

M/s. K. L. Johar & Co.

Vs

Assistant Commissioner of Sales Tax (Assessment) Special Circle, Ernakulam and Another

Writ Petitions Nos. 154 And 385 of 1972

(R. S. Pathak, O. Chinnappa Reddy JJ)

24.07.1980

JUDGMENT

PATHAK, J. –

1. Both these writ petitions have been filed under Article 32 of the Constitution against assessments made under the Kerala General Sales Tax Act, 1963 by the Assistant Commissioner of Sales Tax (Assessment) Special Circle, Ernakulam for the assessment years 1970-71 and 1971-72 respectively. The petitioner contends that the assessing authority has acted without power in including in its total turnover certain amounts recovered by the petitioner from its customers as tentative deposits on the sale of goods made to them.

2. It appears that the petitioner sells liquor and on some sales of liquor it not only charged the purchasers for freight and excise duty but also included in the bills a certain amount by way of 'deposit' to be charged as sales tax in the event of freight and excise duty being included in the total turnover for the purpose of assessment. In the assessment orders, the assessing authority did not clearly pronounce on the true nature of the amounts recovered by way of deposit but it is now not disputed that the deposits were in fact recovered by the petitioner as alleged by it. It is also not disputed that the amounts recovered by way of freight and excise duty are includible in the total turnover of the petitioner for the purpose of sales tax. In the circumstances, it is clear that the 'deposit' amounts must be regarded as sales tax recovered by the petitioner and payable to the Revenue. Indeed, it is admitted between the parties that the amounts have since been paid over and realised by the Revenue. That being so, Rule 9(1) of the Kerala General Sales Tax Rules comes into operation and in accordance with it the amounts recovered as deposit by the dealer, and now found to represent sales tax, be deducted from the total turnover of the dealer for the purpose of assessment to sales tax.

3. In the circumstances, the writ petitions are allowed and the assessment orders are quashed insofar as they include the amounts recovered as 'deposits.' in the total turnover of the petitioner for the assessment years 1970-71 and 1971-72. There is no order as to costs.

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