Anbumathi Traders and ors. Vs. State of Tamil Nadu and ors.

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SooperKanoon Citation : sooperkanoon.com/837092

Court : Chennai

Decided On : Feb-23-2007

Reported in : (2009)20VST829(Mad)

Judge : K. Raviraja Pandian, J.

Acts : Tamil Nadu General Sales Tax Act, 1959 - Sections 80

Appeal No. : Writ Petition Nos. 36374, 36386, 36390, 36398 and 36597 of 2005, 2652, 2657 and 2658 of 2006

Appellant : Anbumathi Traders and ors.

Respondent : State of Tamil Nadu and ors.

Advocate for Def. : Haja Nazirudeen, Special Government Pleader

Advocate for Pet/Ap. : A. Chandrasekaran, Adv.

Disposition : Petition allowed

Judgement :

K. Raviraja Pandian, J.

1. The facts on which the present writ petitions have been filed is that the petitioners are dealers and their assessments for respective assessment years were completed originally. There were certain disputes as to the taxability of

pulses, which were already taxed, were again taxed when ground into flours. This Court in [1993] 3 MTCR 337 (K.P.R. Rajah and Sons v. Commercial Tax Officer), has ruled that the flours are taxable even though the pulses were already taxed, as there is a separate entry under Sections 80(a) and 80(b) of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 which is corresponding to entry (ii) in Part IIIB of the First Schedule to the Tamil Nadu General Sales Tax Act as amended. It is also accepted that till orders are passed in the above said judgment on March 29, 1993, the department had always been interpreting that if tax has been paid for pulses, no fresh tax need be paid for flour. On that basis, several assessments were carried out by the department. Having regard to the above said judgment, in respect of the dealers whose assessments were already completed, the second respondent has issued a circular dated September 16, 1993 to the following effect:

Till the judgment in K.P.R. Rajah and Sons v. Commercial Tax Officer [1993] 3 MTCR 337, the department has always been interpreting that if tax has been paid on pulses, then no fresh tax need be paid on that pulses flour. Several assessments have also been carried out by the department on this basis. It is only because of the judgment, the new interpretation has come about. Therefore, the request for waiver of liabilities up to March 31, 1993 and not to re-open the past cases is reasonable and is accepted.

This waiver is only in respect of tax liability on pulses flour when the pulse has suffered tax. It does not amount to either conceding that these pulses flour are declared goods or any waiver in respect of difference in tax, surcharge, additional surcharge and additional sales tax. Since the judgment is clear, that pulses flour is not a declared goods.

2. This circular has been subsequently ratified by the Government, by G.O. No. 394 Commercial Tax Department dated June 9, 1998. Paragraph 2 of the G.O. reads as follows:

2. The Government have examined the above request of the Special Commissioner and Commissioner of Commercial Taxes and decided to accept it. The Government, accordingly, ratify the action of the Special Commissioner and

Commissioner of Commercial Taxes, in having issued instructions to the assessing officers not to reopen the past cases of assessments on flour (for the period up to March 31, 1993) wherever such assessments have been finalised without applying the High Court's judgment dated March 29, 1993.

3. It is the precise case of the petitioners that the petitioners assessments were already over, but have been reopened on the basis of the judgment reported in [1993] 3 MTCR 337 (K.P.R. Rajah and Sons v. Commercial Tax Officer), which is impermissible in view of the circular of the second respondent issued in Ref. R. Dis. 60407/93/Acts Cell I, dated September 16, 1993, wherein, it is specifically stated that the request for waiver of liabilities up to March 31, 1993 and not to reopen the past cases of assessments was reasonable and was accepted. The said circular has been ratified by the Government in G.O. (Rt) No. 394 dated June 9, 1998 and the relevant portion of the same is extracted in the previous paragraphs.

4. In view of the circular dated September 16, 1993 and the Government Order dated June 9, 1998, the reopening of the assessments of the petitioners, which had been originally completed, subsequent to the circular dated September 16, 1993 cannot be legally sustainable in law. Hence, the assessments so made subsequent to September 16, 1993 has to be set aside in respect of the additional sales tax only. In the light of the circular dated September 16, 1993 and the Government order dated June 9, 1998, the writ petitions are allowed.

5. There is no order as to costs.