(2010) 08 KL CK 0034

In the High Court Of Kerala

Case No : S.T. Rev. No. 21 of 2007

State of Kerala APPELLANT

Vs

Universal Gloves (P) Ltd. RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 4 KLT 781 : (2011) 41 VST 384

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Mohammed Rafeeq, Government Pleader, for the Appellant; V.M. Kurian, Mathew B. Kurian and K.T. Thomas, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Heard Government Pleader and counsel appearing for the Respondent-Assessee. The question raised is whether the Tribunal was justified in granting exemption to the Assessee on the purchase turnover of rubber latex used in the manufacture of gloves for export. Respondent-Assessee is an industrial unit in the Cochin Export Processing Zone and the purchase of latex is also made from another unit in the Cochin Export Processing Zone. Notification, S.R.O.1727 of 1993 entitles exemption for export-oriented units for purchase of industrial raw materials for use in manufacture. The notification provides for exemption to the seller on producing declaration obtained from the purchasing unit to the effect that purchase is for use in the manufacture of goods for export. However, in this case, seller of rubber latex is not liable for tax because the item is taxable at the last purchase point, and purchaser being manufacturer happens to be liable to pay tax at the point of last purchase if exemption is not available. Department has no case that the item purchased is not used in the manufacture of rubber gloves for export. So much so, the condition in the notification is satisfied and the disallowance of exemption is only on technical ground that declaration contemplated under the notification has no application. We do not think on this technical ground exemption can be disallowed. In our view, declaration applies only to commodities which are taxable at sale point and the same does not apply to commodities taxable at last purchase where tax liability falls on the industrial unit itself if exemption is not available. In this case, Respondent is eligible for exemption if they prove the ingredients of the notification with evidence that the item purchased, i.e., rubber latex, is used in the manufacture of gloves for export. Since the department has no case to the contrary, we uphold the order of the Tribunal and dismiss the revision filed by the State.