
(1988) 04 RAJ CK 0028

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 24 of 1987

Assistant Commercial Taxes Officer

APPELLANT

Vs

Laxmi Misthan Bhandar

RESPONDENT

Date of Decision : 20-04-1988

Acts Referred:

Constitution of India, 1950 — Article 269, 286, 366

Citation : (1989) 74 STC 260

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

Bench : Single Bench

Advocate : P.K. Bhansali, for the Appellant; D.S. Shishodia, for the Respondent

Final Decision : Dismissed

Judgement

J.S. Verma, C.J.—This order shall also dispose of S.B. Sales Tax Revision Petitions Nos. 25 of 1987, 26 of 1987, 27 of 1987, 28 of 1987, 40 of 1987, 36 of 1987, 37 of 1987, 38 of 1987, 39 of 1987, 41 of 1987, 46 of 1987, 47 of 1987 and 45 of 1987 all of which involve for decision the same point.

2. These revisions are against the common order dated 14th April, 1986 passed by the Rajasthan Sales Tax Tribunal in a bunch of appeals involving one common question which has been mentioned in the Tribunal's order as under :

This set of appeals relating to the sales of eatables being dealt with, under this order, have one thing in common. They all relate to the period prior to 2nd February, 1983 on which the 46th Amendment to the Constitution came into effect. The assesseees in all these cases are restaurants/canteens/eating houses serving food, snacks and beverages as their only or substantial business.

3. The gist of the Tribunal's order is that it holds that sales and services by restaurants/canteens, etc., made prior to 2nd February, 1983 are not taxable unless tax had 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. Aggrieved by this decision of the Tribunal, the department has

preferred these revisions.

4. In my opinion, the point for decision involved in these revisions can be decided merely on the basis of Sub-section (2) of Section 6 of the Constitution (Forty-sixth Amendment) Act, 1982 which came into force with effect from 2nd February 1983. This provision reads as under :

(2) Notwithstanding anything contained in Sub-section (1), any supply of the nature referred to therein shall be exempt from the aforesaid tax-

(a) where such supply has been made, by any restaurant or eating house (by whatever name called), at any time on or after the 7th day of September, 1978 and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time ; or

(b) where such supply, not being any such supply by any restaurant or eating house (by whatever name called), has been made any time on or after the 4th day of January, 1972 and before the commencement of this Act and the aforesaid tax has not been collected on such supply on the ground that no such tax could have been levied or collected at that time :

Provided that the burden of proving that the aforesaid tax was not collected on any supply of the nature referred to in Clause (a) or, as the case may be, Clause (b), shall be on the person claiming the exemption under this sub-section.

5. It is obvious from the above extract of the Tribunal's order mentioning the facts that the point in controversy relates only to the sales of eatables in restaurants, canteens, eating houses serving food, snacks and beverages for consumption therein prior to 2nd February, 1983, the date with effect from which the Constitution (Forty-sixth Amendment) Act, 1982 came into force. The decision herein is, therefore, confined only to such sale transactions by such assesseees and no more. The question, whether such transactions amounted to "sales" liable to sales tax according to the provisions of various State laws was debatable for quite some time and came to be settled by the Supreme Court decisions in Northern " India Caterers" cases reported in [1978] 42 STC 386 and [1980] 45 STC 212. To overcome the difficulty faced in taxing such sales as a result of the decisions of the Supreme Court, the Constitution (Forty-sixth Amendment) Act, 1982 was enacted which came into force with effect from 2nd February, 1983. By this Amendment Act, Articles 269, 286 and 366 were amended and the Seventh Schedule to the Constitution was also amended by adding an entry in the Union List. Section 6 of the Act provides for validation and exemption. Sub-section (1) of Section 6 contains the validation clause, while Sub-section (2) therein provides for exemption in certain situations "notwithstanding anything contained in Sub-section (1)". Sub-section (3) provides for removal of certain doubts as mentioned therein.

6. In support of the Tribunal's order learned counsel appearing for the assesseees

made a twofold submission. Their first submission is that Sub-section (1) of Section 6 of the Constitution (Forty-sixth Amendment) Act, 1982 which contains a validation clause does not have the effect of permitting imposition of sales tax on these sale transactions by such assesseees even as a consequence of the validation made thereby, inasmuch as, the Rajasthan Sales Tax Act prior to its amendment in 1987 did not permit levy of sales tax on any such transaction. The other submission is that even if the net of Sub-section (1) of Section 6 be wide enough to permit such a tax to be levied in respect of such transactions by such assesseees for the period prior to 2nd February, 1983, the exemption granted under Sub-section (2) of Section 6 is sufficient to relieve these assesseees of this tax liability. In my opinion it is not necessary in this revision to consider and decide the merits of the first contention, inasmuch as the same does not arise out of the Tribunal's order and even otherwise the other submission based on Sub-section (2) of Section 6 is sufficient to grant relief claimed by the assessee as indicated earlier.

7. It may be reiterated that the scope of this revision is indicated by the scope of the appeals disposed of by the common order passed by the Tribunal which has already been extracted above. 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 assesseees all of which are restaurants, canteens, eating houses, etc. To this category of assesseees 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 assesseees 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 assesseees in respect of the tax not collected for such supply during the specified period. All such transactions during the specified period being exempt in this manner, the assessee ultimately gets the benefit and, therefore, it is unnecessary to consider and decide the larger question which apparently was not raised, considered or decided at any stage earlier. It may however be clarified that it would be open to the assessee to raise that question, in case on the facts of a particular case, the same arises and the benefit under Sub-section (2) of Section 6 is not available and unless Sub-section (1) thereof relieves the assessee of the tax liability, the assessee would otherwise be liable.

8. I may add that even though the Tribunal's conclusion appears to be the same as understood by me yet several parts thereof may be either debatable or ambiguous. The Tribunal's order has, therefore, to be understood as indicated herein and the tax liability of the assessee in each case has to be determined accordingly.

9. These revisions are, therefore, dismissed subject to the above observations.

10. No costs.