(2006) 08 KL CK 0025

In the High Court Of Kerala

Case No : S.T. Rev. No. 281 of 2003

Keerthi Liquors APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 04-08-2006

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 7(14)

Citation : (2009) 20 VST 336

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

Bench : Division Bench

Advocate : K.B. Muhamed Kutty and K.M. Firoz, for the Appellant; Georgekutty Mathew, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the tax revision is whether the petitioner, an arrack dealer, who paid sales tax at the compounded rate u/s 7(14) of the Kerala General Sales Tax Act, 1963, is entitled to exemption on turnover tax under annexure D notification, namely S.R.O. No. 1401 of 1992. The Tribunal following the decision of this Court in Parakkattil Aleyamma v. Sales Tax Officer [1993] 91 STC 518 SC : [1993] 1 KLT 810 reversed the appellate authority''s order in favour of the petitioner, and held that the petitioner is liable to pay turnover tax on the sales turnover of arrack during the year 1992-93. Notification S.R.O. No. 1401/92 which was made effective from April 1, 1992 after retaining turnover tax at all points on items like, petrol, foreign liquor, etc., provided that items not mentioned in Sub-clauses (a) to (f) of the notification and falling under the First or Fifth Schedule will be exempt from turnover tax, except the commodities that are brought from outside the State on consignment transfer. This notification was challenged as discriminatory by various dealers who brought goods from outside the State and sold in the State, and this Court in Assistant Commissioner (Assessment), Sales Tax v. Associated Cement Companies Ltd. [1998] 108 STC 219 SC held that notification was discriminatory and by way of declaratory relief this Court held that local dealers are entitled to exemption from turnover tax on first sales of goods not covered by Sub-clauses (a) to (f) of S.R.O. No. 1401/92. This judgment appears to be accepted by the Government and is applicable to the present case.

2. The next question is whether the petitioner falls under Sub-clause (g) of the notification entitling for exemption. The Tribunal held that the petitioner does not fall under Sub-clause (g) probably under the impression that arrack is an item falling under Sub-clause (b) of notification which provides for turnover tax at all points on Indian-made foreign liquor, and foreign liquor. The items on which turnover tax at all points are retained under Sub-clause (b) under S.R.O. No. 1401/92 are foreign liquor, and Indian-made foreign liquor. Those are entries 53 and 54 of the First Schedule to the KGST Act which specifically excludes arrack. Since petitioner was a dealer in arrack for the year 1992-93, petitioner is covered by Sub-clause (g) and by virtue of the above decision the petitioner is not liable to pay any turnover tax on sales turnover of arrack.

3. Therefore we allow the sales tax revision by vacating the order of the Tribunal and restoring the order of the first appellate authority, for the reasons stated above.

