

(2006) 07 KL CK 0092
In the High Court Of Kerala
Case No : TRC No's. 107 and 122 of 2003

State of Kerala

APPELLANT

Vs

Rosen Fisheries

RESPONDENT

Date of Decision : 13-07-2006

Acts Referred:

Citation : (2006) 3 KLT 823 : (2007) 8 VST 209

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

Bench : Division Bench

Advocate : V.V. Asokan, Government Pleader, for the Appellant; Jose J. Mathaikal, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The question raised in the TRCs is whether baby fish is entitled to exemption from sales tax under entry 18 of the Third Schedule to the KGST Act which provides for exemption for "dried fish and fresh fish". Respondent is engaged in sale of baby fish to Fish Farms. The Assessing Officer took the view that the item referred to in entry 18 of the Third Schedule, that is, fish whether dried or fresh, is a food commodity. Since baby fish is not used as food, it is not entitled to exemption and hence he assessed it under residuary entry of the First Schedule. The first appellate authority held that baby fish is also fresh fish and hence it falls under Entry 18 of the Third Schedule to the Act, thereby entitling to exemption from tax, to which Tribunal concurred.

2. Special Government Pleader appearing for the revision petitioner-State contended that dried fish and fresh fish falling under Entry 18 are obviously food commodity, while baby fish cannot be used as food by virtue of it's small size making it unworthy for human consumption. Counsel appearing for the respondent on the other hand contended that all varieties of fish, however, small or big, will fall under entry 18 and hence exempt from sales tax. Even though we are prima facie in agreement with the argument of Special Government Pleader that Entry 18 of the Third Schedule generally treats fish as a food commodity, we

do not think the intention of the Legislature is to tax baby fish hatched and sold to Fish Farms for more than one reason. In the first place, entry 37 of the Third Schedule provides for exemption of marine products such as prawns, lobsters, crustaceans, mollusis. etc. There is nothing in the entry to show that exemption is for the meat of these items or only when such items are sold for consumption. In the course of fishing, it is quite possible for the fishermen to catch baby fish of various varieties and it is upto them to sell it for rearing for maturity instead of using it as food. Secondly, we find that Entry 39 of the Third Schedule provides for exemption of Nursery plants, seedlings, suckers and other planting materials, including seeds used for raising crops. Even though many crops are taxable under the Act, their seeds and seedlings are granted exemption under general category which only shows the Legislature's intention to encourage cultivation. We do not find anything to indicate in the Schedules or elsewhere in the Act that the Legislature wanted a disincentive for fish farmers by taxing baby fish purchased by Fish Farms for rearing. Above all, there is no entry in the Schedules to the Act to levy tax on any other category of fish which are ordinarily not used as food such as ornamental fish kept in Aquariums. In the circumstances, we are of the view that fish in all forms, whether baby, dried or fresh, will fall under Entry 18 of the Third Schedule to the Act.

TRCs. are accordingly dismissed.