(1998) 06 KL CK 0041

In the High Court Of Kerala

Case No : T.R.C. No''s. 143-45 of 1997

Pukraj Jathajee APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 01-06-1998

Acts Referred:

Citation : (1999) 107 ELT 17

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : K.B. Mohamed Kutty, for the Appellant; V.V. Asokan, Special Government Pleader for Taxes, for the Respondent

Judgement

Om Prakash, C.J.—Heard Counsel for the parties.

2. The short question for consideration in these tax revision cases relating to the consecutive assessment years 1989-90, 1990-91 and 1991-92 is whether pan parag in the manufacture of which the assessee is engaged, falls under Item No. 165 of the First Schedule, appended to the Kerala General Sales Tax Act, 1963, liable to tax at the rate of 8 per cent. Item No. 165 of the First Schedule is as under :

"165. Scented arecanut"

3. The case of the assessee is that one of the ingredients of the pan parag manufactured by him, is tobacco and, therefore, that product is different from the scented arecanut and hence the former is liable to tax as unclassified item at the rate of 5 per cent. We have carefully gone through the orders of the assessing officer, the appellate authority and the Sales Tax Appellate Tribunal. Before the assessing officer, the assessee filed a copy of reply (Annexure B) stating that pan parag is prepared by adding the following ingredients :

"Betelnut catechu, lime, permitted spices, flavours with tobacco or without tobacco."

4. In the last paragraph of the reply (Annexure B), the assessee stated as follows:

"The item dealt by me is pan masala which contained betelnut, catechu, tobacco, lime, permitted spices and flavours."

Neither the assessing officer nor the appellate authority has referred to tobacco anywhere in the impugned orders. In short, the submission of learned Counsel for the assessee is that the pan parag prepared with tobacco is different from the scented arecanut and, therefore, the former cannot be taxed under Item No. 165 as classified item.

5. The question for consideration is whether the preparations of pan parag with tobacco or without tobacco are different from that of scented arecanut. Despite the contention raised by the assessee that pan parag can be manufactured with tobacco or without tobacco and that the entire turnover of pan parag of the assessee during the years under review contained tobacco, was not at all considered either by the assessing officer or by the appellate authority. The Appellate Tribunal for the first time took cognizance of the contention of the assessee that the ingredients of the pan parag manufactured by the assessee, included tobacco as well. The Appellate Tribunal, however, concurred with the findings recorded by the assessing officer and the appellate authority without recording a clear finding whether the preparations with tobacco or without tobacco are the same and different from the scented arecanut. We, therefore, venture to decide this vital question first.

6. Pan parag based on tobacco will, surely, not be consumed by those, who are not used to tobacco and, therefore, the two preparations - one with tobacco and the other without tobacco - are to be considered on the separate footings. In common parlance also, if one goes to the market to purchase a tobacco based preparation, viz., pan parag or pan masala, he will not be satisfied if he is provided such product without tobacco. If one is used to tobacco preparation, then he will surely ask only for that preparation and not the preparation which is without tobacco. In common parlance, the two preparations - with tobacco and without tobacco - are different. The contention of the learned Counsel for the assessee is that pan parag or pan masala, with or without tobacco, are the same. We are not inclined to accept this submission. Pan parag or pan masala without tobacco and the scented arecanut classified under Item 165 of the First Schedule, will fall in the same category. There is no difference in these preparations. They bear simply different names. All are arecanut based preparations. There may be some difference in the flavour of each such preparation, but, in essence, they are commonly understood as one and the same preparation and they serve the same purpose. But in no case can they be equated with tobacco based preparation. The consumers of tobacco based preparation are different from those who are not used to tobacco.

7. However, it is the case of the assessee that its entire sales turnover of the

years under consideration was of pan parag based on tobacco, which, as already pointed out, is different from pan parag simpliciter and scented arecanut. Since none of the authorities adverted to such case of the assessee, the matter requires reconsideration.

8. In the result, the tax revision cases succeed and are allowed : the orders passed by the assessing officer, the appellate authority and the Appellate Tribunal, relating to all the assessment years, are set aside and they are remitted to the assessing officer, who will record a clear finding, whether the entire sales turnover of the assessee during these years was of pan parag based on tobacco and if that is so, the same will be brought to tax as unclassified item liable to tax at the rate of 5 per cent. If the assessing officer comes to the conclusion that the product of the assessee, named as pan parag, was without tobacco, then that will stand on the footing of the scented arecanut, falling under Item 165 of the First Schedule, liable to tax at the rate of 8 per cent.

Order on CMP. No. 2336 of 1997 in T.R.C. No. 143 of 1997 dismissed.