(2011) 12 KL CK 0034

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 109, 110, 111, 112, 113, 114, 115 and 116 of 2011

Telsa Marketing Private Limited APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:
Kerala General Sales Tax Act, 1963 — Entry 135

Citation : (2012) 56 VST 349

Hon'ble Judges : K. Vinod Chandran, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Devan Ramachandran and Aswin Gopakumar, for the Appellant; Bobby John, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether the Sales Tax Appellate Tribunal was justified in holding that the hydraulic tipping system sold by the petitioner attracts sales tax as an accessory of motor vehicle at the rate of eight per cent under entry 135 of the First Schedule to the Kerala General Sales Tax Act (hereinafter called, "the Act"). We have heard counsel for the petitioner and Government Pleader for the respondents. The petitioner is a dealer of hydraulic tipping systems manufactured by Wipro Infrastructure Engineering. The item is used for attachment beneath the body of trucks for lifting and dumping articles. In fact it is the functional equipment attached to tipper lorries engaged in transport of goods. The advantage of the tipper system is mechanical unloading of goods by lifting the body through the hydraulic tipping system. While the assessing officer classified the item under entry 135, the petitioner''s case is that the item falls under entry 157(2) of the First Schedule to the KGST Act. Since controversy is on the classification of the item, we extract hereunder the relevant entries:

2. The assessing officer, first appellate authority and the Tribunal concurrently found that the item sold by the petitioner is an accessory attached to lorries to make the trucks operationally tipper lorries. It is common knowledge that a

tipper lorry is a common category of vehicles used for transport of goods like earth, stones, rubble, waste, etc., and it''s advantage is unloading of goods by the mechanical device which is the hydraulic system attached beneath the body and is operated from the driver''s cabin by the driver. During hearing, counsel for the appellant produced leaflet of the item, namely, hydraulic tipping system, manufactured by the manufacturer, Wipro Infrastructure Engineering. We notice that the publication of the manufacturer with pictures itself is under the head "truck hydraulic solutions" and in all the pictures given in the colour leaflet what is seen is the single piston, double piston hydraulic system attached to trucks to lift the body for the purpose of unloading the goods. Therefore, there is no controversy about the use of the item as one attached to trucks to make it a tipper truck. All the three authorities concurrently found that the hydraulic tipper system is an accessory attached to trucks for easy mechanical unloading of goods without the engagement of human agency. Even though the contention of counsel for the petitioner is that the same hydraulic system can be attached to cranes and other earth moving equipments, we do not think any such use will render the tipping system used as an attachment to trucks anything other than an accessory of automobiles. The further contention raised by counsel is that entry 157(ii) takes in components of earth moving machinery, cranes, etc., and hydraulic system is used in these equipments. No doubt, hydraulic system may be used in earth moving equipments, cranes, etc. However, what we notice is that the petitioner does not have a claim that they are selling the item to any one for use in cranes or in earth moving equipment or in any other machinery referred to in entry 157(ii). The only question raised before all the authorities is whether the hydraulic tipping system sold by the petitioner which is manufactured by Wipro Infrastructure Engineering is assessable as an accessory of automobile or not. As already stated, from the leaflet produced in court, the manufacturer whose agent/dealer petitioner is, is Wipro, manufacturing and selling hydraulic tipping system for use only in trucks. So much so, we do not find any merit in the contention of the petitioner that the item falls within the description of components under entry 157(ii) above stated. In fact, the type of hydraulic system used in trucks and in cranes or other earth moving equipments are different types. If any hydraulic lifting and downing system is used in any crane or earth moving machinery, certainly it can be treated as a component of such item. However, in this case we do not find any scope for considering this issue because the petitioner is an exclusive dealer only in hydraulic tipping system manufactured by Wipro which is engaged in manufacture of the system only for use in truck. Consequently we see no merit in the revision cases and the same are accordingly dismissed.

