

(2014) 02 KAR CK 0103

In the Karnataka High Court

Case No : Writ Appeal No. 3371/2013 and W.A. Nos. 6549-98/2013 C/W W.A. No. 3372/2013 (T-ET)

Hathway Cable and Datacom (P) Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Karnataka Entertainments Tax Act, 1958 — Section 4C, 4C, 4D, 4D, 4G, 4G

Citation : (2014) 02 KAR CK 0103

Hon'ble Judges : Dilip B. Bhosale, J;B. Manohar, J

Bench : Division Bench

Advocate : K.P. Kumar, Sr. Advocate for S.R. Shivaprakash, Advocate for the Appellant; S. Sujatha, AGA, Advocate for the Respondent

Judgement

Dilip B. Bhosale, J.—These intra Court writ appeals are preferred against the common order dated 01.03.2013 rendered by learned Single Judge in W.P. No. 14111/2010 C/w W.P. Nos. 33491-541/2010, whereby all the petitions have been dismissed.

2. The writ petition No. 14111/2010 was filed by M/s. Hathway Krishna Cable (P) Limited, while W.P. Nos. 33491-541/2010 were filed by Hathway Cable & Datacom Pvt. Limited (for short "the assesseees"). The assesseees, are Companies incorporated under the provisions of the Companies Act, 1956.

3. Though in the writ petitions, the petitioners made four prayers, which were considered by learned Single Judge, learned counsel appearing for the assesseees, before this Court, pressed the appeals only for the prayer Clause (B) in the writ petitions. Prayer Clause (B) reads thus:

"(B). Issue a writ in the nature of certiorari calling for the records and proceedings of the petitioner's case and after looking into the legality thereof to quash and set aside:

(i) the impugned action of levy and/or recovery of entertainment tax under Section 4C of the Karnataka Entertainment Tax Act from the Petitioner whilst denying to the Petitioner the benefit of composition tax under Section 4D of the Karnataka Entertainment Tax Act and/or to declare the impugned action as unconstitutional, illegal and void;

(ii) to quash the demand notices and assessment orders annexed as "J-1" to "J-6" in all No. ADCOM.ENF.SZ.CTO-19/10-11 dated 13.10.2010 passed by respondent-2 to the Writ Petition and/or to declare the same as unconstitutional, illegal and void."

4. The assessee-Company, are engaged, since 2002, in distribution of Satellite Televisions Signals (for short "the STS") to its subscribers in the city of Bangalore. They download STS from various broadcasters and transmit the same by cable television to its subscribers directly. They also transmit STSs to local cable operators, who in turn supply the signals provided by the assesseees to their subscribers.

5. The assesseees, are liable to pay entertainment tax, being a Multi System Operators (for short "MSO"), under Section 4G of the Karnataka Entertainment Tax, Act, 1953 (for short "the KET Act"). In addition thereto, the assesseees are liable to pay tax under Section 4-C of the KET Act. In the present case, we are concerned with the tax liability under Section 4-C r/w 4-D of the KET Act.

6. Submissions advanced by Mr. K.P. Kumar, learned Senior Counsel, taking exception to the order passed by learned Single Judge and for the relief in the writ petitions, are two fold. Firstly sudden change in the policy introduced by way of amendment to Section 4-D r/w Rule 41-G by Act No. 5 of 2006 w.e.f. 01.04.2006 (for short "Amendment of 2006") is arbitrary in nature being irrational, discriminatory and that it amounts to unreasonable classification. Secondly, prior to the amendment of 2006, whereby Section 4-D was amended, amendment of Rule 41-G was made vide Karnataka Entertainment Tax (amendment) Rules, 2004 (for short "Amendment of 2004") and by this amendment, the following words and punctuations were inserted, namely "having more than five hundred connections" after the words "every proprietor who" as specified under Section 4-C of the Act and in view thereof the Government reversed this policy without any rational. In other words, he submitted that composition tax was allowed to be paid by the operators vide 2004 amendment, having more than 500 connections, which they changed by way amendment in 2006 to less than 500 connection. Thus, composition tax facility which was made available to the operators like the assesseees was withdrawn by implication. He submitted, prior to the amendment of 2004, number of connections was not prescribed for levying of entertainment tax. In support of his contentions, he placed, reliance upon the judgment of the Kerala High Court in Asianet Satellite Communication Ltd. Vs. State of Kerala and Another, .

7. On the other hand, Mrs. Sujatha, learned AGA, appearing for the State submitted that the Government by way of an amendment in 2006 made reasonable classification and there is direct nexus with the object sought to be achieved and in any case, it cannot be termed as unreasonable. She further submitted that the Government having realized their mistake, which they committed by way of amendment of 2004, rectified it by amendment of 2006, with a view to support small cable operators having less than 500 connections. Insofar as power and competence of the legislature in making such amendments is concerned, she placed reliance upon the judgments of the Supreme Court in *State of Tamilnadu and others v. Sangu Chakra Hotels Pvt. Ltd.*, 1990 (77) STC 253, *KHANDIGE SHAM BHAT AND ANOTHER Vs. AGRICULTURAL Income Tax OFFICER, KASARAGOD, AND ANOTHER.*, .

8. Section 4-C was inserted by Act No. 11/1993 and it came into force w.e.f. 1-4-1993. This provision provides for levying entertainment tax at the rates mentioned therein, in the case of entertainment provided with the aid of antennae or cable television to a connection holder on payment of any contribution or subscription or installation and connection charges or any other charges collected in the manner provided therein. Explanations 1 and 2 appended to this provision may be necessary, which read thus:

"Explanation-1: A Multi System Operator providing entertainment through Antennae or Cable Television directly to subscribers apart from providing satellite television signals to another proprietor, shall be liable to pay tax under this Section in addition to his liability to pay tax under Section 4-G.

Explanation-2: A Proprietor being a Direct To Home service provider providing entertainment through antennae or Cable Television directly to subscribers apart from providing satellite television signals under the Direct To Home scheme, shall be liable to pay tax under this Section in addition to payment of any tax liability under Section 4-G."

9. Section 4-D was inserted by Act No. 6/1995 and was brought into force w.e.f. 1-4-1995. It provided for composition of tax payable under Section 4-C. Section 4-D reads thus:

4-D. Composition of tax payable under Section 4-C.--In lieu of the tax payable under Section 4-C [any proprietor other than a Multi System Operator or a Direct To Home Service provider, may], at his option and subject to such condition and in such manner as may be prescribed pay a tax with respect to the entertainment provided at the places specified in Column 2 of the table below at the rates specified in Column 3 thereof.

Bracketed portion in Section 4-D namely "any proprietor other than a Multi System Operator or a Direct To Home service provider may" was substituted for the words "proprietor may", as observed earlier by the amendment of 2006 i.e., Act No. 5/2006 w.e.f. 1-4-2006. Payment of composition of tax, as provided for under Section 4-D, prior to the amendment of 2006 and after the amendment of

2004 was available to the Operators or Direct To Home service providers having more than 500 connections and there was an option open to the Operators whether to opt for composition of tax or payment of tax, under Section 4-C, on regular basis. After amendment of 2006, the position was reversed and the benefit of composition of tax was extended only to any Operator having less than 500 connections as contemplated by Rule 41-G of the Rules. This amendment, according to the assesseees, affected their right to opt for composition of tax since they are having more than 500 connections, and therefore, it is arbitrary, discriminatory and unreasonable."

10. It is true that prior to the amendment of 2006, the benefit of composition of tax was also extended to the Proprietors/Operators/service providers, having more than 500 connections, such as assesseees. After the amendment of 2006, the benefit of composition of tax, in lieu of regular tax payable under Section 4-C, is not available to the operators/service providers having more than 500 connections. Such benefit, before the amendment of 2006, was not available to the small cable operators who were having 500 or less connections/customers. In this connection, it would be advantageous to reproduce the explanation placed on record by the Revenue with a memo dated 9-6-2010. The relevant portion containing Department's explanations reads thus:

"3. A MSO providing satellite television signals directly to subscribers is not liable to pay tax under Section 4-G on amounts received from connection holders because, the levy under Section 4-G is attracted on the activity of "receiving and distributing television signals" and ordinarily "distributing" refers to the act of supplying goods or services to smaller businesses or retailers who ultimately reach the goods or services to the consumers. Explanation (1) to Section 4-C does not create any additional liability on the MSO providing satellite television signals directly to subscribers under 4-G on amounts received from subscribers and it only clarifies that such MSO in addition to his liability under Section 4-G on distribution of satellite television signals to cable operators-is also liable to tax under Section 4-C on providing satellite television signals directly to subscribers. Consequently, the levy under Section 4-G is attracted only when a MSO distributes television signals to a cable operator, who transmits such television signals to connection holders (subscribers).

4. A MSO providing satellite television signals directly to subscribers" is not eligible for the composition tax payment scheme provided under Section 4-D to cable operators as he is specifically excluded from such scheme."

At this stage, it would also be advantageous to reproduce. the relevant averments made in the statement of objections filed on behalf of the respondents, whereby they have placed the reasons for carrying out the amendment of 2006. The relevant averments in paragraph 12 of the statement of objections reads thus:

"The Legislature has fixed the rate at Rs. 15.00 or Rs. 20.00 per connection per

month. if the entertainment is through cable television or through antennae respectively. Even if Rs. 15.00 is taken per connection the tax payable as per Section 4-C will be at Rs. 7500/-for 500 connection and for the same number of connections it will be at Rs. 10,000/- if rate per connection is taken as Rs. 20.00. In lieu of these tax liabilities, the rate of composition tax fixed is at Rs. 6500/- which is almost near and slightly less than the actual tax liability. Hence, fixing of Rs. 6500.00 or Rs. 7500.00 for proprietors having connections up to 500 is very reasonable. If the number of connections is less than 500, the proprietor can decide whether opting for composition is beneficial for him or not. On the other hand if no condition is fixed even a proprietor having one lakh connections will also become eligible for composition and in such case the tax liability under Section 4-C of KET Act, if taken Rs. 15.00 per month per connection works put at Rs. 15,00,000.00 as against which he will have to be allowed composition benefit for mere Rs. 65000.00 or Rs. 7500.00 which is certainly not reasonable proposition. In other words the fixing of criteria "500 connection" and exclusion of Multi System Operator's and DTH service provider from the benefit of composition certainly will not amount to. discrimination under article 14 of the Constitution of India."

11. Thus from the bear perusal of the provisions contained in Sections 4-C and 4-D of the Act read with Rule 41-G of the Rules and so also the explanation offered by the Department and the relevant portion of the statement of objections, it is clear that the amendment was introduced with a view to help the small Service Providers/Cable Operators having less than 500 connections and to collect more entertainment tax from the Multi System Operators or Direct To Home service providers like assesseees, having more than 500 connections. This classification, in our opinion, is not unreasonable or irrational. It is also clear from the following illustration:

"The service provider having less than 500 connections, before the amendment of 2006 was required to pay for 499 connections about Rs. 7,400/-, whereas, the Multi System Operators or Direct To Home service providers, like assesseees, having more than 500 connections, irrespective of its number, whether it is 501 or 10,000 connections, was paying only Rs. 6,500/- as provided for under Section 4-D of the Act, as it stood prior to the amendment."

12. Now, in view of the amendment of 2006, it is exactly the other way round: The small service providers are given the benefit of composition of tax whereas the Multi System Operators or Direct To Home service providers are required to pay regular tax on the number of connections as provided for under Section 4-C of the Act. It is true that there was no nexus with the number of connections when composition of tax scheme was first introduced, but the Government having realized its mistake, brought amendment of 2006 whereby the benefit of composition of tax was extended only in favour of the operators who have less than 500 connections. Similarly, merely because the nature of service provided by the assesseees and Cable Operators is same, it cannot be said that the

amendment make discrimination, since the amendment is related to number of connections, which classification, in our opinion is justifiable.

13. It is well settled that taxation law cannot claim immunity from the equality clause of the Constitution. The taxation statute should not also, be arbitrary and oppressive, but at the same time the court cannot, for obvious reasons, meticulously scrutinize the impact of its burden on different persons or interests. Where there is more than one method of assessing tax and the legislature selects one out of them, the Court will not be justified in striking down the law on the ground that the legislature should have adopted another method which, in the opinion of the court, is more reasonable unless it is convinced that the method adopted is capricious, fanciful, arbitrary or clearly unjust (see. *Khandige Sham Bhat And Another* (supra)). It is also well settled that where the legislature, in its sincere attempt to meet a difficult situation, makes a law adopting one of diverse methods open to it, if the overall picture indicates that the method works fairly well on all similarly situated, it cannot be struck down as arbitrary or capricious, merely because some hardship may be caused to some in the implementation of law, which is inevitable in almost every taxation law.

14. The Supreme Court in *Khandige Sham Bhat and another*, while dealing with the doctrine of classification, after making reference to its judgment in *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, quoted observations therefrom as under:

"It is now well established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases, namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established..... that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In *Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others*, the Supreme Court while dealing with doctrine of classification observed thus:

"The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well. It cannot be doubted that if the classification is made with the object of taxing only the economically stronger while leaving out the economically weaker sections of

society, that would be a good reason to uphold the classification if it does not otherwise offend any of the accepted norms of valid classification under the equality clause.

Broadly stated the points involved in the constitutional attack to the validity of this classification are, in substance, only two:

- (1) Is the classification of sales of cooked food made with reference to the eating houses wherein the sales are made, founded on an intelligible differentia? and
- (2) If so, does the classification have a rational nexus with the object sought to be achieved?

It would be useful at this stage to refer to some decisions of this Court indicating the settled principles for determining validity of classification in a taxing statute. In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, , Krishna Iyer. J., speaking for the Constitution Bench held that a classification based, inter alia, on "profits of business and ability to pay tax" is constitutionally valid."

In *KERALA HOTEL AND RESTAURANT ASSOCIATION*, the Supreme Court also quoted the relevant paragraph from its judgment in *S. Kodar Vs. State of Kerala*, , which reads thus:

"As we said, a large dealer occupies a position of economic superiority by reason of his volume of business and to make the tax heavier on him, both absolutely and relatively, is not arbitrary discrimination, but an attempt to proportion the payment to capacity to pay and thus arrive in the end at a more genuine equality. The capacity of a dealer, in particular circumstances, to pay tax is not an irrelevant factor in fixing the rate of tax and one index of capacity is the quantum of turnover. The argument that while a dealer beyond certain limit is obliged to pay higher tax, when others bear a less tax, and it is consequently discriminatory, really misses the point, namely, that the former kind of dealers are in a position of economic superiority by reason of their volume of business and form a class by themselves. They cannot be treated as on a par with comparatively small dealers. An attempt to proportion the payment to capacity to pay and thus bring about a real and factual equality cannot be ruled out as irrelevant in levy of tax on the sale or purchase of goods. The object of a tax is not only to raise revenue but also to regulate the economic life of the society."

15. From bear perusal of the principles laid down by the Hon"ble Supreme Court in the aforesaid judgments and having regard to the facts of the present case, we are satisfied that there exists a rational nexus; with the object sought to be achieved and the classification also, as observed by the Supreme Court, is founded on intelligible differentia. This being a relevant basis for classification related to avowed object, it cannot be a ground of invalidity, merely because a class of operators, having more than 500 connections, are required to pay more entertainment tax than the operators who are having less than 500 connections.

The discrimination is not within the class of assesseees in which they fall. The distinction is made between the two classes, namely small Cable Operators having less than 500 connections and Multi System Operators or Direct To Home service providers having more than 500 connections. In our opinion, the learned Single Judge has considered the question in proper perspective and after having dealt with the submissions advanced by the learned counsel for the parties has rightly dismissed the petitions.

16. In our opinion, no ground whatsoever is made out to interfere with the order of the learned Single Judge in intra court appeals. Hence, the writ appeals are dismissed.