

(1961) 08 KAR CK 0004

In the Karnataka High Court

Case No : Appeal Petition No. 542/59-60, Civil Revision Petition No. 618 of 1960

B.P. Krishnamurthy

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 04-08-1961

Acts Referred:

Mysore Excise Act, 1901 — Section 3 (10), 3 (11), 3 (9)
Mysore Sales Tax Act, 1957 — Section 12, 23, 5 (1)

Citation : (1965) CriLJ 568 : (1964) 1 MysLJ 340 : (1962) 13 STC 436

Hon'ble Judges : B.M. Kalagate, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : K. Sreenivasan, for the Appellant; D.M. Chandrasekhar, High Court Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—The main question to be decided in this case is whether the tax payable under the Mysore Sales Tax Act, 1957, in respect of sales of beer manufactured in India is three per cent. or twenty-five per cent. of the turnover. The material facts are these :

The petitioner is a dealer in liquor carrying on his business in a place known as Subha Bar, and for the assessment year ending on 31st March, 1958, in his return which he furnished u/s 12 of the Mysore Sales Tax Act, 1957, he declared his turnover to be Rs. 60,000. In respect of the half year ending on 31st March, 1958, the Commercial Tax Officer computed the turnover of the petitioner to be Rs. 39,000.

2. The process by which he reached that conclusion was this : On 1st October, 1957, on which date the Act came into force, the petitioner had with him stocks of liquor of the value of Rs. 15,634-75 up. To this amount, the Commercial Tax Officer added a sum equivalent to twelve and half per cent. thereof which in his opinion represented the petitioner's profits. The total of these two amounts was Rs. 18,000. To this sum of Rs. 18,000 was added another Rs. 18,000 which represented the value of liquor purchased by the petitioner after 1st October,

1957. The value of refreshments which the petitioner served in his bar was Rs. 3,000. The total of these sums of money which was thus Rs. 39,000 was computed to be the petitioner's turnover for the relevant period.

3. But, in respect of the sum of Rs. 18,000 which represented the value of liquor purchased by the petitioner after 1st October, 1957, the Commercial Tax Officer held that the petitioner being the second dealer was not liable to pay any sales tax. The tax which the petitioner was therefore called upon to pay was on a turnover of Rs. 21,000.

4. From this assessment, the petitioner appealed to the Deputy Commissioner of Commercial Taxes, and that appeal having been dismissed, he appealed next to the Mysore Sales Tax Appellate Tribunal. That appeal was also unsuccessful.

5. In this revision petition presented u/s 23 of the Act, two contentions were urged before us by Mr. Srinivasan, the learned Advocate for the petitioner. The first, of them is that there has been an excessive taxation, and the second is that in respect of the turnover of Rs. 18,000 which was the value of liquor owned by the petitioner on 1st October, 1957, he was not liable to pay any tax since he was neither the first dealer nor the earliest of the successive dealers in the State.

6. I shall proceed to consider the validity of the second contention which, in my opinion, has to fail.

7. Section 5(1) of the Act provides that every dealer shall pay for each year tax on his total turnover at the rate of two per cent. of such turnover.

8. Sub-section (3) of that section which is in the nature of an exception to what is contained in sub-section (1) reads :

"Incidence and levy of tax.

5. Levy of tax on sale or purchase of goods.

* * *

(3) Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied

(a) in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule, by the first or the earliest of successive dealers in the State who is liable to tax under this section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule, on the turnover of sales of such dealer in each year relating to such goods :

* * *"

9. It is not disputed that the goods sold by the petitioner are those mentioned in column (2) of the Second Schedule to the Act. That being so, the person who was liable to pay tax in respect of those sales was the first or the earliest of the successive dealers in the State who is liable to tax u/s 5.

10. It should be mentioned that before the enactment of the Mysore Sales Tax Act, 1957, sales of liquor including beer were exempt from the payment of sales tax.

11. It is contended by Mr. Srinivasan that, on 1st October, 1957, when the new Mysore Sales Tax Act came into force, the petitioner was not the first or the earliest of the successive dealers in the State, since by then, he had already purchased the goods sold by him from more than one dealer. He proceeded to submit that the petitioner was, therefore, on that date, either the second dealer or a dealer who had purchased from some one who had made a purchase from a second or third dealer.

12. It is true that section 5(3), in terms, declares that, in respect of goods specified in column (2) of the Second Schedule, the only person from whom tax can be demanded is the first or the earliest of the successive dealers in the State. It is not disputed that after the Mysore Sales Tax Act, 1957, came into force the petitioner was the first or the earliest of the successive dealers in the State in respect of the goods sold by him. The question is, whether in spite of the fact that after the Mysore Sales Tax Act, 1957, came into force, the petitioner was the first or the earliest of the successive dealers in the State, no tax can be demanded of him by reason of the fact that by the time the Act came into force he had already purchased the goods sold by him from someone else.

13. There are, in my opinion, two answers to the contention urged by Mr. Srinivasan. It should be remembered - and that is the clear provision contained in section 5(3) - that the person who is liable to pay the tax in respect of sales of goods mentioned in column (2) of the Second Schedule is the first or the earliest of the successive dealers in the State after the Mysore Sales Tax Act, 1957, came into force. Before that Act came into force, sales of those goods were exempt from the payment of sales tax and there could have been no dealer during that period who was liable to pay sales tax in respect of the sales of such goods. For the first time, the new Act made sales tax payable even in respect of those sales, and it indicated the first or the earliest of the successive dealers in the State as the person who was liable to pay such tax.

14. For the purpose of section 5(3), the only material question would be as to who is the first or the earliest of the successive dealers after the new Act came into force on 1st October, 1957. The fact that there were other dealers who dealt in those goods before that date and the fact that the first and earliest of the dealers after the Act came into force had purchased before 1st October, 1957, the goods from any one of those dealers, are quite immaterial considerations. The incidence of liability is on the first or the earliest of the successive dealers who sells the goods after 1st October, 1957. The petitioner being admittedly the first dealer who sold the goods after 1st October, 1957, is, it is plain, the person who is liable to pay the tax in respect of those goods. That, in my opinion, is the construction which we should place upon section 5(3) of the Act.

21. The Commercial Tax Officer in this case called upon the petitioner to pay tax even in respect of sales of Indian beer at twenty-five per cent. of the turnover.

22. The Mysore Sales Tax Appellate Tribunal before whom it was contended that what could be demanded of the petitioner was only three per cent. of the turnover, repelled the argument on the ground that the item applicable in the Second Schedule in respect of beer, whether it was foreign or Indian beer, was the 38th item and that beer even if it was Indian beer did not fall within the 39th item.

23. The question is whether that view taken by the Mysore Sales Tax Appellate Tribunal rests on a correct construction of the items 38 and 39 referred to above.

24. Mr. Government Pleader addressed the argument that the 38th item refers to all kinds of beer, whether it was Indian beer or whether it was foreign beer, and that beer was taxable only under the 38th item since beer was not liquor. That appears to have been also the view taken by the Mysore Sales Tax Appellate Tribunal.

25. Now, if beer is country liquor, it is clear that commodity falls within the 39th item since the 39th item is a special provision relating to country liquor.

26. The expression "country liquor" occurring in items 38 and 39 is defined by Explanation II appearing underneath the Second Schedule and that Explanation reads :-

"Explanation II - "Country liquor" in items 38 and 39 means liquor manufactured in India, other than liquor manufactured and compounded in India and coloured and flavoured to resemble gin, brandy, whisky or rum imported from outside the territory of India".

27. If Indian beer is country liquor, it is clear that it is taxable only under the 39th item, unless we come to the conclusion that the 38th item is the item under which alone all kinds of beer, whether it is Indian beer or foreign beer, is taxable.

28. I find it difficult to accept the argument that every kind of beer including Indian beer is taxable only under the 38th item. I am unable to come to that conclusion notwithstanding the submission made to us by Mr. Government Pleader that the word "including" occurring in item 38 supports that construction.

29. I am disposed to take the view that all beer is liquor. The ordinary dictionary meaning of the word "liquor" is that it is a drink produced by fermentation or distillation. Beer, according to the Shorter Oxford English Dictionary, means -

"an alcoholic liquor obtained by the fermentation of malt (or other saccharine substance) flavoured with hops or other bitters".

30. It will thus be seen that beer is liquor not merely because it is a drink prepared by the fermentation of some substance but also because it is, as ordinarily understood, liquor, as pointed out in the Shorter Oxford English

Dictionary.

31. It would be interesting to notice the definitions of "liquor", "beer" and "country liquor" in the Mysore Excise Act, 1901. Sections 3(9), 3(10) and 3(11) contain the definition of those words. Those definitions are as hereunder :-

3. "In this Act, unless there be something repugnant in the subject or context -

(9) "Liquor" includes spirits of wine, Methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol.

(10) "Beer" includes ale, stout, porter and all other fermented liquors usually made from malt.

(11) "country liquor" means liquor manufactured in the State of Mysore or in any part of India, Batavia, Ceylon (or any other country which may be specified in the rules framed by Government from time to time in this behalf).

* * * * *

32. I am therefore of the view that beer is liquor within the meaning of that expression occurring in the first part of item 38 of the Second Schedule to the Act. I do not attach any importance to the fact that after the words "all liquor" occurring in that item, the words "including beer" were added.

33. Ordinarily, the word "including" as contrasted with the word "namely" imports addition indicating something not already included, whereas the word "namely" imports interpretation.

34. But that is not how, in my opinion, the word "including" has necessarily to be interpreted and understood wherever that expression occurs in a statute or elsewhere. It is common knowledge that in definitions contained in many statutes the definition is merely inclusive and the word "includes" is employed in such definitions by way of abundant caution so that the expression defined might not be understood to eliminate from its ambit, matters and things which the definition says should be included.

35. How the expression "including" in a statute should be interpreted was authoritatively stated by their Lordships of the Privy Council in *Dilworth v. Commissioner of Stamps*, *Dilworth v. Commissioner for Land and Income Tax* ([1899] App. Cas. 99.). At page 105, this is what Lord Watson said :

"The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the

words or expressions defined. It may be equivalent to "mean and include" and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions".

36. So interpreted, the word "including" occurring in the 38th item cannot necessarily be understood as adding to the category of liquor, beer which was not already liquor but which was statutorily added to that category for the purpose of taxation. In the 38th item, as I read it, beer was included as falling within the category of liquor not because it was not already liquor, but by way of abundant caution so that no one would be able to suggest that beer was not liquor.

37. My view receives support from the pronouncement in *In Re. Power, Public Trustee v. Hastings* ([1947] 1 Ch.D. 572.).

38. The testator in that case by his will gave all his residuary estate to the Public Trustee upon trust to sell and invest and to hold the trust fund so constituted upon trust for his wife for life and after her death for his children and issue.

39. Clause 8 provided "All moneys requiring to be invested under this my will may be invested by the trustee in any manner in which he may in his absolute discretion think fit in all respects as if he were sole beneficial owner of such moneys including the purchase of freehold property in England and Wales". The testator's widow had asked the Trustee to apply part of the trust fund in the purchase of a freehold house with vacant possession for her to live in with the testator's children.

40. It was contended that the words "including the purchase of freehold property in England or Wales" must be construed as extending the effect of the clause so as to authorise the purchase of freehold property otherwise than as an investment, for the reason that if it were not so, those words would be meaningless.

41. As urged by Mr. Government Pleader in this case, the argument advanced was that the word "including", wherever used, enlarges the meaning of the word or expression after which it occurs and adds to the natural significance of that word or expression. Repelling that contention, Jenkins, J., observed :

"Having established that proposition, Mr. Winterbotham's next step is to say that the addition of the words "including the purchase of freehold property in England or Wales" must be construed as extending the effect of the clause so as to authorize the purchase of freehold property otherwise than as an investment, because he says that, if that were not so, these words would be meaningless. He has referred me to the well-known case of *Dilworth v. The Commissioner of Stamps* ([1899] AC. 99.), in support of the proposition that the effect of the word "including" when introducing expressions explanatory of the meaning of another word, is *prima facie* to enlarge the meaning of that word. It seems to me that the words "including the purchase of freehold property in England or Wales" can be sufficiently accounted for by regarding them as having been inserted by

the draftsman *ex super abundanti cautela* to make sure that no one would suggest that this clause did not extend to the purchase of freehold property as an investment. I think it is pressing the argument altogether too far to say that the effect of inserting those words must be to introduce some process which is not investing at all."

42. In the view that I take, beer is liquor for the purpose of item 38 of the Second Schedule to the Act, and if that be the position, the only sales of beer which can be taxed at twenty-five per cent., which is the rate provided for in that item, are sales of beer which is not country liquor. That is the express provision contained in the 38th item.

43. If the beer sold is country liquor, the relevant entry in the Second Schedule would be the 39th item under which the sales of such beer could be taxed.

44. The next question would be whether the beer sold by the petitioner in this case, if such beer was manufactured in India, is country liquor, and therefore not governed by the 38th item.

"Country liquor", as defined in Explanation II appearing underneath the Second Schedule, means liquor manufactured in India, other than liquor manufactured and compounded in India and coloured and flavoured to resemble gin, brandy, whisky or rum imported from outside the territory of India.

45. Beer being in my view liquor, if it is beer manufactured in India and is not coloured and flavoured to resemble foreign gin, foreign brandy, foreign whisky or foreign rum, is clearly country liquor falling within the said Explanation.

46. If the beer sold by the petitioner in this case was not coloured and flavoured to resemble foreign gin, foreign brandy, foreign whisky or foreign rum, such beer was country liquor within the meaning of that expression occurring in the 39th item and therefore not taxable under the 38th item.

47. The assumption made by the Mysore Sales Tax Appellate Tribunal that all beer, whether foreign or indigenous, is taxable only under the 38th item is therefore an assumption resting on a misconstruction of the 38th item.

48. It was necessary for the Mysore Sales Tax Appellate Tribunal to investigate the question whether any part of the petitioner's turnover consisted of sales of beer manufactured in India but not made to resemble imported gin, brandy, whisky or rum, and to tax that part of the turnover at the rate specified in the 39th entry. The question as to whether and if so what part of the petitioner's turnover consists of the sales of such beer does not appear to have been investigated at any stage by any one.

49. That being the position, the proper order that we should make, in my opinion, would be to remit the matter to the Commercial Tax Officer for an investigation into that question. That would be the only question which the Commercial Tax Officer should now investigate. The other parts of the

assessment made by the Commercial Tax Officer shall stand undisturbed. It would not be open to the petitioner to urge before the Commercial Tax Officer that he is not the first or the earliest of the successive dealers referred to in section 5(3) of the Act, since as I have held, he is one such.

50. The Commercial Tax Officer will now dispose of the matter as directed by this order.

51. In the circumstances, there will be no order as to costs.

Kalagate, J.

52. I agree.

53. Ordered accordingly.