(2006) 09 KL CK 0025

In the High Court Of Kerala

Case No : S.T.R. No. 224 of 2004

Ranganayaki APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 18-09-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 2
Kerala General Sales Tax Rules, 1963 — Rule 32(13)

Citation : (2007) 1 KLT 281 : (2007) 10 VST 799

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S.K. Devi, M. Raj Mohan, Santhosh P. Abraham, Frankur D. Jayan, Deepsur D. Jayan, K.P. Pradeep, Shanmugam D. Jayan and P.K. Mayadevi, for the Appellant; Georgekutty Mathew, Government Pleader (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—Question raised is whether petitioner is liable to pay sales tax on the sales turnover of Benz Car sold during the year 1998-99. Petitioner, admittedly, is a trader holding registration under the KGST Act. The Car purchased was retained as a business asset which is a fact not disputed by petitioner. Assessing Officer treated the sale of the Car as a transaction incidental to business and hence levied tax. First appellate authority allowed the appeal, holding that petitioner''s purchase is a local purchase of the car from an importer who imported the Car from abroad. The logic applied by the first appellate authority is that petitioner''s sale is a second sale and hence not liable to be assessed. Tribunal, on the other hand, held that in the absence of proof of payment hi tax on first sale, in terms of Rule 32(13) of the KGST Rules, petitioner is liable to pay tax.

2. During hearing, counsel for petitioner submitted that the Tribunal went wrong in reversing the order of first appellate authority, who on facts found that petitioner''s is a second sale in the State. We are unable to accept this contention

because, it is not all first sales that attract sales tax under the Act. The transaction is taxable when first sale is effected by a dealer who is liable to pay tax under the Act, if the previous owner was not engaged in any business as dealer and the Car was his personal asset, then, his sale to petitioner would not attract any tax liability. If the petitioner has a case that seller was also a dealer, then the petitioner should have produced sale bill or cash memo showing collection and payment of tax in terms of Rule 32(13) of the KGST Rules. In the absence of any such proof produced by petitioner, the sale by petitioner will be the first sale which is liable to tax under the Act, as the petitioner is a registered dealer under the KGST Act, carrying on business in the State. Under Clause (b) of Section 2(vi) "business" includes any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern. Sale of a business asset by a trader in the course of business is, therefore, rightly assessable to tax under the KGST Act. We, therefore, uphold the order of the Tribunal and dismiss the S.T. Rev, case.