

State of T.N.

Vs

Arasan Ice Cream Sweets

Civil Appeal No. 11373 of 1996

(S. P. Bharucha, G. T. Nanavati JJ)

23.09.1998

ORDER

1. The respondent has been served, but does not appear.
2. The respondent was a dealer in sweets, coffee, ice cream and bakery products. For the relevant Assessment Year 1987-88, he had a total turnover of Rs. 12,07,301, out of which the turnover in bakery products was of Rs. 1,94,076.
3. A notification dated 26-3-1981, issued by the State Government in exercise of powers under Section 17(1) of the Tamil Nadu General Sales Tax Act, 1959 gave an exemption in respect of the tax payable by any dealer under the said Act on the sales of "appalam", vermicelli and bakery products without a brand name or with a brand name not registered under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958). On 25-7-1983, the notification was amended and the following proviso was headed to the item referred to above :

"Provided that the exemption in respect of bakery products shall not apply to a dealer whose total turnover in a year exceeds rupees two lakhs."

4. The High Court held that the Tribunal had been right in granting exemption to the respondent on the turnover of bakery products amounting to Rs. 1,94,076, which was less than Rs. 2 lakhs. The State is in appeal by special leave.
5. In our view, the High Court was in error. The notification as originally issued gave an exemption in respect of the tax payable by a dealer on the sales of, inter alia, bakery products. The amendment restricted the operation of that exemption to a dealer whose total turnover in a year did not exceed Rs. 2 lakhs. The emphasis, in our view, was on the total turnover of the dealer and that would include not only the dealer's turnover in bakery products but also such turnover in other articles as the dealer might have. Such total turnover of the respondent being over Rs. 2 lakhs, it was not entitled to the exemption.
6. The appeal is allowed and the order under appeal is set aside. There shall be no order as to costs.