
(2001) 02 KL CK 0012

In the High Court Of Kerala

Case No : T.R.C. No"s. 322 and 328 of 2000

Nabeesa Mundoli

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:

Citation : (2001) 123 STC 1

Hon'ble Judges : S. Sankarasubban, J;A. Lekshmikutty, J

Bench : Division Bench

Advocate : N. Muraleedharan Nair and V.K. Shamsudeen, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—These two tax revision cases are filed u/s 41 of the Kerala General Sales Tax Act, 1963 challenging the common order passed in T.A. Nos. 19 and 20 of 1997 on the file of the Sales Tax Appellate Tribunal, Additional Bench, Kozhikode. The assessment years are 1989-90 and 1991-92. The assessee is the revision petitioner. The assessee is running a hotel and restaurant and cooked food and beverages are served in the hotel.

2. For the assessment years 1989-90 and 1991-92 the question that arises for consideration is whether the cooked food made in the hotel is liable for exemption under entry 57 of the First Schedule to the Kerala General Sales Tax Act, 1963. According to entry 57 of the First Schedule, cooked food including beverages not falling under entry 76A of the Schedule sold or served in hotels and/or restaurants the turnover in respect of which is Rs. 20 lakhs and above is liable to be taxed at the point of first sale in the State by a dealer who is liable to tax u/s 5. According to the assessee, the turnover that should be taken for the purpose of entry 57 is only the turnover in respect of cooked food and beverages. The other items sold in the hotels cannot be taken into consideration for the purpose of fixation of the turnover.

3. Another contention raised was that certain sales were effected to Indian Airlines. According to the assessee, the cooked food was sold to the Indian Airlines not by them. According to the assessee, Paramount Tower had sold the cooked food to Indian Airlines and Paramount Tower was assessed for the sale to Indian Airlines. Hence, it cannot be tackled on the assessee. The Tribunal upheld the findings of the appellate authority that the entire turnover in the hotel can be taken into consideration for finding out the limit of Rs. 20 lakhs fixed under entry 57.

4. The case of the assessee is that in addition to the cooked food, other articles like fruits, breads, biscuits are sold. The turnover of these items cannot be taken into consideration for fixing the turnover of cooked food. Entry 57 of the First Schedule to the Kerala General Sales Tax Act, 1963 is as follows :

"57. Cooked food including beverages not falling under entry 76A of this Schedule sold or served in?

(i) hotels and/or restaurants, the turnover in respect of which is twenty lakhs rupees and above; and

(ii) bar attached hotels and/or restaurants.

At the point of first sale in the State by a dealer who is liable to tax u/s 5

Rate of tax (per cent) 10."

There is no dispute in this case that the beverages sold do not come under entry 76A. What is the meaning of the words coming under entry 57, "the turnover in respect of which is twenty lakhs rupees and above". The authorities have interpreted the turnover as the turnover of the hotel while the assessee will argue that it is the turnover of the cooked food.

5. An identical question came up for consideration in the Madras High Court in the decision reported in *State of Tamil Nadu v. Arasan Ice Creams and Sweets Restaurant* [1996] 100 STC 333(hc). There, a notification issued by the Madras Government in exercise of the powers conferred under the Madras General Sales Tax Act came up for consideration. There the provision that came up for consideration before that court was as follows :

"Provided that the exemption in respect of bakery products shall not apply to a dealer whose total turnover in a year exceeds rupees two lakhs."

The Madras High Court held thus :

"A plain reading of the abovesaid notification would go to show that exemption would be granted only if an assessee is dealing with bakery products within the turnover limit of Rs. 2 lakhs. The word "turnover" occurring in the abovesaid notification would indicate the total turnover arising out of the entire business transaction relating to the sale of bakery products and we cannot include the turnover relating to other goods."

When we examine the entry, the entry deals with cooked food and beverages. So, item that is taxed is cooked food including beverages. Clause (i) says that cooked food sold or served in hotels or restaurants, the turnover in respect of which is twenty lakhs rupees and above is liable to be taxed. So also under Clause (ii) cooked food sold or served in a bar attached hotel or restaurant is entitled to be taxed. The intention appears to be to exempt the cooked food from taxation up to a certain limit. Learned Government Pleader argued that a reading of entry 57 will show that the word "turnover" qualifies hotels and restaurants and not cooked food and hence, if the total turnover in a hotel is more than Rs. 20 lakhs, the cooked food item is liable to be taxed. We don't accept this contention. Entry 57 deals with cooked food including certain beverages. It is to be taxed at the first point of sale and the rate is 10 per cent. There is a classification with regard to cooked food when it is sold in hotels and restaurants and when it is sold in bar attached hotels and restaurants. So far as bar attached hotels and restaurants are concerned, cooked food is liable to be taxed, whatever may be the turnover. But so far as the other hotels are concerned, the entry says that it is liable to be taxed, if the turnover is more than Rs. 20 lakhs. A hotel or restaurant may sell many items other than cooked food. When we speak of turnover, we mean the turnover of the particular goods or commodity. It does not refer to the turnover of the shop or establishment. Further, according to us, what the Legislature had the intention was with regard to the turnover of cooked food and not the turnover at the place from where it was sold.

6. Hence, we are of the view that if the turnover of the cooked food and beverages as mentioned in entry 57 is less than Rs. 20 lakhs, then those items are not liable to be taxed. So far as the present case is concerned, the argument of the learned counsel for the petitioner is that there are items other than cooked food and beverages that are sold in the hotel and those items are also taken into consideration for fixing the turnover. In the light of the view that we have taken, we direct the assessing officer to consider afresh the turnover of cooked food and beverages as per entry 57 and pass orders accordingly.

7. The next question is as to who sold the cooked food to the Indian Airlines, According to the assessee, the cooked food was not sold by the assessee to the Indian Airlines, but by Paramount Tower. The assessee has produced annexure D. Since we are directing the matter to be considered afresh by the assessing authority, we direct the assessing authority to consider this aspect also.

In the above view of the matter, the tax revision cases are allowed. The assessing authority will reconsider the question on the basis of the directions given above.

Order on C.M.P. No. 4547 of 2000 in T.R.C. No. 322 of 2000 dismissed.

Order on C.M.P. No. 4569 of 2000 in T.R.C. No. 328 of 2000 dismissed.