

Kerala High Court

Deputy Commissioner (Law), ... vs T.S. Sujatha on 24 July, 2000

Equivalent citations: 2002 128 STC 405 Ker

Author: Lekshmikutty

Bench: G Sivarajan, A Lekshmikutty

JUDGMENT Lekshmikutty, J.

1. The matter arises under the Kerala General Sales Tax Act, 1963. The revenue is the revision-petitioner. The assessment year concerned is 1991-92. The respondent-assessee is a dealer in Indian-made foreign liquor having a shop at Chingavanam. She was also running a restaurant attached to the liquor shop. In the assessment for the year 1991-92 the assessee, inter alia, claimed exemption from payment of tax on the sale of cooked food in the restaurant on the basis of S.R.O. No. 1003/91. The assessing authority rejected the said claim. This was confirmed in appeal by the first appellate authority. However, in second appeal the Sales Tax Appellate Tribunal granted the exemption. Hence the revision.

2. The only question that arises for consideration is as to whether the Appellate Tribunal was justified in granting exemption on the turnover of cooked food sold by the assessee in the restaurant run by her. During the relevant period, the sale of cooked food including coffee, tea and like articles served in a hotel, restaurant or in other place not falling under entry 40 of the First Schedule and when the turnover does not exceed rupees five lakhs, is exempted from sales tax as per entry 12 of the Third Schedule to the Act. The Government in exercise of its powers under Section 10 of the Act, issued S.R.O. No. 1003/91 which, inter alia, granted exemption in respect of the tax payable under the Act on the sale of cooked food including beverage not falling under entry 76A of the First Schedule to the Act sold or served in all hotels and restaurants other than bar attached or star hotels and restaurants.

3. Though entry 12 of the Third Schedule to the Act grants exemption from payment of sales tax on the turnover of cooked food served in a hotel or a restaurant only when the turnover does not exceed rupees five lakhs, S.R.O. No. 1003/91 granted total exemption in respect of the turnover of the sale of cooked food including beverages not falling under entry 76A of the First Schedule to the Act sold or served in all hotels and restaurants other than bar attached or star hotels and restaurants. The assessee as already stated is only having a foreign liquor shop and a separate restaurant though both the business are conducted in the adjacent buildings. The Tribunal has noted that the licence issued to the assessee under the Foreign Liquor Rules was only for the sale of foreign liquor. The restaurant conducted by the assessee was a small one attached to the liquor shop. The Tribunal also noted that the same is not a bar hotel and the sales turnover is below rupees five lakhs. It is on these grounds the Tribunal has held that there is no justification for levy of tax on the turnover of cooked food supplied in the restaurant.

4. In order to attract the levy of tax on the turnover of cooked food under the provisions of entry 12 of the Third Schedule as well as under the notification, the cooked food must be sold or served in a bar attached hotel or a star hotel. Bar attached hotels can be conducted only by the holder of an FL3 licence issued under the Abkari Rules. Admittedly the assessee is not a holder of FL3 licence. She is

only conducting a foreign liquor shop. The hotel business conducted by her is independent though the same is attached to the foreign liquor shop. The conduct of the restaurant in a building attached to the foreign liquor shop will not make the restaurant a bar attached restaurant. The department has no case that liquor is supplied in the restaurant. In this case, the finding of the Tribunal is that the sales turnover of cooked food is below rupees five lakhs. Even if the turnover is above rupees five lakhs, in view of the notification S.R.O. No. 1003/91 the same is not liable to tax. The Tribunal, according to us, is perfectly justified in deleting the turnover of cooked food from the assessment. The revision is accordingly dismissed.