

(2008) 01 KL CK 0062
In the High Court Of Kerala
Case No : M.F.A. No. 588 of 2003

R.F. Enterprises

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 30-01-2008

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 40, 5, 59A

Citation : (2009) 23 VST 148

Hon'ble Judges : T.R. Ramachandran Nair, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.P. Sukumar and V. Devananda Narasimham, for the Appellant; K.P. Pradeep, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—This is an appeal filed u/s 40 of the Kerala General Sales Tax Act, 1963 (hereinafter called, "the Act") challenging annexure VII order of the Commissioner of Commercial Taxes issued u/s 59A of the KGST Act. The appellant was engaged in packing and marketing of "kattimoru" (thick buttermilk) and "sambharam". The product labels produced as annexures V and VI show that one item is thick buttermilk which is given the name "kattimoru" in Malayalam and the other "sambharam", the ingredients of which under the label are buttermilk, ginger, green chillies and curry leaves. Though the appellant classified the products under "curd and buttermilk" coming under entry 49 of the First Schedule to the KGST Act taxable at four per cent and returns were filed accordingly, the assessing officer issued notice proposing to assess the products as "milk products" under entry 92 taxable at 12 per cent. This prompted the appellant to file an application for clarification u/s 59A of the KGST Act which was answered by the Commissioner of Commercial Taxes vide annexure VII. The Commissioner disapproved the classification by the appellant as well as by the assessing officer and held that items do not come under any of the specific entries in the Schedule and therefore, he clarified that the items fall under the

residuary items covered by entry 177 of the First Schedule to the KGST Act taxable at eight per cent. It is against this order that the appellant has filed this appeal.

2. In order to appreciate the contentions raised, we have to refer to the relevant entries of the statute and for easy reference, we extract hereunder entries 49 and 92 of the First Schedule to the KGST Act.

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Description	of	goods	Point	of	levy	Rate	of tax
-----							49
Curd and buttermilk	At the point of first sale in	Four per cent	the State by a dealer who is liable to tax u/s 5.	92	Milk products including do	12 per cent	milk powder, baby food, ghee, cheese and butter except curd, buttermilk, Horlicks, boost, Bournvita, Complan and similar items whether or not bottled, canned or packed.

3. The appellant's case is that both the products of the appellant fall under the item "buttermilk" covered by entry 49 stated above. It is common knowledge that buttermilk is made from curd by removing fat and by adding water thereto. "Kattimoru" in Malayalam means thick buttermilk and "sambharam" is extensively diluted buttermilk. In other words, both are one and the same product and the variation is only in the water content. While kattimoru is concentrated buttermilk, sambharam is diluted form of buttermilk. The product description in annexures V and VI produced by the petitioner shows that the ingredients in kattimoru is thick buttermilk and in the other, namely, sambharam, buttermilk, ginger, green chillies and curry leaves. Addition of ginger, green chilly and curry leaves is only to give flavour to the product. However, sambharam remains as such even with the addition of these ingredients. Moreover, the price shown for 200 ml of sambharam under the label is Rs. 3 inclusive of all taxes. In the case of kattimoru, the price charged for 500 ml is only Rs. 8. There is nothing to indicate that the product contains fat or any other ingredient. The product description and the price thereon clearly go to show that the products are only buttermilk with different concentrations. We are, therefore, of the view that both the products are squarely covered by buttermilk under entry 49 of the First Schedule to the Act taxable at four per cent. The intention of the Legislature is very clear from the different rate of tax provided for different products. While milk products such as milk powder, ghee, cheese and butter covered by entry 92 attract tax at 12 per cent, value-added soft drinks like fruit juices, Horlicks, Bournvita, Boost, Complan, etc., attract tax under entry 144 at the rate of 20 per cent. The basic scheme is to identify the class of customers for the goods and provide rate of tax depending on their capacity. While value-added milk products and soft drinks are consumed by the more affluent class, the class of customers who buy buttermilk are economically weak. Therefore, if higher rate of tax is demanded for buttermilk, the same will defeat the intention of the Legislature in

fixing a lower rate to such products. We, therefore, find that the Commissioner clearly went wrong in clarifying that the appellant's products are not covered by entry 49. We declare that the products of the appellant referred above are buttermilk covered by entry 49 and the clarification of the Commissioner to the contrary is illegal and unsustainable. We, therefore, allow the appeal by quashing the impugned order.