

(2007) 09 KAR CK 0052
In the Karnataka High Court
Case No : S.T.A. No. 11 of 2007

T.T.K. Healthcare Limited

APPELLANT

Vs

Authority for Clarification and Advance Rulings

RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 4 (1) (b), 5 (1)

Citation : (2013) 75 KarLJ 57 : (2009) 22 VST 561

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : A. Rama, D. Venkatesh and Vikram A. Huilgol, for the Appellant;

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The correctness of the order passed by the respondent on the application filed by the assessee seeking clarification with reference to entry No. 40 of the First Schedule to the Karnataka Value Added Tax Act, 2003, it has been clarified by the respondent with reference to its jurisdiction, after interpretation of the entry 40, by holding that the assessee is not liable for exemption under entry 40 of the First Schedule and alternatively the goods being non-scheduled goods were liable to tax at 12.5 per cent u/s 4(1)(b) of the KVAT Act, is questioned in this appeal, framing three questions of law, which read thus:

(1) Whether the clarification No. AR.CLR.CR-147/06-07 dated March 30, 2007 of the Authority for Clarifications and Advance Rulings is right in law in so far as it does not classify "cereal-based ready-to-fry pellets" sold under the brand name of "Fryums" under entry 40 of the First Schedule to the KVAT Act, 2003?

(2) Whether the Authority for Clarifications and Advance Rulings has erred in passing the impugned order dated March 30, 2007? and

(3) Any other question of law this honourable court deems fit in the facts and circumstances of the case.

2. In support of the said contentions, various grounds are urged in this appeal placing reliance upon the decision of the Supreme Court in the case of Shiv Shakthi Gold Fingers v. Assistant Commissioner, Commercial Taxes reported in [1996] Manu SC 1566 wherein the apex court has held after setting aside the decision of the Rajasthan High Court that the shape of the product does not include it from being a form of papad and further observed, "the question under consideration before the High Court was whether gole papads could be classified as papads for the purpose of exemptions" and made certain observations at paragraph 3 and the same need not be extracted as it is not necessary in this order as the respondent after referring to the said decision did not rightly apply the same to the facts of the case holding that the same has no application thereto in view of the specific item mentioned in entry No. 40 of the Schedule, the classification sought for by the appellant is in respect of fry snack pellets, which are called as "sandige" in Kannada which eatable commodity is totally different from "pappad"

3. The clarificatory application filed by the assessee was heard by the Authority for Clarification and an order was passed. The authority after referring to the facts and legal contentions urged by the petitioner has elaborately referred to entry No. 40 of the First Schedule "papad" which is exempt u/s 5(1) of the Act and examined the claim of the assessee with reference to the eatables manufactured by it. The authority has taken note of points with reference to the rival legal contentions urged before it. The meaning of papad and its utility viewpoint is extracted and the Kannada meaning of the same is also referred and the policy declaration by the company as per annexure 2 to the application is also examined which deals in products like "ready-to-fry snack pellets" in English and the same is translated in Kannada as "sandige" and concludes the same as Fryums and held that the same does not fall under entry No. 40 of the Schedule and automatically 12.5 per cent of tax under the Act is applicable and the respondent has considered the reliance placed upon the meaning of "papad" in encyclopedia as adopted from the word "papa-dum".

4. After careful application of mind by the authority and considering the 4 legal submissions made on behalf of the assessee, keeping in view the decision of the judgment of the Supreme Court in Shiv Shakthi's case [1996] SC 1566 referred to supra, clarified and held that the food products of Fryums for which they are seeking exemption do not fall under entry 40 "papad" and therefore it has held that the goods of fry snack pellets in respect of which clarificatory order sought is liable for sales tax u/s 4(1)(b) of the Act at the rate of 12.5 per cent. The respondent after careful consideration of the case of the appellant and examining its claim has recorded a finding of fact stating that the manufactured eatable commodity, namely, fry snack pellets, in respect of which clarification was sought for by the appellant, does not fall within entry 40 of the First Schedule to the Act in respect of which exemption granted for eatable commodity is not applicable to the item manufactured by the applicant and therefore it has rightly rejected the application. We are in agreement with the view of the authority and therefore we

do not find any good reasons whatsoever to interfere with the order.

5. The appeal must fail and accordingly this appeal is dismissed.