(2012) 09 KAR CK 0301

In the Karnataka High Court

Case No : Sales Tax Appeal No''s. 2 of 2011 and 3 to 24 of 2012 (Tax)

D.A. Sons APPELLANT

Vs

The Additional Commissioner of Commercial Taxes RESPONDENT

Date of Decision : 20-09-2012

Acts Referred:

Citation : (2013) 75 KarLJ 101 : (2013) 63 VST 111

Hon'ble Judges : K. Sreedhar Rao, J;B. Manohar, J

Bench : Division Bench

Advocate : Kamath and Kamath, for the Appellant; T.K. Vedamurthy, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Sreedhar Rao, J.—The appellant is an assessee trading in edible products and other stationery products. The assessee is also selling the exercise books meant for young children, which contain cartoons and the children have to paint the cartoons with appropriate colours. The following are the items sold by the assessee:

(a) Mango Chutney: Sugar, mango, iodised salt, spices and condiments and acids (citric acid).

(b) Mango garlic chutney: Sugar, mango slices, mango pulp, garlic, acid, water, iodised salt and red chilly powder.

(c) Mango and saffron: Sugar, mango pulp, peclin and acid -- citric acid and also contains added natural flavour saffron.

(d) Apple and cinnamon: Sugar, apple, water, peclin, acids (citric acid), iodised salt and acids and also contains added natural favour -- cinnamon.

(e) Mutton Kolhapuri Curry Paste: Onions, tomato paste, cashewnuts, water, refined sunflower oil, spices and condiments, iodised salt, dry coconut, ginger, green chilly, hydrogenated vegetable oil and star anise powder.

(f) Kadai Chicken Curry Paste: Onions, cashewnuts, water, tomato paste, refined sunflower oil, spices and condiments, iodised salt, garlic, ginger, green chilly, hydrogenated vegetable oil.

(g) Vegetable Biryani Paste: Onions, tomato paste, water, refined sunflower oil, spices and condiments, iodised salt and garlic.

The Assessing Officer found that the above items used in the processed edible products are not covered under Entry 3 of Third Schedule to the Karnataka Value Added Tax Act, 2003 and that they cover under residuary Entry u/s 4(1)(b) of the KVAT Act. With regard to the exercise books also, it is found that they are to be taxed under Entry 11 of First Schedule to the KVAT Act. The Joint Commissioner in appeal set aside the order of the Assessing Officer and held that the above paste items fall within Entry 3 of Third Schedule to the KVAT Act, 2003 and that the exercise books are totally exempted. The Additional Commissioner while exercising the revisional power set aside the order of the Joint Commissioner and restored the order of the Assessing Officer. The assessee aggrieved by the said order has filed these appeals.

2. The following substantial questions of law are framed for consideration:

1. Whether mango chutney, mango garlic chutney, mango and saffron, apple and cinnamon, mutton Kolhapuri curry paste, vegetable biryani paste and kadai chicken curry paste are covered by Entry 3 in Third Schedule or covered under the residuary entry of Third Schedule and what should be the rate of tax in respect of the said items?

2. Whether the sale of kids notebooks or printed articles are exempted from tax?

3. Entry 3 of Third Schedule to the KVAT Act, 2003 reads thus:

All processed fruit and vegetables including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice (whether in sealed container or otherwise).

4. If it is u/s 4(1)(b) of the KVAT Act, 2003, the rate of tax will be 12.5%. The above paste items used in preparation of vegetable items are basically made out of fruit and vegetables and the said paste is processed products. The view taken by the revisional authority that the above paste did not come within Entry 3 of Third Schedule is erroneous.

5. The contention is that the above paste items contain other spicy ingredients, which do not constitute fruit or vegetable and therefore they have to be excluded from the meaning of Entry 3 of Third Schedule to the KVAT Act, 2003 is untenable argument. What is required to be seen in a matter like this would be that in the given items are paste in question what is the dominant ingredient. It may be that there would be composition of other ingredients in making the paste, but the dominant ingredient would be the decisive criteria. In that view, the paste in question would come within the purview of Entry 3 of Third Schedule. With regard to the kids exercise books is concerned, they are in nature

of exercise books containing cartoons. The young children are expected to colour cartoons with appropriate colour crayons. The purpose of the said exercise books is to inculcate the basic art of painting. Therefore, the said exercise books do constitute printed books to be exempted from the tax. In that view, the questions of law are answered in favour of the appellant. Hence, the appeals are allowed.

