(2006) 08 KL CK 0085

In the High Court Of Kerala

Case No : S.T. Rev. No. 341 of 2004

State of Kerala APPELLANT

Vs

Sterling Farm Research Service (P) Ltd. RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Citation : (2009) 20 VST 658

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

Bench : Division Bench

Advocate : V.V. Asokan, Special Government Pleader, for the Appellant; A. Kumar, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised in the Depart-mental revision case is whether the Sales Tax Appellate Tribunal is justified in upholding claim of sales tax exemption on the respondent''s product marketed in the name "Neopeat". The counsel for respondent produced a sample copy of the product which is made of coir pith or coir fibre dust with short length fibres. In the course of defibreing coir pulp, substantial quantity of dust or coir pith is obtained. Long length fibres are recovered and the dust with broken fibre pieces are bonded together and marketed by the respondent under the brand name "Neopeat". The Coir Board certified the product as coir pith coming under entry 17 of the Third Schedule to the Kerala General Sales Tax Act, 1963 and based on it, respondent claimed exemption from sales tax, which was declined. However, the Tribunal allowed the claim of exemption based on the certificate issued by the Coir Board.

2. The learned Special Government Pleader appearing for the petitioner contended that the item is not organic manure as listed in entry 17 of the KGST Act and, therefore, not entitled for exemption. The learned Counsel for respondent, on the other hand, contended that though the item does not fall under entry 17, the same will fall under entry 24 and hence exempt from tax.

3. In order to appreciate the alternate contentions, we have to refer to entry 17

and entry 24 of the Third Schedule to the KGST Act which provide for exemption of certain goods from sales tax. The said entries are extracted hereunder for easy reference:

17. Cow dung, wood ash, poultry manure, Green manure, compost, town compost, fish manure and organic manure including neem cake and crushed neem fruit other than those specifically mentioned in the First Schedule.

Explanation.--The term "Organic Manure" referred to in this entry shall mean only the manure produced or derived naturally from plants or animals or from both.

24. Green or soaked husk, coconut fibre, coir and coir products other than rubberised coir fibre foam.

4. Wikipedia, the free Encyclopedia describes waste and by-products of coir as follows:

Coir fibres make up about 1/3 of the coconut pulp. The other 2/3 is called the pith or dust, it is biodegradable but takes 20 years to decompose. Once considered useless it is now being used as mulch, soil treatment and a hydroponic growth medium.

5. What is easily not decomposable and what remains stable for twenty years, cannot be said to be organic manure comparable to the items specified in entry 17. Moreover, organic manure itself was introduced in the Schedule only by Act 7 of 2001 with effect from July 23, 2001 which is much after the year for which the assessment in question arose. However, even though the respondent''s argument that the item is exempt as organic manure is unacceptable, we are of the view that the item will fall under entry 24 of the Third Schedule referred to above which provided for exemption to all coir and coir products other than rubberised coir fibre foam. If all coir products are granted'' exemption, we see no reason why a by-product or dust product should not be declined exemption. The intention of the Legislature to grant exemption to anything and everything purely made from coir and coconut husk, is clear from the above entry and all what is intended to be taxed is rubberised coir products. In such circumstances, respondent''s product which is a by-product of coconut husk, is entitled to exemption under entry 24 of the Third Schedule to the KGST Act. We, therefore, uphold the order of the Tribunal for the reasons stated above and dismiss the S.T. revision case.

