(2009) 03 KL CK 0022

In the High Court Of Kerala

Case No : S.T. Rev. No. 120 of 2007

Parisons Roller Flour Mills Pvt. Limited — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Citation : (2009) 2 KLT 651 : (2010) 28 VST 397

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : S. Anil Kumar and K.S. Hariharan, for the Appellant; V.K. Shamsudeen, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The question raised is whether broken wheat produced and sold by the petitioner is a wheat product falling under entry 172 of the First Schedule to the Kerala General Sales Tax Act, 1963 or is wheat as such covered by Second Schedule entry providing for wheat. We have heard Sri S. Anil Kumar, counsel appearing for the petitioner and Government Pleader appearing for the respondent.

2. The Tribunal relying on a decision of the Supreme Court in Rajasthan Roller Flour Mills Association v. State of Rajasthan [1993] 91 STC 408 held that broken wheat is a wheat product liable to be assessed under entry 172 of the First Schedule at four per cent. The relevant entry provided in the Second Schedule covers "wheat" as such. The broken wheat is processed wheat whereunder wheat is cleared of the husk and broken into three or four pieces. In fact, only certain variety of wheat can be subjected to this process and admittedly, it is a value added product. In commercial parlance it is different from wheat as such and therefore, broken wheat cannot be treated as wheat as such. This rules out the petitioner''s claim for assessment of broken wheat under the Second Schedule as wheat. Even though counsel for the petitioner compared broken wheat with broken rice and submitted that the identity and nature of use of broken wheat is the same as wheat itself, we are unable to accept this contention because entry

172 covers "wheat products, i.e., to say, maida, atta, sooji, rava and the resultant bran". Counsel for the petitioner submitted that sooji referred to in entry 172 is nothing but rava. However, these are only words of Hindi and are used to describe wheat in different forms. The Legislature certainly cannot be expected to use different words to explain the same item, namely, rava. Therefore, rava is not certainly the same as sooji and sooji used in the context should only mean wheat pieces of higher dimension than rava. This will certainly come within the category of broken wheat. All the wheat products enumerated in entry 172 are wheat in various forms or constituents of wheat without any addition to it whatsoever. Therefore, broken wheat which is yet another form of wheat, is rightly classifiable under entry 172 taxable at four per cent. We, therefore, hold that the broken wheat produced and sold by the petitioner attracts tax at four per cent under entry 172 of the First Schedule to the KGST Act.

3. Though the petitioner is a small-scale industrial unit entitled to concessional rate of tax on inter-State sale, such lower rate is declined for the reason that broken wheat is not manufactured product. We do not think the Department can take contradictory stands with regard to the identity of the item. When the item is treated as a product of wheat, the petitioner is entitled to concessional rate on inter-State sale also. Therefore, we direct assessment of inter-State sales turnover of broken wheat at four per cent, if the assessee is entitled to benefit of notification for inter-State sale of products. The sales tax revision case is disposed of upholding the classification of the product by the Tribunal but with a direction to grant concessional rate at four per cent on inter-State sale of broken wheat without C form.

