

(1999) 02 KAR CK 0016
In the Karnataka High Court
Case No : Writ Appeal No. 5643 of 1998

Crag Martin Distillery (Private) Limited, Goa
Vs

APPELLANT

State of Karnataka

RESPONDENT

Date of Decision : 18-02-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)
Karnataka Excise (Excise Duties and Fees) Rules, 1968 — Rule 2A
Karnataka Excise Act, 1965 — Section 22, 23

Citation : (1999) ILR (Kar) 2169 : (1999) 5 KarLJ 392

Hon'ble Judges : Y. Bhaskar Rao, Acting C.J.; A.M. Farooq, J

Bench : Division Bench

Advocate : Sri B.K. Sampath Kumar, for the Appellant; Sri Kishore Mallya, Government Advocate, for the Respondent

Judgement

1. This writ appeal is filed assailing the order of the learned Single Judge upholding the constitutional validity of Rule 2-AA of the Karnataka Excise (Excise Duties and Fees) Rules, 1968 (hereinafter for short, referred to as the "rules") and dismissing the writ petition.

2. The brief facts of the case are that the appellant is a manufacturer of liquor in the State of Goa. The appellant is importing liquor into the State of Karnataka for supply to Mysore Sales International Limited (MSIL). The aforesaid rules provide for levying of fee for import of liquor into State of Karnataka by the manufacturers from other States. The appellant challenged the said rule contending that the local manufacturers are not charged with any such fee or tax whereas only manufacturers from other States who are importing liquor are only charged with such fee. By such charging, the liquor manufactured by them in other States has to be sold in Karnataka at a price higher than the liquor being sold by the manufacturers of Karnataka. Therefore, the said rule is discriminatory. It is stated that the appellant has to sell the liquor at Rs. 20/- per bottle more than the local manufacturers by virtue of the fee levied on them under the rules.

It is secondly contended that Sections 22 and 23 of the Karnataka Excise Act which empower the State to levy excise duty and countervailing duty (CVD) authorises the State to levy excise duty and CVD on the liquor imported from other States. In the case of the appellant CVD is already imposed and as such collecting the import fee again is without any authority of law and therefore unconstitutional and that there is no legislative competency for the State to levy the fee.

3. The learned Government Advocate contended that the business in liquor is privilege of the State. The State has got the right to prohibit the entire trade in liquor or to permit such business in liquor with limitations prescribed by the State. As per the provisions of the Excise Act and rules framed thereunder, the State has got power to levy import fee apart from CVD. The State is authorised to levy fee as per the relevant entries in the Constitution. There is no discrimination since all the manufacturers outside the State of Karnataka who import liquor are levied with the import fee; at the most, it is only classification of a particular class but not discrimination of an individual. Therefore, Rule 2-AA of the Rules is not discriminatory and not violative of Article 14 of the Constitution of India. The appellant has no fundamental right to do business in liquor or any other right except those granted by the State subject to the limitations prescribed by the State. The contention that there is no quid pro quo for levying fee is not tenable as the State is employing number of people in Excise Department to regulate the import of liquor from other States by incurring heavy expenditure. Even in the absence of such quid pro quo to a particular individual, the statute or rule cannot be held invalid. There are no merits in the appeal and the appeal is liable to be dismissed.

4. To appreciate the above contentions, it is relevant to mention some of the Entries in the Lists of the VII Schedule to the Constitution. Entry 51 of List II reads as follows:

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India.-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry".

According to the said Entry the State is competent to levy excise duty or CVD.

Entry 8 of List II of VII Schedule reads thus:

"8. Intoxicating liquors, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors".

This entry authorises the State to legislate regarding production, manufacture,

possession, transport, purchase and sale of intoxicating liquors. It is to be mentioned here itself that the transport includes import and export also.

Entry 66 of Entry II empowers the State to levy fee on all items enumerated in List II.

Thus, by virtue of Entry 51 of List II of VII Schedule to the Constitution, the State is empowered to levy duty or CVD and by reading together Entry 8 and Entry 66 of List II, it is manifest that the State is competent to levy fee on the transport of liquor which include import and export.

5. The Karnataka Excise Act deals with the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon, in the State of Karnataka. Section 22 of the Act empowers the State for levying excise duty or CVD. Section 23 of the Act prescribes the method for levying such duties. Section 24 of the Act empowers the State to levy the excise fee in addition to the excise duty or CVD for grant of licence or lease. Section 26 deals with forms and conditions of licence etc. Section 71 of the Act empowers the State to frame the rules. Section 71(1)(d) thereof empowers the State to frame rules to regulate import, export, transport, manufacture, cultivation, collection, possession, supply or storage of any intoxicant.

6. To appreciate the rival contentions, it is also relevant to extract Rule 2-AA of the Rules:

"2-AA. Levy of import fee.-- The fee shall be levied on brandy, whisky, gin, rum, vodka, milk punch beer and wine manufactured outside the State but within India and imported into the State of Karnataka at the rate specified below:

(a) rupees two for bulk litre on brandy, whisky, gin, rum, vodka, milk punch beer and wine; and

fifty paise for bulk litre of beer".

constitutional validity of the said rule is challenged on the ground that the State has no legislative competency to levy the import fee. But, Entry 51 of List II provides for levying duties of excise on alcoholic liquors for human consumption manufactured or produced in the State and for levying CVD at the same or lower rates on similar goods manufactured elsewhere in India and imported into the State except medicine and toilet preparations containing alcohol. Thus, the State is competent to legislate for levying excise duty and CVD. Entry 8 of List II provides that the State has power to legislate regarding intoxicating liquors i.e., production, manufacture, possession, transport, purchase and sale of intoxicating liquors. Entry 66 empowers the State to levy fees on all matters in List II. Therefore, by reading Entries 8 and 66, the State has got power to levy fees. Our view is supported by the judgment of the Supreme Court in *Southern Pharmaceuticals and Chemicals, Trichur and Others Vs. State of Kerala and Others*, .

The Apex Court in *M/s. Khoday Distilleries Ltd. etc. Vs. State of Karnataka and others*, has held that the State has got absolute right to prohibit or deal with the intoxicants and their Lordships have stated as follows:

This issue relating to violation of the fundamental rights of the appellants under Article 19(1)(g) has already been negated by the Court in the present case in *Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others*, .

It has been held (paragraph 60 of SCC : para 15 of AIR) that the right to carry on any occupation, trade or business does not extend to carrying on trade or business in activities which are inherently pernicious or injurious to health, safety and welfare of the general public. This Court has further held that a citizen has no fundamental right to do trade or business in intoxicating liquor. Hence, such trade or business in liquor can be completely prohibited. For the same reason, the State can create a monopoly either in itself or in the agency created by it, for the manufacture, possession, sale and distribution of liquor as a beverage and it can also sell licences to citizens for this purpose by charging fees. When the State permits trade or business in potable liquor with or without limitation, the citizen has the right to carry on trade or business only subject to the limitations so placed".

Therefore, levying of fee is only to regulate the import of liquor from other States into the State of Karnataka as held by the Supreme Court. That when the State permits trade or business in liquor with or without limitation, the citizen has the right to carry on trade or business only subject to the limitations so placed. The State grants import permits subject to payment of CVD and import fee as provided under the provisions of the Act and the rules made thereunder. Therefore, levying of fee cannot be said unconstitutional or without legislative competency of the State.

8. The learned Counsel for the appellant contended that there is no legislative competency in the State for imposing fees and in the absence of any statute providing a specific provision to levy tax or duty, the authority cannot collect any tax or fee. He relied on the judgment of the Supreme Court in *Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.*, . The Constitution Bench of the Supreme Court was considering the provisions of the Uttar Pradesh Sales Tax Act as amended by Act 25 of 1948 and notification issued therein altering the rate of tax on non-edible oils from a particular date. The Supreme Court while interpreting the said provisions has noted the principle of interpretation of taxing statutes as follows:

"(b) Interpretation of Statutes -- Taxing statutes -- No equitable considerations:

In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import

provisions in the statutes so as to supply any assumed deficiency".

In Ahmedabad Urban Development Authority Vs. Sharadkumar Jayantikumar Pasawalla and others, , the Supreme Court held that tax cannot be imposed by rule or regulation unless specifically provided by the statute or provision specifically delegating that power.

9. There is no dispute about the principle laid down in the above two judgments. In the present case, Sections 22 and 23 of the Excise Act empower the State to levy excise duty and CVD. Section 71(d) of the Act empowers the State to make rules to regulate import and export, transport, manufacture, possess and purchase and sell the intoxicating liquors. The power delegated vide this rule is exhaustive. Therefore, by virtue of this rule, the State has got power to regulate import of intoxicating liquor into the State and for such regulation the State could levy fee on the intoxicant imported into the State. Therefore, it cannot be said that the Karnataka Excise Act has not provided any provision delegating the power to Government to impose the fee for import of intoxicants. Therefore, the above cited judgments relied upon by the learned Counsel for the appellant will not apply to the facts of this case.

10. The learned Counsel for the appellant relied on the judgments in Krishi Upaj Mandi Samiti and Others Vs. Orient Paper and Industries Ltd., , I.T.C. Ltd. and Others Vs. State of Karnataka and Others, , M/s. Khoday Distilleries case, supra and Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, , for the proposition that there is difference between tax and fee. Tax can be imposed without providing any service, whereas for levying fee quid pro quo principle must be satisfied. According to him, the State is not rendering any service to the persons importing liquor into the State of Karnataka. Therefore, on that count itself, levying fee is bad. On the other hand, the learned Government Advocate contended that the State has appointed number of persons for regulation of import of the intoxicants into the State incurring heavy expenditure and it is not necessary that service to every individual is required. Therefore, he refuted the contentions of the learned Counsel for the appellant.

11. There is no dispute that for levying fee rendering of service to a person from whom the fee is collected is necessary. Though in earlier years it was the view that rendering service to persons from whom the fee was collected was required, the same has been diluted by the judgments of the Apex Court and the Apex Court held that when a fee is collected from a class of persons, service provided to that particular class is sufficient and in such cases an individual may not receive a particular service and that cannot be a ground to hold that there is no quid pro quo and merely by the absence of such quid pro quo, the rule cannot be said to be ultra vires. This proposition is supported by the judgment of the Supreme Court in the case of Gasket Radiators Pvt. Ltd. Vs. Employees' State Insurance Corpn. and Another, and City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, , wherein it is held:

"It is well-settled by numerous recent decisions of the Supreme Court that the traditional concept in a fee of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee must receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay, receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee".

The principles laid down in the said judgment squarely apply to the facts of the case, and we do not see any force in the contention of the learned Counsel for the appellant.

12. The learned Counsel for the appellant further contended that the fee levied is too excessive, and with the amount of tax and fee paid by the importer on the intoxicant imported into the State of Karnataka, the intoxicants sold by the appellant would cost Rs. 20/- per bottle more than what the local manufacturer sells and as such it will be impossible for them to do any business in the State of Karnataka. It is contended that the fee levied is acting as a clog on the freedom of trade and business and it is also discriminatory being violative of Article 14 of the Constitution of India.

13. Even accepting the contention of the learned Counsel for the appellant that the imported liquor sold in the State will cost more than the one locally manufactured, in liquor business no individual has got any fundamental right to do trade in liquor as held by the Supreme Court in *Khoday Distilleries Limited's* case, *supra*, which has been reiterated by the Apex Court in the later judgments in *State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc.*, and *Bihar Distillery and Another Vs. Union of India (UOI) and Others, .* In the above judgments, the Supreme Court in explicit terms and words held that the business in intoxicants is exclusive privilege of the State and no person has got any fundamental right. The State can prohibit the entire trade in intoxicants or it can permit the same subject to limitations prescribed by it. In view of the above dicta laid down by the Apex Court, it cannot be contended that the imposition of fee on the import of liquor which makes it costlier than the locally manufactured liquor, is arbitrary. Further, the fee is levied for all the liquor imported into the State and it is not the case of the appellant that only liquor manufactured in Goa and imported into Karnataka alone are levied with fees. As held *supra*, when a class or classification is varied, it is not hit by the doctrine of discrimination.

14. For all the above reasons, we do not see any ground to interfere with the order of the learned Single Judge. Appeal is therefore dismissed.

Y. Bhaskar Rao, Actg. C.J. and A.M.

Farooq, J. 18-2-1999

Learned Counsel requested for grant of leave to appeal to Supreme Court. We do not see any substantial question of law of general importance to grant leave. Accordingly, leave is rejected.