

(1956) 09 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No"s. 166 to 173, 188 and 197 to 204 of 1955, 8 to 10 of 1956 and Civil Petition No"s. 17 and 36 of 1956

B. Seetharamaiah and Others

APPELLANT

Vs

Assistant Sales Tax Officer and Others

RESPONDENT

Date of Decision : 27-09-1956

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mysore Sales Tax Act, 1948 — Section 11, 3 (1) (b), 3 (2)

Citation : AIR 1957 Kar 63 : (1957) 35 MysLJ 125

Hon'ble Judges : Venkataramaiah, C.J; Hombe Gowda, J

Bench : Division Bench

Advocate : G.S. Ullal, for the Appellant; A.G., for the Respondent

Judgement

Venkataramaiah, C.J.—In all these petitions filed under Article 226 of the Constitution of India, the legality of the levy of sales tax under the provisions of the Mysore Sales Tax Act on the turnover of Petitioners has been challenged. The turnover represents the amounts realised by sale of eatables and refreshments in hotels or restaurants kept by petitioners. u/s 3 (a) of the Act the tax is payable on the annual turnover of every dealer. Sub-section (b) which at first prescribed the rate at which the tax is payable as three pies per rupee was altered by Act 25 of 1954 and now reads as follows:

"(b) the tax shall be calculated at the following rates:

Rate of tax

(1) In the case of every dealer whose total turnover is Rs. 7,500 and above but not exceeding Rs. 10,000.

Rs. 25 per annum.

(2) In the case of every dealer whose total turnover exceeds Rs. 10,000 but does not exceed Rs. 25,000.

The rate specified in item (1) on the turnover not exceeding Rs. 10,000 and two pies in the rupee on the turnover exceeding Rs. 10,000.

(3) in the case of every dealer whose total turnover exceeds Rs. 25,000.

The rate specified in item (2) on the turnover not exceeding Rs. 25,000 and three pies in the rupee on the turnover exceeding Rs. 25,000.

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding house, restaurant or canteen, the tax shall be calculated at the following rates:

Rate of tax

(1) In the case of every dealer whose total turnover is Rs. 7,500 and above but not exceeding Rs. 10,000.

Rs. 75 per annum.

(2) In the case of every dealer whose total Rs. 10,000 but does not exceed Rs. 38,000.

The rate specified in item (1) on the turnover not exceeding Rs. 10,000 and three pies in the rupee on the turnover exceeding Rs. 10,000.

(3) In the case of every dealer whose total turnover exceeds Rs. 36,000.

The rate specified in item (2) on the turnover not exceeding Rs. 36,000 and four and a half pies in the rupee on the turnover exceeding Rs. 36,000."

2. Section 11 of the Act as amended states:

"No person, other than a registered dealer liable to the payment of tax under Sub-sections (2) and (2-A) of Section 3 shall collect any amount by way of tax under this Act; nor shall such registered dealer make any such collection except in respect of the sale or purchase of the goods specified in Schedule I and except in accordance with such, conditions and restrictions, if any, as may be prescribed."

3. Section 3 (2) provides that in regard to the articles specified in Schedule I the tax is to be levied and at the point mentioned therein. Section 3 (2-A) deals with liability of persons not having a place of business in Mysore.

4. Section 11 is, it is said, found only in the Mysore Act and that there is no provision analogous to it in the laws applicable to other States. A double restriction is imposed under the section on the collection of tax; firstly that it cannot be collected at all by the unregistered dealers and secondly that it can be collected by the registered dealers only in respect of goods specified in Schedule 1. The registered dealers are thus compelled to pay the tax which they are forbidden to recover from others and cannot have recourse to shifting the burden on the consumer as is usual. It is argued on behalf of Petitioners that in effect

and reality what is taxed is the income of the assessee about which the State is not competent to legislate and that the new enactment is exceptionally severe as even the deductions permissible under the Income Tax law cannot be claimed.

The learned Advocate-General urged that legality of the levy does not depend on transferability of liability and that there is no hindrance to a person being taxed though he can-not realise it from others. The possibility of this is not sufficient to determine the nature of the tax and may affect the consideration of the tax being direct or indirect. Nor does it answer the criticism that the provision amounts to "colourable legislation" inasmuch as the tax which purports to be one on sales is in essence not so. These contentions are not without some force but do not help the petitioners.

The section under which the levy is to be made is 3 not 11. A difficulty or disability is no doubt caused by petitioners by Section 11 but this cannot be an excuse for their not being charged. The payment may diminish the gains or even increase the loss but has to be made irrespective of this since the recovery of the tax from others is not a right conferred by the Sales Tax Act or the Constitution much less a condition precedent to it. Further the petitioners have not been taxed as yet and the petitions have been filed before the turnover is determined so that the bearing of Section 11 in relation to petitioners is at best uncertain.

5. The material point for consideration is right to equality of treatment guaranteed by Article 14 of the Constitution and whether this is prejudiced by making a differentiation in the extent of liability between sales within and sales outside hotels, of articles of food. It is not and cannot be disputed that the discrimination if arbitrary offends the Article and that the provision therefore in a taxing law as in any other law cannot have validity.

What is objectionable is, not the existence of a distinction but the absence of a reasonable basis for it and a just relation between that and the object of the Act. The petitioners complain that this is lacking and that therefore the imposition of the tax at rates far higher than those applicable to other sellers of the same articles constitutes an infringement of the constitutional right.

In support of the classification the respondents allege that sales of articles of food fetch more money inside a hotel than outside owing to facilities for use or consumption. Sales of eatables like other articles chiefly depend on the quality of preparation and the taste of persons intended to be served. The situation and environments of some hotels may be so uninviting as to deter many from getting in spite of the preparations being good and tasteful.

The Proprietors of such hotels may find that the articles attract more buyers at selected places removed from these than on the spot. So the advantage which the hotels, etc., are supposed to have in effecting sales within the premises is doubtful and does not exist in some cases. Moreover, the object of the Act is to levy tax on sales and not on property or profession. The classification of dealers

in the same articles as those who sell them in certain places and those who do not, cannot be assumed to be rational or have a just relation to the object.

Section 11 is not open to this objection as, the ban on dealers and restrictions on registered dealers in the collection of the tax are applicable uniformly to persons of the respective class.

6. The identical question whether the differentiation under a similar provision in the Madras Sales Tax Act is not repugnant to Article 14 arose in the Madras High Court before a Division Bench. The decision reported in A.R. Krishna Iyer and Another Vs. The State of Madras, , was that the proviso to Section 3 (1) (b) which is the same as in the Mysore Act is void and unenforceable as it offends the Article of the Constitution.

7. The petitioners may be taxed, if at all, u/s 3 (1) (b) and not under the proviso. The proviso is invalid and cannot be availed of for levying the tax. We order accordingly, and direct parties to bear their own costs.

8. Order accordingly.