(2006) 08 KL CK 0017

In the High Court Of Kerala

Case No : S.T. Rev. No''s. 331 and 508 of 2004

State of Kerala — APPELLANT

Vs

M/s. Saj Flight Services (P) Ltd. — RESPONDENT

Date of Decision : 25-08-2006

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

Citation : (2006) 4 ILR (Ker) 220 : (2006) 3 KLJ 246 : (2006) 4 KLT 399 : (2007) 8 VST 148

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

Bench : Division Bench

Advocate : V.V. Asokan GP, for the Appellant; P. Gopalakrishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—The question raised in these S.T. Rev. Cases filed by State is whether the tribunal is right in holding that cooked food supplied or sold to Air Companies for serving in Air Crafts is entitled to exemption under Notification SRO No. 1003/91 dated 1-8-1991. Relevant portion of the Notification is extracted hereunder for easy reference:

SRO NO. 1003/91 - In exercise of the powers conferred by Section 10 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), 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 under the said Act on the sale or purchase, as the case may be, of goods specified below payable by the persons or units with regard to their turnover, subject to the conditions and restrictions specified therein, namely:

1) Tax on the sale of cooked food including beverages not falling under Entry 76-A of the first schedule to the said Act sold or served in all hotels and restaurants other than Bar attached or Star Hotel and Restaurants.

This notification shall come into force on the 1st day of August, 1991.

Case of the State is that cooked food is exempt only when the same is sold or served in hotels or restaurants other than bar attached hotels and restaurants. Counsel for respondent contended that liability for tax on cooked food arise only when the same is sold or served in bar attached hotels or star hotels. Therefore, the question is whether the notification grants exemption to cooked food sold or served anywhere other than bar attached or star hotels and restaurants. It is clear from the main body of the notification that exemption is granted to goods described subject to conditions specified in the notification. The items that are exempt under clause (1) are cooked food and beverages other than alcoholic liquor whether Indian made or foreign made, covered by Entry 76A of the 1st Schedule to the KGST Act. The next question is as to who are the dealers entitled to exemption. It is clear from the Notification that exemption is available to hotels and restaurants other than bar attached or star hotels and restaurants. The last is the condition for exemption. It is clear from clause (1) that what is insisted upon is sale or service of the commodity namely cooked food in hotels and restaurants other than bar attached hotels and restaurants. On this analysis, we find exemption to cooked food is available only when it is sold or served in hotels or restaurants other than bar attached or star hotels and restaurants. Therefore, sale of cooked food any where-else probably even by a hotelier will attract tax. In other words, if a hotel or restaurant makes an out-door service, the same will attract tax. Therefore, it is obvious that a dealer like the respondent engaged in sale of cooked food to Air Companies for service in the Air Crafts is not entitled to exemption under the above notification. If the contention of the respondent is accepted, then the notification has to be read as a charging provision which it is not because, it is an exemption notification issued u/s 10 of the Act to certain commodities subject to conditions which are discussed above. In view of our understanding of the notification as above, and since the notification does not admit any other meaning the order of the tribunal holding that petitioner is entitled to exemption for sale of cooked food to Air Companies for service in Air Crafts is absolutely incorrect. Even though counsel for respondent relied on Financial Act of 2004 where under specific Entry is brought under item 46A to the 1st Schedule to the KGST Act providing for tax at 8 per cent on sale of cooked food and beverages to Air Line Services, we do not think the said provision goes to show that prior to the introduction of specific rate in the 1st Schedule entitles the commodity for exemption when sold by a dealer to Air Companies. If a commodity is not exempt and is not specifically covered by any Entry in the Schedule, then the rate of tax provided under the residuary Entry in the 1st Schedule applies. In this view of the matter, we allow the S.T. Rev. Cases by reversing the order of the tribunal and restoring the assessments.