
(2000) 12 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No's. 5993-6068 of 1997

Excise Superintendent and Others

APPELLANT

Vs

Deluxe Bar and Others

RESPONDENT

Date of Decision : 06-12-2000

Acts Referred:

Citation : (2000) 8 JT 68 : (2000) 9 SCC 295

Hon'ble Judges : A. S. Anand, C.J;Shivaraj V. Patil, J;R. C. Lahoti, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. This order will dispose of the batch of appeals filed by the State impugning the judgment of the Division Bench of the High Court of Andhra Pradesh dated 6-3-1992.

2. The respondents are amongst holders of wholesale licence (FL 15), retail licence (FL 24), bar licence (FL 17), storage licence for godowns (FL 19) as well as distributor's licence (FL 27). These licences have been issued to the respondents under the Andhra Pradesh Excise Act, 1968 (hereinafter referred to as "the Act"). During the currency of the block of 5 years for which the licence was valid, the State Government issued GOMs No. 160, Revenue (Ex. III) dated 3-3-1990 amending the Schedule to the Andhra Pradesh (Foreign and Indian Liquor) Rules, 1970 (hereinafter referred to as "the Rules") framed under the Act, whereby licence fee in respect of wholesale licence for the sale of all kinds of Indian liquor including those which were not consumed on the premises, bar licences, storage licences, club licences and retail licences were enhanced. The enhancement was directed to come into force w.e.f. 1-4-1990 in the GOMs itself. An Excise Year has been defined under the Act as a year commencing from 1st October and ending 30th September. In the GOMs, enhancement was not made retrospectively commencing with the current Excise Year. However, on demand being raised for enhanced licence fee for the period 1-4-1990 to 30-9-1990, GOMs No. 160 dated 3-3-1990 was put in issue by the respondents through

several writ petitions. A Division Bench of the High Court upheld the contention of the respondents that the State Government could not collect increased licence fee during the middle of the Excise Year as also the contention that the enhancement was arbitrary. The Division Bench, however, rejecting the contention of the State held that the enhanced licence fee which was made effective from 1-4-1990 could only apply from the beginning of the next Excise Year i.e. 1-10-1990 irrespective of the fact that it was still within the block of 5 years. It is this finding, which has been put in issue by the State Government before us through this batch of appeals.

3. The argument of learned Senior Counsel for the appellant State raised before us, which was also canvassed before the High Court, is that in view of clause (v) of the counterpart agreement which was required to be entered into under Section 29 of the Act read with Rule 30(3) of the Rules, the licensees had bound themselves to pay the licence fee, gallonage fee, excise duty and security deposit or any enhanced licence fee, gallonage fee, excise duty, security deposit and the like levied from time to time and therefore the licensees could not challenge the enhanced licence fee levied from time to time during the validity of their licence.

4. We are unable to agree. A perusal of Rules 24 and 25 of the Rules speak of the annual licence fee being charged from the licensees. This annual character of the licence fee has to be considered as licence fee for an Excise Year i.e. for a period of 12 months commencing from 1st October and ending 30th September of the following year. Once the annual licence fee is enforced at the commencement of the Excise Year and has either been paid by the licensee or agreed to be paid in six bimonthly instalments, the right of the licensee to operate that licence for that Excise Year gets crystallised and that right cannot be put in jeopardy during the subsistence of the Excise Year concerned. The rule-making authority was apparently conscious of these Rules and, therefore, while formulating GOMs No. 160, Revenue (Ex. III) dated 3-3-1990 categorically stipulated that: "The amendments hereby made shall come into force on and from the first of April, 1990." (emphasis ours) The Division Bench of the High Court while dealing with this aspect rightly observed:

"It should also be noted that the amendment to the Schedule introduced by GOMs No. 160 dated 3-3-1990 is not retrospective in operation as is the case with GOMs No. 74 dated 1-2-1990 relating to licence fee on distilleries. At any rate, there is no clear language in the amended provision which goes to show that the enhancement will affect the existing licensees during the year itself. It cannot therefore be said that the increased quantum of licence fee brought about by the impugned GO should be projected into the schedule of rates prevalent at the beginning of the year. Thus, viewed from any angle, we should uphold the contention of the learned counsel for the petitioners and hold that the enhanced licence fee introduced by the impugned GO will only be operative after the end of the Excise Year i.e. after 30-9-1990 and for the Excise Year beginning from 1-10-1990, the licensees have to pay the increased licence fee ten days before

the commencement of the Excise Year (1990-91) as enjoined by Rule 25. The increased licence fee will also be applicable to the licences issued on or before 1-4-1990 i.e. the date on which the impugned GO had come into force."

5. We are in complete agreement with the above view. In fiscal matters, the provisions are required to be strictly construed and there is no scope for looking to the unexpressed intendment.

6. We, accordingly, uphold the finding of the High Court to the effect that enhancement of the licence fee by GOMs No. 160 dated 3-3-1990 becomes effective only from 1-10-1990 and that enhanced licence fee can be collected from the respondents w.e.f. 1-10-1990 notwithstanding the fact that the block of 5 years for which they had obtained licence, had not yet expired. The impugned judgment is well considered and sound. We do not find any reason to interfere with the same.

7. These appeals, therefore, fail and are dismissed. However, we leave the parties to bear their own costs.