

# KERALA HIGH COURT

Odi Rubber Ltd

Vs

State of Kerala

(K.S. Paripoornan, J.)

18.07.1990

## JUDGEMENT

**K. S. Paripoornan, J.**

( 1. ) THESE are connected cases. The same assessee is the revision-petitioner in both these revisions. The petitioner is a company carrying on the business of manufacture of automobile tyres, tubes, etc. , at Modinagar with the branch office at Ernakulam. One of the products sold by it is rubber flaps. It is stated to be a sheet of rubber used for placing between the metal rim of the wheel and the rubber tube inside the tyre of a motor vehicle so as to give better protection to the tube from damage. THESE flaps are usually used for heavy vehicles. We are concerned with the assessment years 1982-83 and 1983-84. Originally, the assessment were made treating the rubber flaps manufactured and sold by the revision-petitioner as a rubber product coming within entry 39 of the First Schedule to the Kerala General Sales Tax Act, 1963 ("the KGST Act"), viz. , "rubber products other than those specifically mentioned in the Schedule". It was so taxed at the point of first sale at the hands of the dealer at 8 per cent. It is seen that the Deputy Commissioner of Sales Tax initiated suo motu revision, for both the years, under section 35 of the KGST Act and took the view that rubber flaps will come within entry 138 of the First Schedule to the KGST Act - "motor vehicles, motor vessels. . . . and spare parts and accessories thereof" and taxable at the first point of the sale by a dealer at 15 per cent. He, therefore, set aside the assessments and directed the assessing authority to make fresh assessments in the light of the order passed in the revisions. The assessee carried the matter in appeals before the Sales Tax Appellate Tribunal and assailed the decision of the Deputy Commissioner of Agricultural Income-tax and Sales Tax, dated July 18, 1988. The Appellate Tribunal heard the appeals and passed a common order dated October 11, 1988. It took the view that under entry 138 of the First Schedule to the KGST Act, accessories of motor vehicles or accessories of spare parts of motor vehicles will come under the said entry. It was also held that rubber flap, even if held not to be part of a motor vehicle, is at least an accessory of a spare part, i. e. , wheels of motor vehicle. It was concluded that rubber flap are accessories of the wheels of the motor car, since it increases the effectiveness of the wheel. So it was held that the decision of the Deputy Commissioner, holding that rubber flaps

will come within entry 138 of the First Schedule to the KGST Act, did not merit interference in the appeals. The assessee has thereafter come up in revisions before this Court.

( 2. ) WE heard counsel for the revision-petitioner, Mr. Pathrose Mathai, as also counsel for the respondent-Revenue, Mr. N. N. Divakaran Pillai. WE will extract the relevant entries, in order to understand their true import. " THE FIRST SCHEDULE Goods in respect of which single point tax is leviable under sub-section (1) or sub-section (2) of section 5.-----

----- Sl. Description of goods Point of levy Rate of No. tax -----  
----- 39. Rubber products other At the point of 8 than  
those specifically first sale in the mentioned in this State by a dealer Schedule. who is liable to  
tax under section 5. 138. Motor vehicles, motor At the point of 15. " vessels, motor engines, first  
sale in the chassis of motor vehicles, State by a dealer trailers, motor bodies who is liable to built  
on the chassis of tax under section 5. motor vehicles, bodies built for motor vessels, or engines,  
and spare parts and accessories thereof.-----

- According to the revision-petitioner, rubber flaps will come only within entry 39 of the First Schedule to the KGST Act. The Revenue contends that rubber flaps will come only within entry 138 of the First Schedule to the KGST Act. We are of the view that the Sales Tax Appellate Tribunal misconstrued the relevant entries and committed an error of law. Admittedly, rubber flaps manufactured and sold by the revision-petitioner is a "rubber product". Entry 39 of the First Schedule to the KGST Act deals with rubber products. The only question is whether rubber flaps manufactured and sold by the revision-petitioner are specifically mentioned in the Schedule. Admittedly, it is not so. If so, the rubber flaps manufactured and sold by the revision-petitioner will, on a plain reading of the entry, be taken in by entry 39 of the First Schedule to the KGST Act as a rubber product other than those specifically mentioned in the Schedule. Counsel for the Revenue submitted that rubber flaps manufactured and sold by the revision-petitioner are accessories of the spare parts of motor vehicles, specified in entry 138 of the First Schedule to the KGST Act. We are of the view that entry 138 refers to motor vehicles, motor vessels, motor engines, etc. , and spare parts and accessories thereof, which means spare parts of motor vehicles, motor vessels, motor engines, etc. The words "accessories thereof" in entry 138 of the First Schedule have reference to motor vehicles, motor engines, etc. , and not the "spare parts", immediately preceding the words occurring in the entry. The Appellate Tribunal was in error in holding that rubber flaps manufactured and sold by the revision-petitioner are accessories of spare parts of motor vehicles, coming under entry 138 of the First Schedule to the KGST Act. The construction of the relevant entries by the Appellate Tribunal is a palpable error.

( 3. ) WE are satisfied that the rubber flaps manufactured and sold by the revision-petitioner will come only under entry 39 of the First Schedule to the KGST Act. WE set aside the order of the Appellate Tribunal in T. A. Nos. 556 and 557 of 1988 dated October 11, 1988 and restore the order of the assessing authority. The above tax revision cases are allowed. Petitions allowed. . ;