

P. Mytheenkannu

Vs

State of Kerala

(S.P.Bharucha, V.N.Khare JJ)

30.07.1997

JUDGMENT

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KHARE,J.

1. The appellant, who is a dealer in Ayurvedic herbs and oils, supplied ayurvedic herbs to the Government Ayurvedic College, Trivandrum during the assessment years 1984-85, 1985-86 and 1986-87 and, consequently, filed return in Form 8 of Kerala General Sales Tax Act (hereinafter referred to as 'the Act'), claiming exemption on entire turnover for the aforesaid three assessment years. The exemption so claimed was on the basis that ayurvedic herbs are taxable at the point of last purchase in the State by a dealer who is liable to pay tax. The Ayurvedic College being the last purchaser, the appellant obtained valuation certificate from the College for quantity of herbs purchased by them and furnished the same before the Sales Tax Officer. The Additional Sales Tax Officer, Trivandrum and further two appellate courts did not accept the claim of the appellant for exemption of tax in view of the fact that the certificate produced by the appellant was not Form-25. The Writ Petition filed at the instance of the appellant against the order of the Sales Tax Authorities was also dismissed by the High Court of Kerala. The Sales Tax Authorities as well as the High Court were of the view that sub-rule (14) of Rule 32 being mandatory, the appellant is not entitled to claim any exemption from tax unless he furnishes a certificate of declaration in Form-25 from the person to whom he sold the goods. This view taken by the High Court has been challenged in this appeal. It was urged that the Valuation certificate obtained from the party to whom the goods had been sold was substantial compliance of requirement of sub-rule(14) of Rule 32 of the Rules, having regard to the fact that that party, being a government body, could not fulfil all the requirements of Form-25.

2. Having heard the matter and perused the record, we find the crucial question that arises in the present appeals is, as to whether the Government Ayurvedic College, Trivandrum comes within the expression " State" occurring in Section 2(viii) of the Act which defines " dealer" . Further, the second question that arises for consideration is, as to whether the certificate issued by the Govt. Ayurvedic College substantially satisfied the requirements of sub-rule(14) of Rule 32 and Form-25. But, these questions have neither been dealt with by the Sales Tax Authorities nor by the High Court. Initially, we thought to decide these questions here. But, in the absence of material facts, it is not safe to decide these questions in this appeal. In such circumstances, we set aside the order and judgment of the High Court of Kerala dated 8.9.1989 in TRC Nos. 106, 107 and 108 of 1989, and send these cases back to the High Court for deciding the questions referred to above. The appeals are allowed. There shall be no order as to costs.