(2006) 08 KL CK 0080

In the High Court Of Kerala

Case No : S.T. Rev. Case No. 380 of 2004

State of Kerala APPELLANT

Vs

Hotel Sabrina RESPONDENT

Date of Decision : 24-08-2006

Acts Referred:
Kerala General Sales Tax Act, 1963 — Section 10, 5A

Citation : (2007) 1 ILR (Ker) 557 : (2007) 10 VST 262

Hon'ble Judges : K.M. Joseph, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : V.V. Asokan, Government Pleader, for the Appellant; Arikkat Vijayan Menon and Meera V. Menon, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the sales tax revision case filed by the State is whether the Tribunal is right in granting exemption to the respondent-assessee on purchase turnover of goods consumed in preparation of cooked food for sale by them under Notification S.R.O. No. 363/92.

2. Heard Special Government Pleader for the State and the counsel appearing for the respondent-assessee.

3. According to the State, exemption is granted only u/s 5A of the Kerala General Sales Tax Act, 1963 on purchase turnover of materials of use in the preparation of cooked food for sale in hotels and restaurants, other than bar attached hotels. In other words, the respondent-assessee being a bar attached hotel is not entitled to exemption is the case of the Department. In order to appreciate the rival contentions raised by both, we refer to notification, S.R.O. 363/92, the relevant portion of which is extracted hereunder:

S.R.O. No. 363/92.?In exercise of powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (15 of 1963), and in supersession of the Notification G.O. (P) No. 120/91/TD dated the 31st July, 1991 published as S.R.O. No.

1009/91 in the Kerala Gazette Extraordinary No. 949 dated the 31st July 1991, the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable u/s 5A of the said Act by the person specified below with regard to their turnover on the purchase of goods mentioned against them subject to such conditions specified therein, namely:

1...

2...

3. Dealers in cooked food including beverages not falling under entries against serial Nos. 53 and 54 of the First Schedule sold and/or served in hotels and/or restaurant on the purchase of goods for consumption in the preparation of such food for sale by them.

4. It is clear from para 1 of the notification that exemption granted is from liability u/s 5A and such exemption has to be granted to the person and the goods specifically mentioned under the notification. The relevant clause applicable to the petitioner, that is Clause 3, clearly mentions the persons or the dealers, who are entitled to exemption, the goods in respect of which exemption is granted and the conditions for granting such exemption. The items which are granted exemption under Clause 3 of the notification are goods for consumption in the preparation of cooked food for sale by them. The condition for exemption is that the cooked food made out of the goods so purchased is sold or served in hotels or restaurants. On an analysis of Clause 3, we find that the persons who are granted exemption are dealers in cooked food including beverages not falling under entries against serial Nos. 53 and 54 of the First Schedule. Entries 53 and 54 of the First Schedule deal with Indian made and foreign made foreign liquor and by virtue of the exclusion of dealers in such liquor from the scope of exemption, the exemption is not available to bar attached hotels, which are admittedly selling liquor falling under entries 53 and 54 of the First Schedule. In other words, a class of dealers entitled to exemption are hotels and restaurants other than bar attached hotels. We do not think the notification admits of any other meaning. Therefore, the interpretation placed on the notification contrary to this finding is erroneous. We therefore reverse the order of the Tribunal and hold that bar attached hotels and restaurants are not entitled to exemption under S.R.O. No. 363/92 on purchase turnover of goods consumed in the preparation of cooked food for sale in such hotels or restaurants, where liquor is also sold.

5. Accordingly sales tax revision case is allowed by vacating the order of the Tribunal and restoring the assessment.