

(2005) 02 KL CK 0059

In the High Court Of Kerala

Case No : S.T.R. No's. 312, 313, 355 and 356 of 2003 and 245 and 269 of 2004

Lazarus Alosius

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Citation : (2005) 3 CTC 254 : (2005) 2 ILR (Ker) 16 : (2005) 2 KLT 604 : (2006) 144 STC 210

Hon'ble Judges : B. Subhashan Reddy, C.J.;P.R. Raman, J;Kurian Joseph, J

Bench : Full Bench

Advocate : V.P. Sukumar, T.M. Sreedharan, Deepak Joy K., S. Abdul Razzak, N. Sukumaran and S. Shyam, for the Appellant; Raju Joseph, Spl. Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—"Whether sales tax varies with place of business" is the question for consideration. This question has been referred to Full Bench by a reference order made by Division Bench in S.T.Rev. Nos. 312 and 313 of 2003. There are two previous judgments of this Court on this point The first is in Vilasini v. State of Kerala 2001 (1) KLT 320 : 2001 (9) KTR 411 (Ker.). Referring to Entry 87 of Schedule I of Kerala General Sales Tax (for short "K.G.S.T. Act"), it was held that soda is taxable in the said Entry, and, then, on a question of fact, it was held that the sales were not exigible to sales tax in the said case, as the sales tax already suffered and being single point tax, second sales were held to be not liable to tax. There were no arguments that soda is not traceable to Entry 87, but taking that the above case laid down a proposition that sale of soda in Bar attached hotels attracts sales tax in Entry 87, another Division Bench, in T.R.C. No. 99 of 1999 held that sale of soda in Bar attached hotels comes within the ambit of Entry 87 and that it is taxable at 20%. The Division Bench, which referred the matter to the Full Bench, differed with the said view and holding that the issue needs a fresh look, has referred the matter to the Full Bench. Other

similar matters also are clubbed later and that is how this batch of cases has been heard.

2. In S.T.Rev. No.355/2003, the assessment year is 1997-1998 while in S.T.Rev. Nos. 312 and 356 of 2003, the assessment year is 1998-1999. In S.T.Rev. No. 245 of 2004, the assessment year is 2000-2001 and in S.T.Rev. No.269 of 2004, the assessment year is 2001-2002. These revisions have been filed aggrieved by the orders of the Sales Tax Appellate Tribunal that the sale of soda in Bar attached hotels is exigible to tax under entry relating to the sale of soda regardless of the place of sale.

3. The Entries underwent change in the assessment years from 1997 to 2002. For the period from 1.4.1997 to 31.3.1999, Entry 87 to Schedule 1 reads as follows:

Entry No. Description of goods Point of levy Rate of tax 87 Non-alcoholic drinks, At the point of 20 squashes, sauces, aerated first sale in the State waters, mineral water, beverages, Glucose D, Glucovita and similar items whether bottled, canned or packed.

From 1.4.1999 to 31.12.1999, the relevant Entry was 124A, which reads as follows:

Entry No. Description of goods Point of levy Rate of tax 124A Squashes, sauces, soda, At the point of 20 mineral water, Horlicks, first sale in the State Boost, Bournvita, Complan, Glucose D, Glucovita and similar items whether or not bottled, canned or packed.

From 1.1.2000, the Entry changes to 141, which reads as follows:

Entry No. Description of goods Point of levy Rate of tax 141 Squashes, sauces, At the point of 20 fruit juices, fruit pulp, first sale in the State soda, mineral water, Horlicks, Boost, Bournvita, Complan, Glucose D, Glucovita and similar other items whether or not bottled canned or packed.

4. The above Entries dealt with the impost of sales tax on sale of goods mentioned therein and relevant for the instant adjudication is the word "aerated waters" in Entry 87, "soda" in Entry 124A and again "soda" in Entry 141 basing upon the amendments from time to time as mentioned supra. Counsel for the petitioners state that soda, which is supplied at the Bar attached hotels is differently dealt with for impost under old Entry 40 corresponding to new Entry 46, Entry 40 was in vogue upto 31.12.1999 and from 1.1.2000, it changed to Entry 46. There is slight change in the rate of taxation for the above assessment years basing upon the changes effected from time to time. For cooked food and beverages coming within the ambit of Entry 40 or 46, as the case may be, it was 6% up to 31.3.1999 and 8% thereafter.

5. Learned Counsel for the petitioners strenuously contended that the Sales Tax Appellate Tribunal has erred in holding that sale of soda is not covered by Entry

40 or 46 and that it is only covered by Entry 87 or 124A or 141 of Schedule I of the K.G.S .T. Act. The purport of the argument of the learned Counsel for the petitioners is that K.G.S.T. Act aims at charging sales, tax on sale of soda differently while it is being supplied at Bar attached hotels and that, place of sale assumes significance, and, that is the criteria for the impost of tax and that while soda sold at places other than Bar attached hotels is chargeable at 20%, it is only chargeable at the concessional rate when it is supplied or sold at the Bar attached hotels and that Entry 40/46 being specific and Entry 87/124A/141 being general, specific entry prevails over the general entry and as such the sales tax leviable for sale of soda at Bar attached hotels is traceable to Entry 40/46 and not Entry 87/124A/141.

6. Mr.Raju Joseph, learned Government Pleader (Taxes), counters the above argument and submits that specific entry is Entry 87/124A/141 and not Entry 40/46 and there is no indication by the Legislature that sale of soda was to be taxed differently when served at Bar attached hotels and that the word "beverages" has to be understood as cooked beverages and that soda, by no stretch of imagination, can be brought within the ambit of cooked beverages and that, consequently, it is only traceable to Entry 87/124A/141.

7. Special law prevails over general law is a settled proposition. Likewise, in taxation laws, special entries of impost always prevail over general entries. Again, words carrying general meaning have to give way to the specific words while tracing the impost in taxation laws. If there is any ambiguity in the interpretation of tax provisions casting doubt on the charging section or the entry, then the said benefit of doubt has to go to tax payer and not to Revenue. But, if the words in the statute are clear and unambiguous, the same have to be read literally without making any assumptions. This view of ours is fortified by the Judgment of the Supreme Court in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, . Dealing with interpretation of taxing provision very comprehensively and referring to the earlier Judgments on the point, the Supreme Court has authoritatively held:

"In a Taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used and it must be found out from the language according to its natural meaning fairly and squarely read. It was also held that one of the well recognized canons of construction is that Legislature, speaks its mind by use of correct expression and unless there is any ambiguity on the language or any provision, the Court should adopt literal construction, if it does not lead to absurdity."

8. In the light of the above legal principles, we proceed further to consider as to whether there is any ambiguity in Entries 87/124A/141 or the other Entries 40/46 and also as to whether soda is clearly covered by Entry 40/46 or Entry

87/124A/141.

9. Relevant is the word "beverages". In generic sense, any potable liquid except water is a beverage. Beverage may be alcoholic or non-alcoholic. Again, among nonalcoholic, it may be hot beverage like tea, coffee or cold beverage like cola and soda. Beverages like cola and soda come within the meaning of "aerated waters". Aerate is a process of exposing product to air for the purpose of mixing with air. Water mixed or charged with gas or air under pressure is "aerated water". Soda is aerated with carbon dioxide. Thus, it is clear that "aerated water" is a special word to the general word "beverage" and soda is a specific word to the word "aerated water". We need to examine whether the Legislature intended to employ the generic word "beverage" in Entry 40/46 so as to include soda therein.

10. It is apt to extract the entries as they underwent changes for the relevant assessment years:

For the year 1.4.1997 to 31.3.1999

Entry No. Description of goods Point of levy Rate of tax 40 Cooked food including At the point of 6 beverages not falling first sale in the under Entries 53 and State 54 of this Schedule sold or served in Bar attached hotels and/ or star hotels/restaurants.

1.4.1999 to 31.12.1999

Entry No. Description of goods Point of levy Rate of tax 40 Cooked food including At the point of 8 beverages other than first sale in those falling under the State Entries 53, 54, 87 and 124A of this Schedule.

From 1.1.2000 on wards

Entry No. Description of goods Point of levy Rate of tax 46 Cooked food, including At the point of 8 beverages not falling first sale in under Entry 60 of this the State Schedule, sold or served in Bar attached hotels and/or star hotels.

11. The word "beverages" in the above Entries cannot be stretched to cover all beverages. It is controlled by the preceding word "cooked food". Soda is not a beverage, which can be said to be egusdem generis with cooked food. Only drinks like tea and coffee can be brought within the meaning of "beverages" as being related and inclusive of cooked food in Entries 40/46. Reference to some case law relating to interpretation of word "cooked food" may be relevant.

12. In Annapurna Biscuit (Mfg.) Co. and Another Vs. The State of U.P. and Another, Allahabad High Court was dealing with the point whether biscuit is either a "cooked food" or "sweetmeats" or "confectionary". The sales tax authorities construed biscuit as a confectionary and the same was set aside by the Court. In Commissioner of Sales Tax v. Jassu Ram Bakery Dealer (1976) 35 STC 461 (All), the same question arose as to whether biscuit comes within the

category of "cooked food". It was held that biscuit did not answer the description of "cooked food". The said view was followed in another judgment in Commissioner of Sales Tax Vs. Vinod Bakery, . In yet another judgment of Allahabad High Court in Commissioner of Sales Tax Vs. Hira Ice Candy, , the same view was taken while construing whether ice candy comes within the definition of "cooked food". It was held that ice candy cannot be called as "cooked food". The said views were affirmed by the Supreme Court in Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow, . It was held in the above case that the words used in law imposing tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force and that if an expression is capable of a wider meaning as well as narrower meaning, the question whether the wider or the narrower meaning should be given depends on the context and background of the case. The Supreme Court held that the process of making an eatable by way of cooking is absent in the business of manufacture and sale of biscuits, even if they are intended for human consumption. The above legal principles laid down by the Supreme Court squarely apply to the instant cases and soda cannot be brought within the Entries 40/46 of Schedule I of the K.G.S.T. Act.

In the result, the Sales Tax Revisions fail and they are accordingly dismissed.