(1995) 09 MAD CK 0076

In the Madras High Court

Case No : Tax Case No. 22 of 1995 (Tax Case Revision No. 9 of 1995)

State of Tamil Nadu APPELLANT

Vs

Arasan Ice Creams and Sweets Restaurant RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Citation : (1995) 09 MAD CK 0076

Hon'ble Judges : T. Jayarama Chouta, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The State is the petitioner. The assessee is Arassn Ice Creams and Sweets Restaurant at No. 2, Madurai Road, Tirunelveli. The assessee is dealing in sales of sweets, ice-creams and bakery products. The turnover with regard to the sale of bakery products comes to Rs. 1,94,076 in the assessment year 1987-88. The assessee claimed exemption under G.O.P. No. 822 dated July 25, 1983 [Notification No. II(1)/CTRE/150/83 (Gazette Notification), dated August 17, 1983]. However, both the assessing officer as well as the Appellate Assistant Commissioner refused to grant the exemption as claimed by the assessee and brought to tax turnover of Rs. 1,94,076 at 5 per cent. Aggrieved, the assessee filed an appeal before the Tribunal. The Appellate Tribunal accepted the contention put forward by the assessee and held that the assessee is entitled to exemption with regard to the turnover relating to the sale of bakery products amounting to Rs. 1,94,076 which is less than Rs. 2 lakhs. Aggrieved by this order, the department is in revisional before this Court.

2. Learned Additional Government Pleader (Taxes) submitted that the Tribunal was not correct in granting exemption with regard to the turnover of bakery products. Learned Additional Government Pleader (Taxes) further submitted that the bakery products. According to the learned Additional Government Pleader (Taxes),if a dealer is dealing bakery products along with other articles, that assessee will not be entitled to exemption on the sale value of bakery products, even though it is less than Rs. 2 lakhs. It was further submitted that in the

earlier notification it was mentioned that the exemption is available to any dealer, but in the latter notification, it was stated that it is a dealer who is entitled to exemption which would indicated that the dealer in bakery business should deal with only the bakery products and nothing else. It was further pointed out that the definition occurring in section 2(q) of the Act, with regard to the total turnover, would mean the entire turnover of an assessee in doing business in all articles. Further, when a person is dealing in bakery products along with other products, he is not entitled to claim exemption under the abovesaid notification.

3. We have heard learned Additional Government Pleader (Taxes) for the State and we have also carefully perused the records. The assessee is dealing in sweets, ice-creams and bakery products. The notification in G.O.P. No. 822, dated July 25, 1983 [Notification No. II(1)/CTRE/150/83, Gazette Notification dated August 17, 1983] runs as under :

"In the said notification in item V, for the proviso, the following proviso shall be substituted, namely :

''Provided that the exemption in respect of bakery products shall not apply to a dealer whose total turnover in a year exceeds rupees two lakhs.''"

A plain reading of the abovesaid notification would go to show that exemption would be granted only if an assessee is dealing with bakery products within the turnover limit of Rs. 2 lakhs. The word "turnover" occurring in the abovesaid notification would indicate the total turnover arising out of the entire business transaction relating to the sale of bakery products and we cannot include the turnover relating to other goods. According to us the object of the notification though not stated anywhere, would be to help consumers on whom the ultimate burden rests. Learned Additional Government Pleader (Taxes) submitted that the object of the notification would be to help the small dealers in bakery business.