
(1987) 03 RAJ CK 0042

In the Rajasthan High Court

Case No : S.T. Revision No. 81 of 1987 (old No. 4 of 1980)

Assistant Commercial Taxes Officer

APPELLANT

Vs

Bikaner Hotel

RESPONDENT

Date of Decision : 11-03-1987

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 5

Citation : (1988) 1 RLW 371 : (1987) 67 STC 414 : (1988) 1 WLN 385

Hon'ble Judges : J.S. Verma, C.J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; R.C. Ghiya, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

J.S. Verma, C.J.—This is a revision by the department in accordance with the newly substituted Section 15 of the Rajasthan Sales Tax Act, as amended by the Amendment Act of 1984. The only question for decision is, whether a "thal" containing entire meal sold by the assessee as a composite unit falls within the ambit of the Notification No. F. 6(16)FD(CT)/69-3 dated 8th March, 1969, so that the individual items constituting the meal are not required to be separated for determining the tax liability of these constituents separately. The material facts are stated hereafter.

2. The petitioner carries on the business of selling meals to customers in "thals" for which the rate was Rs. 1.80 per meal during the relevant assessment periods of 1968-69 and 1969-70. The assessing authority came to the conclusion that supply of meals in "thals" fell within the ambit of the aforesaid notification dated 8th March, 1969, and was, therefore, to be taxed accordingly. The assessee being aggrieved by that order preferred an appeal which was dismissed by the appellate authority. Thereafter, the assessee filed a revision before the Tribunal. It was contended before the Tribunal that the meal served in "thal" by the assessee consisted of rice, dal, chapati, vegetable curry, pepper and onions for

which a sum of Rs. 1.80 was charged per "thal"; and since some of these items were individually exempted from tax, sale of the same as a constituent of the meal was not taxable. The Tribunal after holding that the sale made by the assessee was of a meal served in a "thal", further held that several constituents of this meal being exempt from tax had to be excluded while assessing the tax payable on the meals. The case was, therefore, remanded to the assessing authority by the Tribunal for a fresh assessment in this manner. Aggrieved by the view taken by the Tribunal, a reference was made to this Court at the department's instance for deciding the aforesaid question of law. During the pendency of this reference, a new Section 16 was substituted in the Act as a result of which this matter is being heard and decided as a revision against the Tribunal's order.

3. The aforesaid notification dated 8th March, 1969 has been issued by the State Government under the second proviso to Section 5 of the Act. The relevant portion of this notification reads as under :

S. O. 30.-In exercise of the powers conferred by Sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954), the State Government being of the opinion that it is expedient in the public interest to do so, hereby cancels the Finance (Revenue and Economic Affairs) Department Notification No. F. 6(140) FD (RT)/63, dated April 21, 1964 (S. No. 77).

4. And in pursuance of the second proviso to Section 5 of the said Act, the State Government notifies that-

(i) Halwais, and

(ii) Keepers of hotels, restaurants, refreshment rooms and other eating establishments, tea stalls and the like,

shall pay tax on their taxable turnovers of Deshi Sweetmeats, Namkins, meals, cooked foods, non-alcoholic cold and hot drinks and beverages, snacks and ice-creams, hereinafter referred to as the said goods, at the following scale, namely :-

(i) those whose annual gross turnover does not exceed Rs. 30,000 ... Nil.

(ii) those whose annual gross turnover exceeds Rs. 30,000, for every completed Rs. 6,000 of taxable turnover in respect of the said goods...Rs. 100.

5. It is clear from the notification and the context in which the word "meals" has been used therein that a "thal" of the kind supplied by the assessee to its customers containing a full meal must fall within its ambit. Ordinarily, a meal means composite preparations which together constitute a meal or food taken at a regular eating time. This is how the expression has to be understood in its ordinary sense, and there is nothing to indicate that the word "meals" used in the aforesaid notification has any different meaning. It is not a case where several constituents which together constitute a meal supplied in a "thai" have

been sold as individual items in order to retain the distinct identity as an individual item and are not to be treated collectively as a meal. Any other provision relating to the sale of any of these constituents as an individual item would not, therefore, apply to the meal served in a "thal" by the assessee, which falls within the ambit of the aforesaid notification dated 8th March, 1969. This conclusion finds support from the decisions in AIR 1952 SC 336 (para 14) (State of Bombay v. Virkumar) and [1970] 26 STC 43 (MP) (Commissioner of Sales Tax, M.P. v. India Coffee Workers' Co-operative Society Ltd., Jabalpur).

6. As a result of the above discussion, it follows that the Tribunal was right in first coming to the conclusion that the supply of these items in a "thal" constituted a meal, but it was not justified in thereafter holding that the constituents had to be taxed separately as individual items and not collectively as a meal in accordance with the aforesaid notification dated 8th March, 1969. Before parting with the case, I must record my appreciation for the assistance rendered by Mr. R.C. Ghiya as amicus curiae.

7. Consequently, the revision is allowed in the aforesaid manner. No order as to costs.