

(1965) 08 KL CK 0007
In the High Court Of Kerala
Case No : O.P. 1731 of 1964

Appu Menon Alias Krishna Menon

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-08-1965

Acts Referred:

Abkari Laws (Amendment and Validation) Ordinance — Section 6(2)

Citation : (1965) KLJ 1202

Hon'ble Judges : K.K. Mathew, J

Bench : Single Bench

Advocate : V. Sankara Menon, K.K.K. Kurup and V.P. Joseph, for the Appellant;

Final Decision : Dismissed

Judgement

K.K. Mathew, J.—The petitioner is the proprietor of Hotel National, Ernakulam. He holds an F.L. 3 licence for the sale of foreign liquor in retail in the hotel. Before the integration of Travancore and Cochin, he was paying a licence fee of Rs. 500/- per year for obtaining the licence for carrying on the sale in foreign liquor in retail, and was governed by the provisions of the Cochin Abkari Act, Act 1 of 1077, and the rules promulgated thereunder. After the constitution came into force the same Act and rules were in force. As per notification No.S. R. 4--1859/52/RD dated 19--1--1953, the licence fee was raised to Rs. 2000/- per annum from 1--4--1953. Subsequently it was raised to Rs. 3000/- per annum from 1--4--1963 as per G. O. MS. No. 253/63/RD dated 25--3--1963. Petitioner's contention is that the licence fee could not have been enhanced after 26--1--1950 and that the excess payments made by him were under a mistake of law, and therefore they should be refunded. The contention is that notifications made subsequent to 26--1--1950 enhancing the licence and gallonage fees did not have the sanction of the State Legislature and were therefore ultra vires. In Antony v. Excise Commissioner (1964 KLT 189) the Court had to go into the question of validity of the rules, and the notification dated 25--3--1963, and it was held by this Court that the notification

dated.25--3--1963, was invalid. Petitioner contends that in spite of the above decision of this Court the State directed him to pay Rs. 3000/- for renewal of his licence for 1964--65. On 14--5--1964, the State Government promulgated the Abkari Laws (Amendment and Validation) Ordinance (Ordinance 2 of 1964). The Ordinance was promulgated to get over the situation created by the decision of this Court reported in 1964 KLT 189.

2., The petitioner questions the validity of the Ordinance on two grounds: (1) That it is retrospective in character, and is violative of the fundamental right of the petitioner, and (2) That no fee can be collected under the guise of a luxury tax as luxury tax is a tax on articles of luxury and not a fee for the privilege of carrying on a business. Clause (2) of Section 6 of the Ordinance is as follows:

The luxury tax on liquor or intoxicating drugs shall be levied,--(1) in the case of any liquor In the from of a fee for licence for the sale of the liquor or in the from of gallonage fee or vending fee;.

The only question which I need consider is whether a luxury tax can be imposed in the shape of a licence fee. Petitioner submitted that taking out the licence after payment of the fee is a condition precedent for exercising his right to carry on the business in liquor and that the fee is not a luxury tax as it is not geared to the quantum of the liquor sold. In other words, the contention was that since the fee has no relation to the quantity of liquor sold by the petitioner it is really a tax on his right to carry on the business and not a tax on the liquor sold. A luxury tax, it is said, is a tax imposed on the giver or receiver of luxury article, and that it cannot be imposed by way of licence fee. Petitioner's counsel referred me to the following observation of the Supreme Court in *Western India Theatres Ltd., v. Cantonment Board, Poona, Cantonment* (A.I.R. 1959 S. C. 582, Para 7):

In view of this well established rule of interpretation, there can be no reason to construe the words "taxes on luxuries of entertainments or amusements" in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments or amusements and both may, with equal propriety, be made amenable to the tax. It is true that economists regard an entertainment tax as a tax on expenditure and, indeed, when the tax is imposed on the receiver of the entertainment, it does become a tax on expenditure, but there is no warrant for holding that entry 50 contemplates only a tax on moneys spent on luxuries, entertainments or amusements. The entry, as we have said, contemplates a law with respect to these matter regarded as objects and a law which imposes tax on the act of entertaining is within the entry whether it falls on the giver or the receiver of that entertainment. Nor is the impugned tax a tax imposed for the privilege of carrying on any trade or calling.

It is a tax imposed on every show, that is to say, on every instance of the exercise of the particular trade, calling or employment. If there is no show, there is no tax. A lawyer has to pay a tax or fee to take out a license irrespective of whether or not he actually practises. That tax is a tax for the privilege of having the right to exercise the profession if and when the person taking out the license chooses to do so.

And submitted that the luxury tax can only be imposed on articles of luxury and cannot be imposed in the shape of a licence fee which would really be a fee for the privilege of carrying on a business. In *T. K. Abraham and Others v. State of Travancore-Cochin* (A. I. R. 1958 Kerala 129), it was held that a licence fee for the purpose of stocking tobacco was a luxury tax and that the State Legislature has the power to enact a measure for imposing it. In the light of that ruling I hold that a luxury tax can be imposed in the shape of a licence fee. If that be so, the contention of the petitioner that the tax in this case is not a tax on an article of luxury is without any force.

3. The 2nd submission of petitioner was that the Ordinance is retrospective in character and therefore bad. That contention is without merit and was not rightly pressed by counsel. In the result, the writ petition fails and it is dismissed. No costs.