(2002) 07 KL CK 0101

In the High Court Of Kerala

Case No : O.P. No''s. 6676 of 2002 (T) , 6677, 10324 and 10325 of 2002

Skipper Steel Ltd. APPELLANT

Vs

Sales Tax Inspector and Others RESPONDENT

Date of Decision : 08-07-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 29
Kerala Tax on Entry of Goods into Local Areas Act, 1994 — Section 3
Kerala Tax on Entry of Goods into Local Areas Rules, 1994 — Rule 4(1), 4(2), 4(2A), 4(5)

Citation : (2003) 130 STC 156

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

Bench : Single Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Raju Joseph, Special Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The petitioners in this batch of cases are suppliers of tapered steel tubes to BSNL. The BSNL has issued purchase orders to the factory of the petitioners located in Calcutta, wherefrom the items are despatched to the destination of BSNL in Kerala. The goods were detained at the check-post, Walayar, Palakkad, demanding entry tax as check-post authorities felt that the item fell under declared goods and therefore liable to entry tax. In some cases, entry tax was paid, and in some others under orders of this Court, the goods were released to the petitioners but at the same time this Court directed the BSNL to retain 4 per cent of the bill amount,

2. I heard the learned counsel for the petitioners and the Special Government Pleader for the State. The contention of the petitioners is that the items are custom made and are telephone poles used by BSNL. These are not declared goods falling under the Second Schedule and therefore there is no liability for entry tax. Counsel for the petitioners also questioned the jurisdiction of the Sales Tax Inspector of the check-post to detain the goods and demand entry tax prior to the entry of the goods into Kerala. The petitioner''s counsel also relied on the

purchase order issued by the BSNL which is in a standard form in all the cases. On the other hand, the Special Government Pleader submitted that the items are declared goods and therefore entry tax is payable. The nature of transaction is not very clear from the documents used for transport. If the transaction was treated as an inter-State sale, the petitioners should have charged Central sales tax. The purchase order contains a clause which says that the value of the goods includes sales tax, entry tax, etc. In other words the price is inclusive of taxes. Counsel for the petitioners contended that this does not indicate that there is liability for entry tax which is statutory. The clause, according to him, is therefore only applicable, if entry tax is in fact payable.

3. Admittedly entry tax is attracted to the goods, if the item falls within the Second Schedule to the KGST Act. Second Schedule takes in custom made goods also, because the steel tubes and various other items can be made for the requirement of customers. The Supreme Court has held that the rate of tax on declared goods supplied under works contract attracts tax at 4 per cent only. These matters, of course, have to be examined by the concerned authority. Further if there was no inter-State sale, but only local sale by delivery, then local sales tax is payable. In view of the nature of contentions raised, I feel the matter can be decided only after ascertaining the nature of items and whether the items fall under the Second Schedule to the Act and consequently whether they are liable for entry tax or sales tax. I am of the view that the matter has to be adjudicated by the sales tax officer/entry tax officer. Since the petitioners have "no place of business, the entry tax officer, in-charge of the check-post, is to adjudicate the matter. In the circumstances, I direct the Sales Tax Officer-in-charge of the check-post to issue notice to the petitioners, and adjudicate the matter after hearing the petitioners.

4. Counsel for the petitioners has pointed out that no officer has jurisdiction to adjudicate the matter since petitioners have no place of business in Kerala. But the Special Government Pleader pointed out that wherever the dealer is registered, the particular Sales Tax Officer acts as an entry tax officer. I feel the proposition of counsel for the petitioners cannot be accepted. So long as the statute authorises levy of tax and every area is covered by jurisdiction of an entry tax officer, it cannot be said no officer has jurisdiction to levy entry tax under the Act and since the petitioners have no place of business in Kerala the officer-in-charge of the check-post will have jurisdiction to levy entry tax because entry of goods into local area took place within his area of jurisdiction. Therefore, as and when the goods enter the State the officer-in-charge of border check-post can assess and demand entry tax.

5. Sub-rule (2A) of rule 4 of the Entry Tax Rules makes it clear that every importer other than those falling under Sub-rules (1) and (2) shall, at the time of entry into any local area, file a return in form No. 2B, in duplicate before the officer-in-charge of the check-post established u/s 29 of the KGST Act. Therefore while Rule 4(1) provides for dealers registered under the KGST Act, sub-Rule (2)

provides for vehicles registered under the Motor Vehicles Act. For other "importers" jurisdiction is on the officer-in-charge of the check-post through which the goods are imported to the State. Counsel for the petitioners has pointed out that Sub-rule (5) of Rule 4 deals with assessment, if no return is submitted. In such case also, the normal procedure for assessment has to be followed by the check-post authorities by issuing notice, hearing the party and deciding the matter thereafter.

6. In the circumstances, the petitioners will approach the check-post officer, Walayar, with a copy of this judgment, and the check-post officer will issue notice to the petitioners and after hearing the petitioners adjudicate the matter. Until adjudication is made by the check-post officer the BSNL will retain 4 per cent of the bill amount payable to the petitioners towards entry tax, and the petitioners will be paid only the net amount. In respect of future transactions, the petitioners will be permitted to transport the goods on the petitioners furnishing bank guarantee from branches of nationalised banks in Kerala. On adjudication if it is found that the petitioners are not liable to pay entry tax, then the amounts collected will be refunded to the petitioners without delay.

O.Ps. are disposed of as above.

Order on C.M.P. Nos. 11776 and 21029 of 2002 in O.P. No. 6676 of 2002 dismissed.

