

Supreme Court of India

Commissioner Of Sales Tax vs Northern Railway Catering ... on 14 July, 1994

Equivalent citations: 1995 AIR 93, 1994 SCC (5) 358

Author: K Singh

Bench: Kuldip Singh (J)

PETITIONER:

COMMISSIONER OF SALES TAX

Vs.

RESPONDENT:

NORTHERN RAILWAY CATERING DEPARTMENT ,U.P.

DATE OF JUDGMENT 14/07/1994

BENCH:

KULDIP SINGH (J)

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KULDIP SINGH (J)

YOGESHWAR DAYAL (J)

CITATION:

1995 AIR 93

1994 SCC (5) 358

JT 1994 (5) 73

1994 SCALE (3) 260

ACT:

HEADNOTE:

JUDGMENT:

The Judgement of the Court was delivered by KULDIP SINGH, J.-This Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi¹ held that service of meals whether in a hotel or restaurant does not constitute a sale of good for the purpose of levy of sales tax. Following the law laid down by this Court in Northern India Caterers' case¹ the Allahabad High Court by its order dated 13-12-1979 disposed of Sales Tax Revision Nos. 838,837,532 and 533 of 1979 by holding that the catering done by the Northern Railway stations was not exigible to sales tax. This Court had meanwhile by its order dated 21-12-1979, clarified the judgment in Northern India Caterers' case² to the following effect:

"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 service is merely incidental, the transaction would undoubtedly be exigible to sales

tax. In every case it will be for the, taxing authority to ascertain the facts when making an assessment under the relevant sales tax law and to determine upon these facts whether a sale of the food supplied is intended."

2. The Commissioner of Sales Tax, U.P., Lucknow, thereafter filed Miscellaneous Application Nos. 9, 10, 11 and 12 of 1980 before the Allahabad High Court for review of the order dated 13-12-1979. The High Court dismissed the applications on the ground that the same were not maintainable. These appeals by way of special leave are against the order of the High Court.

3. It is not necessary for us to go into the question as to whether the High Court was justified in dismissing the review applications filed by the appellant. Apart from the clarification dated 21-12-1979 given by this Court the legal position has been altogether changed by the Constitution (46th) Amendment Act, 1982 which came into force with effect from 3-2-1983.

4. We, therefore, set aside the impugned order of the High Court dated 19-3-1982, allow the review applications filed by the Commissioner of Sales Tax, U.P., Lucknow before the High Court and set aside the order dated 13-12-1979 passed by the High Court in sales tax revisions. We remand the case to the Sales Tax Officer concerned who will hold the assessment proceedings afresh in accordance with law. The appeals are allowed in the above terms. No costs.