(1980) 01 KAR CK 0026

In the Karnataka High Court

Case No : Writ petition No. 220 of 1979

K. Seetharama Rao APPELLANT

Vs

Assistant Commercial Tax Officer, Davanagere RESPONDENT

Date of Decision : 28-01-1980

Acts Referred:

Citation : (1986) 62 STC 348

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Judgement

Chandrakantaraj Urs, J.—In this writ petition, the petitioner who is the proprietor of a restaurant runs in the name and style of "Shri Rama Restaurant", Regulated Market Committee Yard, Davanagere, has questioned the legality of assessing his turnover in the restaurant business under the Karnataka Sales Tax Act (hereinafter referred to as the Act) on the ground that what is rendered in the course of his business to his customers is service to the customers and that there is no sale of food articles.

2. In the case of Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, the Supreme Court came to the conclusion that the service of meals to casual visitors in a restaurant located in a hotel in which lodging and meals are provided on "inclusive terms" to residents is not taxable as a sale under the Act. In further held that the position is the same even in respect of the charge imposed for the meal as a whole or according to dishes separately ordered. The decision has further laid down that supply of food and drinks can only be regarded as service and not as sale, irrespective of whether such service is to a resident of the hotel or casual customers to the restaurant.

3. The learned Government Advocate sought to make a distinction in the matter of a hotel which has boarding and lodging facility in addition to restaurant facility and restaurant simpliciter. I do not think that what is applied to a restaurant in a composite hotel, will not also apply to restaurant simpliciter. In this view of the matter, the petitioner is liable to succeed and is entitled to a mandamus

restraining the respondent from levying sales tax on his business turnover in his restaurant. It is accordingly ordered. In the circumstances of the case, there will be no order as to costs.

