(1994) 07 KL CK 0047

High Court Of Kerala

Case No: W.A. No''s. 576, 577, 579 and 660 of 1994

V.S. Jyothish Kumar and Others		APPELLANT
	Vs	
State of Kerala and Others		RESPONDENT

Date of Decision: July 12, 1994

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1), 226
- Kerala General Sales Tax Act, 1963 - Section 5(1), 7(14), 7(17)

Citation: (1994) 95 STC 527

Hon'ble Judges: T.V. Ramakrishnan, J; M.M. Pareed Pillay, J

Bench: Division Bench

Advocate: G. Sivarajan, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader for Taxes and P.K. Behanan, Government Pleader, for the Respondent

Final Decision: Dismissed

Judgement

M.M. Pareed Pillay, J.
Appellants challenge the amendment to Sub-sections (14) and (17) of Section 7 of the Kerala General Sales Tax Act, 1963 (for short "the Act") by the Kerala Finance Act 13 of 1993, as also to Section 5(1)(v) read with item (1) of the Fifth Schedule to the said Act as arbitrary, oppressive, confiscatory and unreasonable.

2. Appellants are the successful bidders at the Abkari auctions held during March 15, 1993 and March 17, 1993, of the right to vend arrack in retail in various excise ranges in the State during 1993-94. They have executed agreements prescribed by the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 and have paid the rental (kist). Appellants contend that they are not liable to pay the tax under the new Abkari policy.

3. Arrack is taxable under the Act at two points, under Clause (v) of Section 5(1) read with item 1 of the Fifth Schedule, the two points being the point of first sale by a dealer who is liable to tax u/s 5 to a registered dealer and the second point being

the point of last sale in the State by a dealer who is liable to tax u/s 5. The rate payable at the first point of levy is 50 per cent. At the second point of levy it is 12.5 per cent. In cases where there are no two points of sale within the State, tax is payable at 62.5 per cent at the point of first sale by a dealer who is liable to tax u/s 5 to a person other than a registered dealer. Sub-section (14) of Section 7 introduced a change with effect from April 1, 1992. This enables the dealers in arrack to pay the tax due from them at a compounded rate. A dealer having licence for retail sales in arrack may, notwithstanding the general provisions, at his option, instead of paying tax in accordance with Clause (v) of Section 5(1) pay tax at 20 per cent of the rental amount payable by him under the Abkari Act 1 of 1077 M.E. for the licence less the amount of tax paid by him for the purchase of arrack on the first sale point. During 1992-93 the contractors were not permitted to import any arrack or rectified spirit and they had to obtain the entire stock of arrack for sale from the distilleries within the Kerala State, owned or controlled by the Government. In other words, there was a State monopoly in regard to the supply of arrack during the aforesaid period. Retail dealers had to pay tax at 50 per cent on their purchases from these distilleries and another 12.5 per cent on the sale price to the consumer.

4. When auctions were conducted during March 15, 1993 to March 17, 1993, the levy of tax was on the aforesaid basis, namely, the two point levy as under item 1 of the Fifth Schedule with an option to the dealers to compound the tax payable at 20 per cent of the rental for the Abkari shop.

5. As a result of the new Abkari policy, State monopoly on the supply of arrack was abandoned and the contractors were permitted to import designated quantities of rectified spirit from other States for conversion into arrack or procure the supply from the distilleries in the State, preference being given for local supply. Rule 8 of the Disposal in Auction Rules was amended to carry out the policy on March 4, 1993 and also on March 31, 1993. As a result of the policy, the contractors became liable to pay tax at 62.5 per cent under the last column to item 1 of the Fifth Schedule on their retail sales of arrack in cases where the rectified spirit was imported from outside, as they became the first and last seller in respect thereof.

6. Contention of the appellants is that the levy in question is oppressive and destructive of their trade and that it violated their fundamental rights under Article 19(1)(g) of the Constitution of India. There is no merit in the contention in view of the law that there is no fundamental right to trade or business in intoxicants. In Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, the Supreme Court declared that there is no fundamental right to trade or business in intoxicants. The Supreme Court observed :

"There is no fundamental right to do trade or business in intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants--its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and

indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants..... The wider right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the State deems expedient. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration."

Though Article 19(1)(g) guarantees the right of every citizen to choose his own employment or to take up any trade or calling, restriction can definitely be imposed by the State in the interests of the public welfare and on the grounds mentioned in Clause (6). Contention of the appellants that the levy in question is oppressive and destructive of their trade in arrack and thereby it violated their fundamental rights under Article 19(1)(g) was rightly repelled by the learned single Judge. That apart, there cannot be any violation of Article 19(1)(g) in the collection of sales tax at the compounded rate as it has been done in accordance with the option of the dealers/contractors. Actually the compounding provision takes off lot of botheration and annoyance to the dealers/contractors as they need not produce their registers, accounts, etc., before the authorities concerned. As they were at liberty to accept the option or not, the belated challenge in the writ proceedings does not have any justification.

7. Another contention of the appellants is that the assurance given by the honourable Finance Minister on the floor of the Legislative Assembly on March 12, 1993 that the compounding pattern would be refixed at 20 per cent has not been honoured and this has caused them considerable financial burden. Speech or statement on the floor of the Legislative Assembly can at best be considered only as a declaration based on Governmental policy. As it is open to the Legislative Assembly to accept the statement or not, no rights flow from the speech made by the Minister. So long as it does not get the imprimatur of the Legislature the speech remains only as a policy statement. On the basis of the speech appellants cannot contend that it is the last word on the matter or that they were misled by it in their actions. As the only limitations on the Legislature are those imposed by the Constitution itself, statements made by the Minister on the floor of the Legislative Assembly cannot be taken to circumvent any of the provisions of a statute. As the taxing power is one of the fundamental powers of the Government and as it has no limitation except those embodied in the Constitution, Minister''s statement during the deliberations in the Legislative Assembly cannot be taken into consideration especially when the statute makes no mention of it or when it is evident from the statute itself that the suggestion was not accepted.

8. Appellants could have very well complied with the normal procedures of assessment by producing accounts, submitting returns and submitting themselves to the process of assessment and paid the tax due from them on the basis of the actual sales. Without doing so, appellants sought compounding. That was done

after April 1, 1993. They were fully aware of the amendment introduced in the Finance Bill, 1993 on March 27, 1993, which came into force on April 1, 1993. As the option exercised by the appellants was accepted by the Revenue, it has resulted in a concluded binding contract. As a result of the option, they availed the benefit of paying the tax at the compounded rate in instalments. Having done so, they cannot retract from the agreement and seek reliefs under Article 226 of the Constitution of India. It is also significant to note that the liability to pay the tax fell ultimately on the consumers. Hence, there cannot be any grievance on the part of the appellants regarding the amendment to Section 7(14).

9. It is true that in relation to those who opted for compounding the tax the rate was altered to 20 per cent of twice the rental amount, i.e., in effect making it 40 per cent. As there was no compulsion on any dealer/contractor to compound the tax and as only those who exercised option alone would have to pay 40 per cent of the kist amount and as they obtained the benefit of payment of the amount of tax at the compounded rate in 12 equal monthly instalments without the trouble of having their accounts, etc., produced and being scrutinised by the departmental authorities for the purpose of assessment, it can very well be found that they are really freed of great botheration. The dealers who wanted compounding of the tax need not undergo the assessment procedure with attendant risk of their accounts being not accepted. Search; seizure and inspection under the various provisions of the Act do not come into play so far as they are concerned. As the appellants were under no obligation to compound the tax and as they exercised their option on their own volition, it is beyond comprehension as to how they could challenge the compounding provision as arbitrary and unreasonable.

10. It is always open to the appellants to pass on the tax to the consumer and recover it from him at the rates specified against item 1 in the Fifth Schedule to the Act. They could recover the tax at 62.5 per cent from the consumer on the sale price of the arrack. Contention of the appellants that the prices of arrack would go very high on account of the new Abkari policy and so people would be weaned away from arrack to foreign liquor was not found acceptable by the learned single Judge. As rightly held by the learned single Judge, each variety of liquor has its own votaries and so merely because of the price increase it is not likely that those who want to purchase arrack would switch on to some other variety of liquor.

11. Contention of the appellants that a purchaser of arrack from the State of Kerala and a purchaser from outside the State are discriminated by the new policy and this is offensive of Article 14 of the Constitution of India is not tenable. As the whole scheme of the policy would show that it is for the dealers to compound the tax and as option is given to them, the belated stand that there is violation of Article 14 cannot be accepted.

12. Next contention of the appellants is that a person who brings rectified spirit from outside the State is treated in a discriminatory manner compared to a person

who purchases arrack from the distilleries within the State. There is no merit in the above contention as there is no case that the dealers who purchase rectified spirit from outside the State stand in the same footing as those who purchase arrack within the limits of the State. As the presumption is always in favour of the constitutionality of an enactment and as it has always to be assumed that the Legislature understands and correctly appreciates the needs of its own people, an enactment cannot be struck down as discriminatory merely on assumptions. Appellants could not point out any data to hold that the persons who purchase rectified spirit from outside the State of Kerala stand on the same footing as those who purchase arrack from within the State in their financial involvements. It cannot be said that the classification made by the Legislature is arbitrary. The burden of showing that a classification rests upon an arbitrary and unreasonable basis is upon the person who challenges the law being violative of Article 14 of the Constitution of India. That burden has not been discharged by the appellants.

13. As the compounded rate of tax is payable pursuant to the option exercised by the appellants and as a concluded contract has arisen when they exercised the option and when it was accepted by the department, they cannot get exonerated of their liabilities and obligations under the Act. As rightly observed by the learned single Judge, writ petition under Article 226 of the Constitution is not the appropriate remedy for impeaching the contractual obligations especially when they exercised their option on their own accord.

We do not find any reason to interfere with the well considered judgment of the learned single Judge in the original petitions. The writ appeals arc dismissed.