(2006) 02 KL CK 0035

In the High Court Of Kerala

Case No : W.A. No''s. 2526, 2599 and 2605 of 2005

Saj Flight Services (P) Ltd. — APPELLANT

Vs

Supdt. of Central Excise — RESPONDENT

Date of Decision : 27-02-2006

Acts Referred:

Finance (No. 2) Act, 2004 — Section 66, 69
Finance Act, 1994 — Section 65(24)
Finance Act, 2004 — Section 65(24), 69

Citation : (2006) 201 CTR 490 : (2006) 1 ILR (Ker) 832 : (2006) 2 KLT 73 : (2006) 4 STR 432

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : P. Gopalkrishnan Nair, for the Appellant; John Varghese, Asst. Solicitor General, Joseph Kodianthara and Mithun Markos, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ Petition was preferred by the appellant seeking a writ of certiorari to quash Ext.P3 and also for other consequential reliefs. Ext.P3 is an order passed by the Superintendent of Central Excise holding that the writ petitioners are providers of catering service to M/s. AIR India and are liable to get registered u/s 69 of Finance Act (No. 2), 2004 and also to follow the provisions of the said Act and Rules with effect from 10-9-2004.

2. Writ petitioner submitted that it would not fall within the definition of "caterer" u/s 65(24) of the Finance Act since petitioner is not providing any catering service. According to the petitioner, those who supply food on occasions like marriage etc. alone can be treated as caterers. Petitioner pointed out that it would not fall within the definition of caterer and no service tax can be imposed on the petitioner. Contention was rejected by the learned single Judge. Learned single Judge Reported in M/s. Saj Flight Services Pvt. Ltd. Vs. Supdt. of Central Excise, took the view that both service tax and sales-tax under the impugned

provisions could be levied on the petitioner and rejected the writ petition against which this appeal has been preferred.

3. Counsel appearing for the petitioner reiterated the same contentions which were raised before the learned single Judge. Petitioner is engaged in the supply of food and beverages to Air companies for inflight service to passengers. Central Excise Department demanded service tax from the petitioner. Constitutional validity of demanding service charge was challenged in Tamil Nadu Kalyana Mandapmam am Assn. Vs. Union of India (UOI) and Others, and was negatived. Only contention raised by the petitioner was that it would not fall within the expression "caterers" under Sub-section 24 of Section 65 of the Finance Act, 1994.

4. We are not prepared to accept the contention of the counsel that service tax can be demanded only from those persons who are caterers engaged in serving food in marriage and other functions. Sub-section 24 of Section 65 specifically says, "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or nonalcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion, "Outdoor caterer" means a caterer engaged in providing services in connection with catering at a place other than his own but including a place provided by way of tenancy or otherwise, by the person receiving such services. Petitioner is admittedly engaged in the supply of food and beverages to Air Crafts for service to the passengers on board. In our view that transaction would attract service tax. In our view service anywhere would attract the liability to tax u/s 66 of the Act. Considering the nature of the work undertaken by the petitioner we find no infirmity in the order of the Superintendent of Central Excise holding that petitioner is providing catering service and is liable to get registered u/s 69 of the Finance Act, 2004. We find no reason to entertain these appeals. They are accordingly dismissed in limine.

