K.M. Babu Vs. State of Kerala

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Court : Kerala

Decided On : Oct-03-2006

Reported in : (2009)20VST516(Ker)

Judge : C.N. Ramachandran Nair and; K.M. Joseph, JJ.

Acts : Kerala General Sales Tax Act, 1963 - Sections 5A

Appeal No. : S.T. Rev. No. 300 of 2004

Appellant : K.M. Babu

Respondent : State of Kerala

Advocate for Def. : Georgekutty Mathew, Government Pleader

Advocate for Pet/Ap. : Arikkat Vijayan Menon and; Harisankar V. Menon, Advs.

Disposition : Petition dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. Question raised is whether the Tribunal is justified in confirming levy of tax under Section 5A on purchase turnover of thulasi leaves by petitioner for manufacture of cough syrup.

2. Petitioner is an ayurveda doctor. He is engaged in manufacture of ayurvedic drug preparations. Cough syrup is one such product manufactured by petitioner using, among other items, thulasi leaves which are purchased from unregistered dealers. While the case of the department is that petitioner is liable to pay tax under Section 5A on the purchase of thulasi leaves from unregistered dealers, petitioner contends that leaves are entitled to exemption under entry 59 of the Third Schedule to the Kerala General Sales Tax Act, 1963. The Tribunal, however, held that since petitioner's product is a manufactured product, petitioner is liable to pay purchase tax on the raw material. We are unable to interfere with the order of the Tribunal because the petitioner is not entitled to exemption, though not for the reasons stated in the Tribunal's order. The entry under which exemption is claimed by the petitioner is extracted hereunder:

59. Vegetables whether roots, green fruits or leaves used for human consumption including yam, potatoes, lime, sabola and tomatoes except their manufactured products.

3. From the above, it is clear that only fruits, leaves, etc., referred to in the latter part of the entry qualify as vegetables. In fact, the items referred to therein are yam, potatoes, lime, sabola and tomatoes which are popular vegetables used to make currys, salads, etc. It is obvious from the entry that all items referred to therein fall in the category of vegetables. There can be no dispute that thulasi leaf is an ayurvedic herb and it's other general use is in temples in connection with pooja. It is not used as a vegetable and is probably unfit for human consumption as a food commodity, whatever be the medicinal properties it has. It is also not a vegetable as understood in common parlance. In fact, there are several vegetable leaves used for cooking, like, spinach, palak, cabbage, etc. Thulasi leaves do not belong to the category of vegetable leaves and no one can get thulasi leaves in a vegetable shop. Therefore, going by the popular meaning and the meaning of leaves which entry 59 of the Third Schedule is capable of as stated above, we are of the view that the petitioner is not entitled to exemption on thulasi leaves.

4. The sales tax revision is, therefore, devoid of any merit and it is dismissed.