
(2009) 06 KL CK 0163
In the High Court Of Kerala
Case No : S.T. Rev. No. 121 of 2009

State of Kerala

APPELLANT

Vs

Godrej Appliances Ltd.

RESPONDENT

Date of Decision : 08-06-2009

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 32(13C)

Citation : (2009) 3 KLT 554 : (2010) 29 VST 247

Hon'ble Judges : C.N. Ramachandran Nair, J;C.K. Abdul Rahim, J

Bench : Division Bench

Advocate : Mohammed Rafiq, Government Pleader, for the Appellant;

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The State has filed this revision challenging the order of the Tribunal passed in a review application filed by the respondent for the assessment year 1998-99. On going through the orders produced we notice that the respondent is a manufacturer of goods effecting first sales in Kerala, and collecting and remitting tax at the rate of 10 per cent on first sale of goods covered by the Fifth Schedule to the Act. In assessment, concessional rate of 10 per cent was declined and assessment was made at full rate of 12.5 per cent which includes tax payable at the point of last sale also, for the reason that the respondent has not produced form 25A in terms of Rule 32(13C) of the Kerala General Sales Tax Rules, 1963. The Tribunal originally dismissed the appeal filed by the respondent-assessee. However, while considering the same issue in the respondent's case for later year, the Tribunal came to the conclusion that form 25A is not required to be furnished by a dealer if he is first seller of goods falling under the Fifth Schedule. Since contradictory view was taken by the Tribunal later, the respondent filed review application which was allowed by the Tribunal reversing their earlier order and allowing the claim which is consistent with the later year's order. The later year's order in favour of the assessee was not contested by the Revenue. It is stated in this revision that revision was not filed

against that order before this Court because the amount of tax involved is not considerable. Two questions arising for consideration are whether the Tribunal was justified in reviewing their earlier order and allowing the claim of the assessee and whether on the merits the Tribunal was justified in holding that form 25A is not required to be furnished by the assessee, who was admittedly the first seller of the goods falling under the Fifth Schedule to the Act.

2. In order to consider the questions we have to refer to Rule 32(13C) of the Rules which is extracted hereunder for easy reference:

32. (13C) Every dealer in goods taxable at the point of first sale and last sale which are coming under the Fifth Schedule to the Act, shall, if he is not liable to tax on such goods by reason of his not being the first seller or the last seller of the goods in the State, obtain a declaration in form No. 25A from the purchasing dealer. The declaration so obtained shall be submitted to the assessing authority on or before 15th of the month succeeding to which the sales relate along with a statement of such declarations showing the name and address of the dealers to whom the goods were sold with the particulars of sale bill, quantity and value and the total turnover covered by such declarations.

3. Fifth Schedule items are taxable at the point of first sale as well as at the point of last sale. However if the first sale happens to be to any person other than a registered dealer, full rate of tax is payable. The commodities involved in the case of the respondent are refrigerator, and microwave oven which are taxable at the point of first sale at 10 per cent and at the point of last sale at the rate of 2.5 per cent. It is clear from the assessment that the respondent-assessee being a manufacturer made first sale of the commodity within the State to registered dealers, collecting and remitting tax at the rate of 10 per cent. They did not obtain form 25A from the purchasers and produce the same, which has resulted in assessment at the full rate of tax, that is, 12.5 per cent. On going through the above rule we notice that form 25A is provided for registered dealers to claim exemption on their sales of commodities falling under the Fifth Schedule to the Act. It is specifically provided that those dealers paying tax at the point of first sale or last sale of the commodity need not produce form 25A, which only means that the said form provided is to claim exemption by dealers who deal with the commodity between the first sale and last sale. In other words dealers other than those engaged in first sale and last sale are required to furnish form 25A for the purpose of claiming exemption. So far as the respondent's sales to registered dealers in Kerala are concerned, if the Department wants to trace the purchasers to ensure tax payment at last sale point, they can do so by verifying the sale bills issued by the respondent. Even if form 25A was obtained and produced by the respondent, the same would have served the very same purpose of getting details of the purchasers who are registered dealers in the State. In other words, in our view, the sale bills will serve the purpose of form 25A, when the first sale is to a registered dealer in the State. We therefore find that the later order of the Tribunal allowing the claim in favour of the respondent-

assessee is correct and is in accordance with Rule 32(13C) of the Rules. The first order of the Tribunal issued for this year was patently wrong as it was against the express provision in the rule. There is nothing wrong in the Tribunal correcting it through review proceedings.

4. We therefore hold both the issues in favour of the assessee and dismiss the tax revision filed by the State.