State of Kerala Vs. Malabar Regional Co-op. Milk Producers Union Limited

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Court : Kerala

Decided On : Nov-25-2008

Reported in : (2009)23VST414(Ker)

Judge : H.L. Dattu, C.J. and; A.K. Basheer, J.

Acts : Kerala General Sales Tax Act, 1963

Appeal No. : Sales Tax Revision No. 286 of 2007

Appellant : State of Kerala

Respondent : Malabar Regional Co-op. Milk Producers Union Limited

Advocate for Def. : K.B. Muhamed Kutty, Sr. Adv. and; K.M. Firoz, Adv.

Advocate for Pet/Ap. : Muhammed Rafiq, Sr. Government Pleader

Disposition : Petition dismissed

Judgement :
ORDER

H.L. Dattu, C.J.

1. The one and only question that arises for our consideration and decision is, the rate of tax payable on the sale of 'sambharam'. The assessee had claimed reduced rate of tax on the ground that sambharam is nothing but buttermilk, as

envisaged under entry 49 of the First Schedule to the Kerala General Sales Tax Act, 1963 ('the KGST Act', for short). However, the assessing authority was of the view that, for the purpose of preparing sambharam, ginger, chilly, etc., are added to the buttermilk, and, therefore, the identity of the buttermilk changes, and, therefore it should be treated as an item falling under the residuary clause, and, therefore, the assessing authority taxed it at eight per cent. Further, the assessing authority had relied upon the clarification issued by the Commissioner of Commercial Taxes, in Clarification No. C3.62774/01/CT/ dated February 15, 2003.

2. Aggrieved by the said order passed by the assessing authority, the assessee had carried the matter in appeal before the first appellate authority. In the first appeal, the assessee's representative had brought to the notice of the first appellate authority, the decision of the Sales Tax Appellate Tribunal, wherein the Tribunal had held, that, buttermilk and sambharam are one and the same commodity and, therefore, they would fall under entry 49 of the First Schedule to the KGST Act. The first appellate authority has ignored the binding decision of the Tribunal, and, relying upon the clarification issued by the Commissioner of Commercial Taxes, has proceeded to confirm the orders passed by the assessing authority.

3. The correctness or otherwise of the orders passed by the first appellate authority was questioned by the assessee before the Tribunal. After detailed consideration of the issue before them and applying the principles laid down by the apex court in the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers [1980] 46 STC 63, the Tribunal has granted relief to the assessee. It is the correctness or otherwise of the orders passed by the Tribunal which is the subject-matter of this revision petition.

4. The issue that would arise for our consideration and decision is, whether by adding of green chilly, ginger, etc., to the buttermilk, the character of the buttermilk would change, to fall it under the entry other than entry 49 of the First Schedule to the KGST Act?

5. Admittedly, the assessee is effecting sales of sambharam. For the preparation of sambharam, the assessee would add ginger, chilly and a pinch of salt to the

buttermilk. Mere addition of the ginger, chilly and a pinch of salt would not change the commodity as such. The sambharam continues to be the buttermilk, and, therefore, in our opinion, the Tribunal was fully justified in annulling the orders passed by the assessing authority which was confirmed by the first appellate authority, and, further treating that sambharam is an item which would fall under entry 49 of the First Schedule to the KGST Act.

6. In that view of the matter, while affirming the orders passed by the Tribunal, we reject the tax revision petition.

7. Ordered accordingly.