(2000) 11 KL CK 0024

High Court Of Kerala

Case No: T.R.C. No. 211 of 2000

Vilasini — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision: Nov. 30, 2000

Citation: (2001) 123 STC 127

Hon'ble Judges: S. Sankarasubban, J; A. Lekshmikutty, J

Bench: Division Bench

Advocate: K. Reghu Kottappuram, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

S. Sankarasubban, J.
This TRC is filed against the judgment in T.A. Nos. 427 to 429 of 1995 and 247/97. The petitioner is an assessee under the Kerala General Sales Tax Act in respect of the business turnover in Yamuna Tourist Home, Adoor. The petitioner was assessed for sales tax for the assessment years 1990-91, 1991-92, 1992-93 and 1993-94 by the Additional Sales Tax Officer, Adoor, fixing assessable turnover at Rs. 11,50,330 for the year 1990-91, Rs. 14,16,925/- for the year 1991-92, Rs. 17,30,100/-for the year 1992-93 and Rs. 21,50,790/- for the year 1993-94. The assessments were made on estimate rejecting the returns filed and accounts produced for the years. The petitioner filed 4 appeals against the said assessment. The appellate authority modified the assessment for the first three years to some extent and dismissed the appeal for the 4th year confirming the assessment order in toto. The petitioner filed an appeal before the Appellate Tribunal. True copy of the order of the Tribunal is produced in this case as Annexure I. The finding of the Tribunal was as follows:

2. The next dispute is that soda and cola sold by the appellant are second sales and hence not taxable at her hands. But, as per specific entries in the schedule, beverages sold in bar attached hotel are taxable and the assessing authority has taken into account

this aspect in including the turnover of soda and cola as taxable at the appellant"s hands. We see no materials before us to interfere with this finding.

3. According to petitioner, this case is governed by Entry 87 of Schedule I of the K.G.S.T, Act, 1963. As per Entry 87 which stood at the relevant time the commodities are taxable only at the first sale. Here admittedly there is second sale. The learned Government Pleader was not able to submit that the item is not fall under Entry 87. Hence we are of the view that the order made by the assessing authority confirmed the appellate authority and modified by the Tribunal is wrong. The assessment orders are set aside.

4. T.R.C. is allowed.