

State of Karnataka by the Commissioner of Commercial Taxes

Vs

Udipikrishna Bhavan

Civil Appeals Nos. 335-36 of 1981

(A.C. Gupta, Baharul Islam JJ)

27.01.1981

JUDGMENT

GUPTA, J. –

1. These two appeals arise out of two revision petitions dismissed by the Karnataka High Court which were preferred by the State of Karnataka under Section 8(A) of the Karnataka Appellate Tribunal (Amendment) Act, 1976 read with Section 23 of the Karnataka Sales Tax Act, 1957. The revision petitions were directed against a common order of the Karnataka Appellate Tribunal by which the Tribunal allowed two appeals preferred by the assessee relating to the assessment for the years ended March 31, 1976 and March 31, 1977 respectively. Following the decision of this Court in Northern India Caterers (India) Ltd. v. Lt.-Governor of Delhi ((1978) 4 SCC 36 : 1978 SCC (Tax) 198 : (1979) 1 SCR 557), the Tribunal had held that the supply of refreshments to the visitors of the two hotels owned by the respondent before us was "part of a social service and not a sale". The High Court taking the same view dismissed the revision petitions. The finding of the Appellate Tribunal, as summarised by the High Court, on which its decision rests is : "The assessee runs a hotel wherein food and drinks are served to the visitors." We do not think that this finding only is sufficient to justify the conclusion reached by the Tribunal and the High Court. It appears that the attention of the High Court was drawn by the judgment of this Court disposing of a review petition in the Northern India Caterers case ((1980) 2 SCC 167 : 1980 SCC (Tax) 222 : (1980) 2 SCR 650). The following extract from that judgment to which the High Court itself has referred is relevant : (SCC p. 173 SCC (Tax) p. 228, para 12)

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 services is merely incidental, the transaction would undoubtedly be eligible to sales tax. In every case, it would be for the taxing authority to ascertain the facts when making an assessment under the relevant sales tax law and to determine upon those facts whether a sale of the food supplied is intended . . .

Clearly therefore the only finding recorded in this case that the assessee runs a hotel wherein food and drinks are served to the visitors is not sufficient.

2. We set aside the impugned order and send the case back to the Sales Tax Officer concerned for a fresh assessment according to law following the guide-lines appearing in the judgment of this Court disposing of the review petition in the Northern India Caterers case ((1980) 2 SCC 167 : 1980 SCC (Tax) 222 : (1980) 2 SCR 650). There will be no order as to costs.

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