

Supreme Court of India

Shri Krishna Enterprises And Ors. vs State Of Andhra Pradesh And Ors. on 25 October, 1989

Equivalent citations: 1988 (1) SCALE 638, 1990 76 STC 67 SC

Bench: R Misra, M M Dutt

ORDER

1. Heard learned Counsel for the parties. Seven assessed in this petition under Article 32 of the Constitution are running hotels, restaurants and canteens which are eating places within the city of Visakhapatnam in the State of Andhra Pradesh. Until the 46th Amendment of the Constitution became effective, the supplies which have been made by these eating houses to consumers were not treated as sale assessable to tax on account of decisions of this Court. The 46th Amendment brought about a change in the basis position by treating such transactions as assessable for tax by treating them as sales.

2. The 46th Amendment came into force with effect from February 2, 1983, and the relevant provision of Section 6 of the Amending Act provided:

Notwithstanding anything contained in Sub-section 1 any supply of a nature referred to therein shall be exempted from the aforesaid tax-(a) where such supply has been made by any restaurants or eating houses (by whatever name call) at any time on or after 7th day of September, 1978 and before the commencement of this Act and the aforesaid tax has not been collected of such supply on the ground that no such tax could have been levied or collected at that time:

or (b)...provided that the burden of proving that the aforesaid tax was not collected of any supply of the nature referred to in Clause (a)...shall be on the person claiming the exemption under this sub-section.

3. On the basis of the said 46th Amendment, the Andhra Pradesh General Sales Tax Act was amended and amending provision came into force on 13th September, 1985 with a corresponding provision as has been extracted from the 46th Amendment of the Constitution. The effect of the said amendment in the State Act, therefore, was that the benefit contemplated by the 46th Amendment was extended upto the date of the State Legislation and this position is not disputed before us by learned Counsel appearing for State. As the law stands, the petitioners before us are to satisfy the designated authority that no tax had been collected before the 46th Amendment or for the matter of that prior to the amendment of the State Legislation. We find from the record that no such opportunity was extended to the petitioners when tax was levied.

4. The situation can appropriately be met and the interest of justice adequately served if opportunity is given to the petitioners to satisfy the appropriate authority that they come within exemption of Section 6 of the 46th Amendment and the State law. The burden to establish the fact is on the assessee. We set aside the assessments and require the Assessing Officer to give opportunity to the petitioners to satisfy him that no tax was collected until 13th September, 1985. In the circumstances indicated above no further collection shall be made. However, the amounts which have been collected, need not be refunded till fresh orders are made. In the event of no liability, the whole or if

some liability is found, then the excess shall be refunded to the petitioners within one month of determination along with interest at 12 per cent from the date of payment till date of refund. In the event of liability being found to be in excess of what has been collected, the Assessing Officer is free to collect the same in accordance with the provisions of the law.

5. The Writ Petition is disposed of accordingly without costs.