(2006) 08 KL CK 0005

In the High Court Of Kerala

Case No : S.R. Rev. No. 131 of 2004

Casino Hotel APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 29-08-2006

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

Citation : (2008) 1 KLJ 530 : (2008) 14 VST 122

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Joseph Markose and Mithun Markos, for the Appellant; Georgekutty Mathew, GP, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The first question raised is whether the tribunal is correct in confirming the assessment of soda and mineral water at twenty per cent under Entry 87 of Ist Schedule to the KGST Act as against six per cent claimed by petitioner under Entry 40 of Ist Schedule. Petitioner is a star hotel and is liable to pay tax on cooked food and beverages at the point of first sale at six per cent as provided under Entry 40 of Ist Schedule to the KGST Act. In order to appreciate the contentions raised, the relevant Entry is extracted hereunder:

40. Cooked food including At the point of first beverages not falling sale in the State by 6% under entries 53 and 54 a dealer who is liable of this Schedule sold or to tax u/s 5 served in bar attached hotels and/or star hotel/s restaurants.

2. The question is whether Soda which is aerated water and mineral water sold by petitioner which are also beverages, attract tax at six per cent under Entry 40 or twenty per cent under Entry 87 of Ist Schedule. Counsel for petitioner contended that aerated water and soda are also beverages and, therefore, when those items are sold in star hotels or bar attached hotels and restaurants, rate of

tax can be only six per cent. We are unable to accept this contention because, aerated water and mineral water are specifically covered by Entry 87 of Ist Schedule which attracts tax at twenty per cent. The point of levy is first sale by a dealer who is liable to tax u/s 5. A hotel is also a dealer who is liable to tax u/s 5. A hotel is also a dealer which is liable to pay tax at the point of first sale on these commodities. The items of beverages referred to in Entry 40 are not beverages specifically mentioned elsewhere in the Ist Schedule to the Act. In other words, beverages normally made in hotels, like, coffee, tea, fruit juice, etc. are the items referred as beverages in Entry 40. So far as the items of beverages, like bottled soft drinks, mineral water or soda, rate of tax is at the appropriate rate mentioned in Entry 87 and a hotel/restaurant referred to in Entry 40 buying such items from registered dealers and making re-sales will be entitled to second sale exemption. A Full Bench of this Court in Lazarus Alosius Vs. State of Kerala, , held that soda and cola sold in bar attached hotels attracts tax at twenty per cent. We do not think the case can be any different so far as mineral water also is concerned. We, therefore, uphold the order of the tribunal confirming the assessment of soda and mineral water under Entry 87 of Ist Schedule to the KGST Act and dismiss the S.T. Rev. Case on this issue.

3. So far as the next issue i.e. assessment of purchase turnover of ice from unregistered dealers u/s 5A is concerned, the issue is covered by the decision of this Court in State of Kerala Vs. Cochin Shipyard Ltd., . Following the said decision, we dismiss the S.T. Rev. Case on this issue also.