

State Of Karnataka By The Commissioner ... vs Udipikrishna Bhavan on 27 January, 1981

Equivalent citations: AIR1981SC1751, (1981)3SCC76, [1981]48STC513(SC), AIR 1981 SUPREME COURT 1751, 1981 TAX. L. R. 3078, 1981 SCC (TAX) 186, (1981) 48 STC 513, 1981 (3) SCC 76

Author: A.C. Gupta

Bench: A.C. Gupta, Baharul Islam

JUDGMENT

A.C. Gupta, J.

1. These two appeals arise out of two revision petitions dismissed by the Karnataka High Court which were preferred by the State of Karnataka under Section 8A of the Karnataka Appellate Tribunal (Amendment) Act, 1976, read with Section 23 of the Karnataka Sales Tax Act, 1957. The revision petitions were directed against a common order of the Karnataka Appellate Tribunal by which the Tribunal allowed the two appeals preferred by the assessee relating to the assessment for the years ended March 31, 1976, and March 31, 1977, respectively. Following the decision of this Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, the Tribunal had held that the supply of refreshments to the visitors of the two hotels owned by the respondent before us was "part of a social service and not a sale". The High Court taking the same view dismissed the revision petitions. The finding of the Appellate Tribunal, as summarised by the High Court, on which its decision rests is:

The assessee runs a hotel wherein food and drinks are served to the visitOrs.

2. We do not think that this finding only is sufficient to justify the conclusion reached by the Tribunal and the High Court. It appears that the attention of the High Court was drawn to the judgment of this Court disposing of a review petition in the Northern India Caterers' case. The following extract from that judgment to which the High Court itself has referred is relevant:

Indeed, we have no hesitation in saying that where food is supplied in an eating-house or restaurant, and it is established upon the facts that the substance of the transaction, evidenced by its dominant object, is a sale of food and the rendering of services is merely incidental, the transaction would undoubtedly be exigible to sales tax. In every case it will be for the taxing authorities to ascertain the facts when making an assessment under the relevant sales tax law and to determine upon those

facts whether a sale of the food supplied is intended.

3. Clearly therefore the only finding recorded in this case that the assessee runs a hotel wherein food and drinks are served to the visitors is not sufficient.

4. We set aside the impugned order and send the case back to the Sales Tax Officer concerned for a fresh assessment according to law following the guidelines appearing in the judgment of this Court disposing of the review petition in the Northern India Caterers' case . There will be no order as to costs.