(1989) 05 DEL CK 0031

In the Delhi High Court

Case No : S.T.C. No. 1 of 1987

Commissioner of Sales Tax APPELLANT

Vs

Chinar Restaurant RESPONDENT

Date of Decision : 04-05-1989

Acts Referred:

Citation : (1989) 05 DEL CK 0031

Hon'ble Judges : Leila Seth, J;A.B. Saharya, J

Bench : Division Bench

Judgement

Leila Seth, J.—By this application u/s 45(2) of the Delhi Sales Tax Act, 1975, the Commissioner of Sales Tax is seeking a direction that the Tribunal be asked to draw up a statement of case and refer the following two questions of law for the opinion of this Court :

"1. Whether, on the facts and circumstances of the case, the learned Appellate Tribunal was justified in holding that the respondent dealer was not liable to pay tax after 4th November, 1978, since he had not collected the same ?

2. Whether, on the facts and circumstances of the case, the provisions of the Constitution (Forth-sixth Amendment) Act, 1982, were correctly interpreted and applied by the learned Appellate Tribunal ?"

2. The relevant assessment year is 1978-79.

3. The assessing authority completed the assessment and raised a demand of Rs. 67,973 which included a sum of Rs. 40,354.90 towards extra demand and Rs. 27,588 as interest.

4. The assessed appealed against the said order. The Deputy Commissioner of Sales Tax dismissed the appeal on 15th February, 1984.

5. The assessed then filed an appeal before the Appellate Tribunal. On 23rd September, 1985, the assessed''s appeal was partly allowed as the Tribunal held

that the assessed was not liable to pay any tax subsequent to 4th November, 1978, as it had not collected any sales tax on sales after that date. But the Tribunal had also found that the assessed had not made out a case that it was covered by the judgment of the Supreme Court in Northern India Caterers (India) Ltd. [1978] 42 Stc 386. It opined that the sales effected by the assessed were subject to sales tax in the absence of any evidence with regard to services being rendered to the customers. Despite this, the Tribunal held that in view of section 6(2)(a) of the Constitution (Forty-sixth Amendment) Act, 1982, the assessed was not liable to pay tax if it had not collected sales tax as it was running a restaurant.

6. It appears to us, that in the facts and circumstances of the case as above indicated, questions of law do arise and consequently, we direct the Tribunal to draw up a statement of case and refer the above mentioned two questions for the opinion of this Court. However, we make no order as to costs.

7. Application allowed.

