(1989) 01 RAJ CK 0002

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 705 of 1987

Assistant Commercial Taxes Officer APPELLANT

Vs

Kwality Restaurant RESPONDENT

Date of Decision : 17-01-1989

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 15(2)

Citation : (1989) 74 STC 264

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

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant;

Final Decision : Dismissed

Judgement

Jagdish Sharan Verma, C.J.—This is a revision u/s 15(2) of the Rajasthan Sales Tax Act, 1954, against the order dated April 23, 1987, passed by the Rajasthan Sales Tax Tribunal, in an appeal against the order of the assessing authority.

2. This revision is similar to Assistant Commercial Taxes Officer v. Laxmi Misthan Bhandar (1988) 25 STL 123 (Raj) and the period of assessment in this case also is prior to 2nd February, 1983, on which date the Forty-sixth Amendment to the Constitution came into force. The Tribunal has held that sales and services by restaurants, canteens, etc., made prior to 2nd February, 1983 are not taxable unless tax has been collected from the customers specifically on bills and deposited, or arrears of it remains due to be deposited on account of any competent order. It was held by me in the aforesaid decision in Laxmi Misthan Bhandar''s case (1988) 25 STL 123 (Raj) as under :

The only matter for decision herein is with regard to the transactions prior to 2nd February, 1983 relating to serving food, snacks and beverages, etc., for consumption by the assessees all of which are restaurants, canteens, eating houses, etc. To this category of assessees and to such transactions Sub-section (2) of Section 6 of the Constitution (Forty-sixth Amendment) Act, 1982 clearly provides exemption where the tax has not been collected on such supply between the period specified therein. It is only such transactions and by such assessees for this period prior to 2nd February, 1983 that the Tribunal rendered its decision by the impugned order. Sub-section (2) applies ''notwithstanding anything contained in Sub-section (1)'' which means that even if the tax liability arises by virtue of Sub-section (1) the exemption would be available to the assessees in respect of the tax not collected for such supply during the specified period.

3. Following the above decision, it must be held that the Tribunal''s order in the present case also has to be understood as indicated herein and the tax liability of the assessee has to be determined accordingly.

4. Consequently, the revision is dismissed subject to the above observations.

