

Madras High Court

State Of Tamil Nadu vs Ramaraja Bhavan on 22 April, 1991

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Bench: A Anand, Raju

JUDGMENT Dr. A.S. Anand, C.J.

1. The respondent is Tvl. Ramaraja Bhavan. The assessing authority in the original assessment exempted a turnover of Rs. 1,39,658.98 from the purview of sales tax holding the turnover as not exigible to tax since it did not represent sale but only service. This view was taken by the assessing authority in view of the judgment rendered by the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1978] 42 STC 386. It transpires that subsequent to the passing of the assessment order certain fresh facts came to the notice of the assessing authority and in the meantime the judgment in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi was clarified on a review petition and was reported as Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi . The assessing authority, therefore, was of the opinion that the turnover of Rs. 1,39,658.98 was an escaped assessment and it was proposed to bring it to tax. The assessee was heard and final assessment order was made bringing the turnover to tax as escaped turnover. An appeal was preferred by the assessee before the Appellate Assistant Commissioner. Reliance was placed before the appellate authority on the judgment of the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1980] 45 STC 212 and it was argued that there was no sale of food and that service is the dominant object of the transactions in the respondents' Bhavan and, therefore, the turnover was not exigible to tax. The appellate authority, however, found that there was sale of food which was predominant object and that the rendering of service was merely incidental. Accordingly, the appeal was dismissed and the transaction was held exigible to tax. The assessee went up in second appeal to the Sales Tax Appellate Tribunal, Additional Bench, Coimbatore. The Tribunal opined that the materials available were not sufficient to hold that the substance of the transaction evidenced by its dominant object was sale of food and that rendering of service was merely incidental. The Tribunal accepted the appeal and set aside the orders of the appellate authority as well as the assessing authority. The Revenue is in revision.

2. The learned Additional Government Pleader (Taxes) submitted that since the Tribunal came to the conclusion that the material available was not sufficient to determine one way or the other as to what was the substance of the transaction and dominant object of the same, it should have remitted the matter to the assessing authority for investigation on the question of fact since it had been observed in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi that this question of fact should be decided in each case with reference to nature and the substance of the transaction. In every case it is a matter for the assessing authority to ascertain the facts when making an assessment under the relevant provisions of the sales tax law and to determine upon those facts whether the sale of food or only service was intended. In our opinion, the Tribunal fell in error in setting aside the orders of the assessing authority and the Appellate Assistant Commissioner. Keeping in view the nature of the transaction, the case was required to be remanded to the assessing authority for its fresh disposal in accordance with law in the light of the observations made by the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi [1980] 45 STC 212. We, therefore set aside the order of the Tribunal, and accepting this revision, remit the case to the assessing authority

for disposal in accordance with law in the light of the observations made in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi .

3. Mr. Natarajan, learned counsel for the respondent, submitted that in view of the 46th Amendment to the Constitution of India the assessee would not be liable. It will be open to the assessee to raise all such points before the assessing authority at the time when the fresh assessment proceedings are taken up. There shall, however, be no order as to costs.

4. Petition allowed.