State of West Bengal & Ors. v. Calcutta Club Limited & Ors.

Levy of sales tax/VAT on supply of food and beverages by clubs to members – interpretation of Article 366(29-A)(e) of the Constitution and Section 2(30) of the West Bengal Sales Tax Act, 1994. Applicability of doctrine of mutuality to incorporated and u

Date of Order: October 3, 2019
Case Law No: GIB-SC-2019-02
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CASE DESCRIPTION / SUMMARY

Facts:
The dispute arose from demands of sales tax on supply of food and drinks by clubs to their permanent members.
The clubs contended that such supplies were governed by the doctrine of mutuality and did not constitute "sale".
The Tribunal and High Court held that no taxable sale occurred as members and the club were not distinct persons.
The matter was referred to a larger Bench to examine the impact of the 46th Constitutional Amendment on the doctrine of mutuality.

Court Decision:
The Court held that the doctrine of mutuality continues to apply even after the 46th Constitutional Amendment.
It ruled that Article 366(29-A)(e) applies only to unincorporated associations and does not cover incorporated clubs.
The Court held that in members' clubs, there is no transfer of property from one person to another, as members and the club are not distinct.
Accordingly, supply of food and beverages by clubs to their members does not constitute a "sale" and is not liable to sales tax/VAT.

Cases Referred by Court:
- C.T.O. v. Young Men's Indian Association
- State of Madras v. Gannon Dunkerley & Co.
- Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi

- State of Punjab v. Associated Hotels of India Ltd.
- Deputy Commercial Tax Officer v. Enfield India Ltd.
- Bacha F. Guzdar v. Commissioner of Income Tax
- Graff v. Evans
- Trebanog Working Men’s Club and Institute Ltd. v. Macdonald
- BSNL v. Union of India

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