(2011) 03 KL CK 0095

In the High Court Of Kerala

Case No : S.T. Rev. No. 7 of 2011

Siemens Limited APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29A(4)

Citation : (2011) 03 KL CK 0095

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : Jose Joseph, for the Appellant; No Appearance, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Heard counsel for the Petitioner and Government Pleader for the Respondent. Order under challenge is penalty levied u/s 29A(4) of the KGST Act for attempted evasion of tax in respect of transport of X-ray unit by the Petitioner from Goa factory to the purchaser''s site at E.S.I. Hospital, Udyogamandal. The Appellant got a purchase order from the Directorate of Insurance Medical Services, Government of Kerala, for supply and installation of an X-ray unit at the E.S.I. Hospital at Udyogamandal. Pursuant to the contract Appellant transported the X-ray unit from Goa where it was manufactured to Kerala under cover of an invoice. The goods were detained at the boarder Check Post in Kerala for the reason that there is attempt of evasion of tax in respect of the goods under transport. However, Petitioner''s contention was that goods were manufactured and transported pursuant to order for sale which involves installation also. The lower authorities including the Tribunal held that the contract provides for local supply and installation and in fact billing itself is required to be done after the X-ray unit is installed. So much so, Respondent''s case is that this is a case of local sale in Kerala. The Tribunal, however, held that since billing is done after installation of the X-ray unit which is part of the contract, the turnover of the X-ray unit should be assessed to tax in Kerala. It is against this order of the Tribunal the Petitioner has filed this revision.

2. During hearing counsel for the Petitioner has relied on several decisions of the Supreme Court and particularly in Bharat Heavy Electrical Limited etc. Vs. Union of India and Others etc., . Another decision relied on by the Petitioner is that of this Court in Petitioner''s own case, Siemens Ltd. Vs. State of Kerala and Another, . Government Pleader on the other hand relied on Division Bench judgment of this Court in State of Kerala v. Unitech Machines Ltd. reported in 2010(2) KHC 330(DB) and in Dosal Ltd. v. State of Kerala reported in (2010) 18 KTR 211 and contended that the transaction is a local sale in Kerala and is assessable as turnover on works contract.

3. After hearing both sides what we notice is there is no coordination between the Assessing Officer and the Intelligence Wing of the Department because the turnover is not considered in the assessment order issued to the Petitioner. Similar is the position with regard to awarder which is another Government agency which does not even collect tax on works contract and that is the reason why Petitioner could claim the transaction as part of CST turnover and claimed exemption. Of course even the Petitioner did not produce the contract or agreement for the supply and installation of X-ray unit which was issued by the Government Department. The question of assessability of the turnover was not considered in assessment which has already become final. Therefore, the fact remains that without even assessing the turnover as taxable in the course of assessment completed on the Petitioner, the department has chosen to levy penalty for alleged attempted evasion of tax. We do not find any merit in the case of the Revenue and in our view, the issue is squarely covered by decision of the Supreme Court in Bharat Heavy Electricals case and that of this Court in Petitioner''s own case referred above. Following the said judgments, we allow the revisions by vacating the orders of penalty confirmed by the Tribunal.