
(1982) 01 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 229, 575, 577, 1755, 1756 and 1763 of 1981

Om Prakash

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 11-01-1982

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 2(o)

Citation : AIR 1981 Raj 165 : (1982) 50 STC 269

Hon'ble Judges : Dwarka Prasad, Acting C.J.; Mahendra Bhushan Sharma, J

Bench : Division Bench

Advocate : H.M. Parekh and S.S. Purohit, for the Appellant; S.C. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Dwarka Prasad, Ag. C.J.

1. These six writ petitions have been filed by owners of hotels and restaurants who have been served with notices for assessment to sales tax.
2. The case of the petitioners is that they have been serving eatables and drinks to their customers and the same does not constitute sales and as such they are not liable to assessment or payment of sales tax. On the other hand, it has been contended by Mr. Sumer Chand Bhandari, the learned counsel appearing for the department, that it would be a question of fact in each case as to whether the transactions entered into by the petitioners would amount to "sale" within the meaning of Section 2(o) of the Rajasthan Sales Tax Act, hereinafter referred to as "the Act". It has been stated by the learned counsel appearing for the department that the petitioners are making sales across the counter and are supplying eatables and drinks outside the hotels or restaurants also at the same rate and an enquiry by the assessing authority is necessary in the matter.
3. The question as to whether a transaction of supply of meals by hoteliers to resident guests in the hotels amounted to sale was considered by their Lordships

of the Supreme Court in *The State of Punjab Vs. Associated Hotels of India Ltd.*, and it was held that there was essentially a contract of service between the parties and the supply of food-stuffs was part of the amenities incidental to service and as such, the transaction did not amount to sale. Their Lordships emphasised that the dominant consideration was that there should be an intention to sell and purchase and that where there is a transaction of service, the supply of food-stuffs is part of or incidental to the service by the hotelier and the transaction could not be split up into two parts.

4. Later, in the case of *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, the question arose as to whether service of eatables to casual visitors in restaurants located in a hotel, in which lodging and meals were provided, was taxable as a sale. Their Lordships of the Supreme Court held that the principle enunciated in *The State of Punjab Vs. Associated Hotels of India Ltd.*, was also equally applicable to the service of food to customers in eating-houses and restaurants, as the owner of the restaurant or the eating-house provides many amenities in addition to the supply of food, like furniture and furnishings, linen, crockery and cutlery, and in the eating places of today he may add music and may specially provide area for floor dancing and in some cases a floor show. It was again emphasised in the *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, that if the essence of the transaction is that of rendering service to the customers, which may include supply of food-stuffs, then the transaction may not amount to a sale, because the dominant object in such a transaction is not the sale or purchase of food-stuffs.

5. In *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, a review petition was filed and their Lordships of the Supreme Court in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, while rejecting the review petition, clarified their earlier decision in the aforesaid case by making the following observations:

...Where food is supplied in an eating-house or restaurant, and it is established upon the facts that the substance of the transaction, evidenced by its dominant object, is a sale of food and the rendering of services is merely incidental, the transaction would undoubtedly be exigible to sales tax. In every case it will be for the taxing authority to ascertain the facts when making an assessment under the relevant sales tax law and to determine upon those facts whether a sale of the food supplied is intended.

6. Thus, the position of law even after the decision of the review petition in the *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, remains almost the same and what is to be adjudged in each case is as to whether the dominant intention in a given transaction was of sale and purchase of eatables or drinks. In cases of sales of food-stuffs or eatables made across the counter, they are obviously transactions of sale, even though some service may be rendered in packing the food-stuffs, yet it may be so insignificant or incidental that the transaction would essentially be one of sale. Similarly, if food-stuffs or drinks are

supplied to customers outside the hotel or restaurant, then also the transactions may amount to sale. In a case where the owner of the hotel or restaurant or of the eating-house charges separate amount by way of service charge for the service rendered by him besides the cost of the food-stuff supplied to the customer, then it would obviously appear that the transaction of sale of food-stuffs and service rendered by the hotelier or the owner of the restaurant have been separately charged. Moreover, it would also be a question of fact as to whether the customer has a right to take away the food-stuffs and in that case the assessing authority will have to decide as to whether the transaction would amount to sale or not. If the dominant object is the sale of eatables and drinks and rendering of service is merely incidental then the transaction may amount to sale. But if on the other hand, there is a transaction in which service is coupled with supply of food-stuffs, and supply of food-stuffs is part of and incidental to the service, then the transaction may not amount to sale.

7. We are, therefore, of the view that it will be for the assessing authority to ascertain the facts in each case and then to determine upon such facts whether a sale of food-stuffs or drinks was intended and decide the matter in the light of the aforesaid decisions of their Lordships of the Supreme Court.

8. As only a notice to show cause has been served upon the petitioners and an enquiry to ascertain the facts is yet to be made on the basis of which alone the nature of the transactions could be determined, we are unable to entertain the writ petitions at this stage.

9. In the result, all the writ petitions are dismissed subject to the observations made above.