 KL CK 0045

In the High Court Of Kerala

Case No : S.T. Rev. No. 312 of 2008

Premier Tyres Limited APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 23(3)

Citation : (2010) 30 VST 561

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

Bench : Division Bench

Advocate : M. Pathrose Matthai, Saji Vargese and Maria Mathai, for the Appellant; Muhammed Rafiq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Sales tax revision filed by the petitioner-company relates to their sales tax assessment under the Kerala General Sales Tax Act, 1963 (hereinafter called "the Act"), for the year 1995-96. The first question raised is against disallowance of sales tax exemption claimed on the sale of nylon tyre cord fabric by the petitioner which was confirmed by the Tribunal. The second question is against demand of interest u/s 23(3) sustained by the Tribunal. We have heard senior Counsel Sri Pathrose Matthai appearing for the petitioner and Government Pleader for the respondent.

2. The contention of the petitioner is that nylon tyre cord fabric falls under the description "man made fabric" covered by entry 11(ii) of the Third Schedule to the Act. However, the Government Pleader submitted that nylon tyre cord fabric is specifically covered by entry 59.02 of the Central Excise Tariff Act and so much so, it would not fall under general entry providing for man made fabrics. Sub-entry (ii) of entry 11 as it stood at the relevant time is as follows:

(ii) Man made fabrics covered under heading Nos. 54.08, 54.09, 54.10, 54.11, 54.12, 55.07, 55.08, 55.09, 55.10, 55.11, 55.12, 58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 59.06 and 60.01, of the Schedule to the Central Excise Tariff Act, 1985 (Central Act 5 of 1986).

3. The specific case of the petitioner is that nylon tyre cord fabric falls under entry 55.07 of the Central Excise Tariff Act incorporated in the abovesaid entry 11(ii) of the Third Schedule to the Act. The said entry is as follows:

55.07. Artificial staple fibres, carded, combed or otherwise processed for spinning.

4. The contention of the petitioner cannot be accepted because nylon tyre cord fabric at all times was covered by the specific entry 59.02 of the Central Excise Tariff Act, which is as follows:

Tyre cord fabric of high tenacity yarn of nylon or other polyamides, polyesters or viscose rayon.

5. It is settled principle that specific entry in the Schedule to the Tariff Act will exclude the general entry and so much so nylon tyre cord fabric when it is specifically covered by entry 59.02 cannot be treated as falling under any other entry including man made fabrics covered by entry 11(ii) of the Third Schedule to the Act, which is enacted with reference to various tariff items of the Central Excise Tariff Act. It is to be noted that the decision in Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, relied on by the petitioner does not apply to this case as the same pertains to rayon fabric only, whereas in this case, the item involved is nylon tyre cord fabric which is covered by entry 59.02 of the Schedule to the Central Excise Tariff Act. Even though the petitioner''s claim of exemption is not tenable for the assessment year 1995-96, we notice that entry 59.02 of the Central Excise Tariff Act is specifically included in entry 11(ii) of the Third Schedule to the Act, granting exemption to nylon tyre cord fabric with effect from April 1, 1999. The amendment cannot be treated as clarificatory or retrospective because it is a specific inclusion of an item which was not provided earlier in the exempted category of goods covered by entry 11(ii) of the Third Schedule to the Act. In fact, exemption provided under entry 11 is through incorporation of various tariff entries of the Central Excise Tariff Act and consequently exemption was rightly declined to the petitioner for the year 1995-96 as such exemption is available only from April 1, 1999 after the amendment to entry 11 to the Third Schedule to the Act. Therefore we dismiss the revision on this issue.

6. So far as the petitioner''s challenge against demand of interest is concerned, the Government Pleader submitted that under annexure A order of the Government, the petitioner was given instalment facility for payment of tax under deferred scheme and in fact the petitioner without committing default remitted the arrears of tax in terms of the instalment scheme. In the circumstances, revision pertaining to challenge against the demand of interest sustained by the Tribunal is allowed vacating the order of the Tribunal and that of the lower authorities levying and demanding interest for the alleged delay in

payment of tax for the year in question.