
(1994) 12 KAR CK 0024

In the Karnataka High Court

Case No : S.T.R.P. No"s. 71 and 186 of 1991

Woodlands Hotel (P) Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Citation : (1995) ILR (Kar) 337

Hon'ble Judges : S. Rajendra Babu, J;B. Padmaraj, J

Bench : Division Bench

Judgement

S. Rajendra Babu, J.—In these two petitions a hotelier is the petitioner. For the assessment years 1984-85 and 1985-86 a sum of Rs. 2,64,850.25 and Rs. 2,40,700 respectively were deducted by the petitioner from the salaries of the employees towards supply of food to them. Whether such amount would constitute consideration for the sale of food is a question posed for our consideration.

2. It is submitted on behalf of the petitioner that it is by way of wages that food was supplied customarily and in such cases the notification issued under the Minimum Wages Act, 1948, on February 14, 1986, made it clear that where food is supplied to workmen certain sums could be deducted from their wages depending upon the category in which they come. It is therefore contended on behalf of the petitioner that the sums deducted from the wages for supply of food is part of wages and not consideration for sale of food. But, it is the stand of the department that the said amount is in the nature of consideration for supply of food.

The assessing authority took the view that though the assessee has referred to minimum charges deductible, the difference between the actual charges and from the sales effected to the customers would make up appropriate charges. However, it also held that the amount received as per the lodging section towards supply of food to workers at Rs. 2,64,250.25 is exigible to tax following the decision of the Karnataka Appellate Tribunal in Hotel Harsha v. State of

Karnataka. The appellate authority was of the view that the argument of the petitioner has got to be rejected in view of the decision of the Tribunal and therefore the assessing authority was justified in levying the tax on that part of the turnover. When the matter was carried to the Appellate Tribunal in second appeal it was noticed therein that the petitioner was entitled to recover feeding charges from the salary of the employees and the said recovery is in lieu of value of food supplied to the workmen. If it was treated to be a compulsory acquisition, the same would amount to sale. Since the petitioner is entitled to deduct certain sums on account of and in lieu of food supplied to workmen, the recoveries will have to be treated as sales. It was also noticed that the petitioner has supplied food to the workmen and instead of recovering the sale proceeds on the spot depending upon the item consumed, it has recovered the sale proceeds of food from their salary on monthly basis. In the opinion of the Tribunal there is no difference between the sale of food to workmen and sale of food to others. The Tribunal did not agree with the proposition that the petitioner had given their workmen wages in kind and if they were to be wages in kind then the salary would have been fixed with a condition of free meals, whereas that is not so. The conditions of employment clearly specify that in the event of worker choosing to take food he would be liable to pay feeding charges at specified rate. This amounts to supply of food at a fixed rate throughout the month and deferring recovery till the payment of wages. In their view there is no difference between an outright sale and sale of food and drinks to a worker and the only difference, if any, would be that a regular bill is issued in respect of sale to a customer, whereas an adjustment of book entry is passed in respect of food supplied to workmen.

3. The learned counsel for the petitioner relied upon a decision in *State of Andhra Pradesh v. Hotel Sri Lakshmi Bhavan, Visakhapainam* [1974] 33 STC 444. When an identical question came up for consideration, the Andhra Pradesh High Court took the view that the supply of food by a hotelier to its employees was essentially an amenity and an incident of contract of service entered in to between the parties and was not made in pursuance of contract of sale, the concept of sale is different from that of service and therefore took the view that such amount was not liable to be brought into tax.

4. The learned Government Pleader relying upon a decision of this Court in *K. Guru Rao v. State of Mysore* (C.R.P. No. 999 of 1961, disposed of on 15th February, 1962) submitted that the amount deducted towards supply of food is certainly in the nature of sale, as there is an option to a worker either to take food in the hotel or elsewhere. It is only in the circumstances when he takes food in the hotel, the hotelier would be entitled to deduct a sum from his wages and not otherwise. Thus, what is deducted out of wages is the sum or consideration paid towards the food that is supplied to him. In that event, there is definitely a transaction of sale.

5. In order to correctly appreciate the position in law we have to refer to the

concept of wages as understood under the Minimum Wages Act. Wages therein has been defined to mean :

"All remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes house rent allowance, but does not include :

(i) the value of :

(a) any house-accommodation, supply of light, water, medical attendance, or,

(b) any other amenity or any service excluded by general or special order of the appropriate Government;

(ii) to (v)"

6. The Karnataka Government has issued a notification under the Act, whereby it is provided as follows :

"Where food is supplied to workmen, the following sums are to be deducted from the wages in the zone mentioned against each :

Amount to be deducted :

Zone A : Rs. 90 per month Zone B : Rs. 80 per month Zone C : Rs. 75 per month"

7. This aspect was considered by this Court in Chandrabhava Boarding and Lodging v. State of Mysore AIR 1968 Mys 156 : [1968] 34 FJR 48 It is explained therein that the notification which is available to deduct the amounts towards the food supplied is more a provision for deduction of the value of an amenity, namely, food than as authorising payment of minimum wages partly in the form of food. Ultimately, it was concluded that the Government had power to fix the value of food supplied to employees for the purpose of deduction from the minimum wages payable to those employees.

8. Looked at the matter in the correct perspective as analysed by this Court, it only means that where food is supplied to a workman, the wages would be cut short by this amount mentioned in the notification. If that is so, what is paid to the workman is only wages as deducted. If that is so, what he would get is only something short of minimum wages, which is permissible under the law to pay. Therefore, it would only mean, what is paid to a workman is the value of the food plus the minimum wages. In that event, the amount paid thereby would only become wages and not a consideration for purpose of sale.

9. Matter also can be looked at from another angle. Whenever services are obtained from a servant what the master would pay to the servant is an incident of contract of service, either wages or any other amenities such as providing food or lodge. In such an event it would become part of the contract of service and not a contract of sale. That was the position noticed by the Andhra Pradesh High

Court in The State of Andhra Pradesh Vs. Hotel Sri Lakshmi Bhavan, Thus, as long as there is no relationship of a seller and a buyer, but only that of a master and a servant and as an incident of relationship of master and servant, if any food is supplied and deductions are made out from the wages of the servant towards the food supplied, the same must be treated as part of wages and not a separate contract of sale of food. Indeed, the Tribunal noticed this very position. In the course of its order it is stated that if wages said in kind the salary would have been fixed at a rate with condition as free meals. If wages are paid and as part of wages free meals are, provided the same would not amount to sale. In the event when meals are provided, definitely wages would be reduced by a substantial sum. If wages are reduced by any particular failure, that figure cannot be taken to be equivalent to the value of the food provided to the employee to attract levy under Karnataka Sales tax Act. This reasoning would certainly knock out the approach of the department. In that view of the matter, we allow these petitions and set aside the orders made by the authorities below.

10. Petitions allowed.