(1993) 06 KL CK 0045

In the High Court Of Kerala

Case No : T.R.C. No''s. 60 and 63 of 1992

Basheer APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 18-06-1993

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 5

Citation : (1993) 06 KL CK 0045

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : K.C. Balagangadharan, for the Appellant; V.C. James, Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—The same person is the Petitioner in both the revisions. He is a dealer in bakery products, tobacoo products, etc. He is a dealer under the Kerala General Sales Tax Act. The Revenue is the Respondent in both the revisions. We are concerned with the assessment years 1986-87 and 1987-88. The Assessee returned a taxable turnover of Rs. 6,664.35 for 1986-87 and Rs. 20,516.90 for 1987-88. The Sales Tax Officer rejected the returns and assessed the dealer on a taxable turnover of Rs. 27,010 and Rs. 61,290 respectively. The appeals filed by the deader before the Appellate Assistant Commissioner were dismissed. In second appeals (T.A. Nos. 142 and 143 of 1991), the Sales Tax Appellate Tribunal, Additional Bench, Palakkad allowed the appeal for the year 1986-87 to a limited extent and dismissed the appeal for the year 1987-88 in toto. Aggrieved by the common order passed by -the Tribunal in T.A. Nos. 142 and 143 of 1991 dated 17th May 1991, the Assessee has filed the above two revisions.

2. We heard counsel for the Assessee Mr. K.C. Bala- gangadharan as also counsel for the Revenue-Senior Government Pleader Mr. V.C. James.

3. The main plea of the Assessee before the Tribunal and also before us is to the effect that the taxable turnover fixed for both the years includes general goods,

taxable u/s 5 of the Act and that the Assessee is not liable to be assessed for the turnover of general goods, since the total turnover fixed is below rupees one lakh for both the years. The plea of the Revenue was that the Assessee had no dealing in general goods and that the taxable turnover fixed for both the years represents the sales turnover of bakery items covered by the entry ''bakery products'' in the first schedule to the K.G.S.T. Act. Entry 9 of the first schedule to the K.G.S.T. Act prior to 1st July 1987 is to the following effect:

Sl. No. Description of goods Point of levy Rate of tax

9 Biscuits not specified in item 8 and bakery products excluding broad At the point of first sale in the State by a dealer who is liable to tax u/s 5 5

Similarly entry 15 of the first schedule to the K.G.S.T. Act with effect from 1st July 1987, is as follows:

Sl. No. Description of goods Point of lezy Rate of tax

?15 Bakery products exclu- ding. bread and biscuit At the pobit of first sale in the State by a dealer who is liable to tax u/s 5? 5?

4. The main thrust of the Assessee''s plea is to the effect that goods which are not baked will not come under bakery products. It was argued that all goods made or sold by a baker cannot be called "bakery products". Bakery products can denote only those goods which are ordinarily and usually baked in an oven, such as bread, bun, rusk, cakes and biscuits. In this case, the Assessee produced and sold sweets such as halva, laddu, jilabi and gulab jamun and fried food articles such as banana chips, tapioca chips, murukku, fried ground nut, etc. These items are not baked in an oven and they will not come under bakery products and taxed as such.

5. Counsel for the Respondent/revenue contended that admittedly the goods were produced or made and sold by the Assessee, who is a dealer in bakery and sweet items, and so the said items sold by him will be bakery products coming within the relevant entry in the first schedule to the K.G.S.T. Act.

6. The crucial issue to be decided in this case is whether banana chips, achappam, mixture, murukku, pakkavada, fried ground nuts, etc., made and/or sold by a baker can be called bakery products as specified in the first schedule to the K.G.S.T. Act. The Appellate Tribunal has taken the view that the entry in the first schedule excludes bread and so the word ''bakery products'' in the first schedule necessarily means any thing connected with a bakery or dealt with by a baker, as bakery goods. Banana chip, murukku, achappam, pakkavada and mixture are popularly known as bakery goods and so they are coverd by the word ''bakery products'' as specified in the relevant entry in the first schedule to the K.G.S.T. Act. The Appellate Tribunal concluded that these items are ordinarily dealt with in a bakery or generally sold in a bakery and in common parlance they are bakery products, since these items are normally available in a bakery.

7. We are of the view that the approach and conclusion of the Sales Tax Appellate Tribunal is erroneous in law. It is now well settled that ''bakery products'' being a word of every day use, "must be construed in its popular sense, meaning that sense which people conversant with the subject matter with which the statute is dealing would attribute to it and it is to be construed as understood in common parlance. The word bakery products should be understood in its natural, ordinary or popular sense and the meaning which they have in relation to the subject matter with reference to which they have been need in the statute. They are well known words of common usage. From the earliest decision of the Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, the matter has been exhaustively considered by the Supreme Court in various decisions. The latest decision on the subject is M/s. Oswal Agro Mills Ltd. Vs. Collector of Central Excise and others etc. etc., . Persons accustomed with bakery and purchasing "its products" would only understand the words to mean "only those goods which are ordinarily baked in a bakery". If certain dealers in bakery products make jilabi, halva, gulab jamun and fried food articles such as banana chips, tapioca chips, murukku, pakkavada, etc., it will only show that making of such goods is their individual choice or preference or taste. It is also a matter of common knowledge that modern marketing has many dimensions. For convenience of the customers, certain bakeries may sell pickles, pappadom or even stationary articles. They are goods made or sold out of individual choice or taste probably to cater to their particular customers as part of their business method or marketing method. But, these isolated or individual choices or taste for marketing particular goods will not and cannot render such goods as one covered by the word ''bakery products''.

8. We are of the view that the Appellate Tribunal was in error in holding that the word ''bakery products'' will take within its fold anything dealt with or marketed or connected with the bakery. In order to say that particular goods are covered by the said word, those goods should be understood in their natural, ordinary or common parlance as bakery goods. So viewed, we are of opinion that the mere fact that banana chips, tapioca chips, murukku, achappam, pakkavada and mixture were sold or marketed by the dealer, who is really a baker, cannot be covered by the entry ''bakery products'' within the meaning of those words as occurring in the Kerala General Sales Tax Act. This is so especially in the context and cellesation of words occurring in the first schedule to the K.G.S.T. Act.

9. In this view of the matter, we reverse the conclusion of the Sales Tax Appellate Tribunal, that in common parlance banana chips, tapioca chips, murukku, achappam, pakkavada and mixture sold by the Assessee are ''bakery products'' coming under 9 upto 30th June 1987 and entry 15 from 1st July 1987 of the first schedule to the K.G.S.T. Act, 1963.

10. The common order of the Sales Tax Appellate Tribunal in T.A. Nos. 142 and 143 of 1991 is set aside to the above extent. We remit the matter to the Appellate Tribunal for passing appropriate orders, in the light of the above

observations.

The Tax Revision Cases are allowed.