

(2013) 03 KAR CK 0054

In the Karnataka High Court

Case No : Writ Petition No's. 14111 and 33491 to 33541 of 2010 (T-ET)

Hathway Krishna Cable (Private) Limited

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 300-A
Karnataka Entertainments Tax Act, 1958 — Section 4-D, 4-E
Karnataka Entertainments Tax Rules, 1959 — Rule 41-G

Citation : (2013) 76 KarLJ 185 : (2014) 67 VST 302

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : K.P. Kumar, for Sri S.R. Shivaprakash, for the Appellant; R. Omkar, Additional Government Advocate, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—The petitioners in these writ petitions have sought for issuance of a writ of certiorari to quash Annexure-F, dated 8-3-2010 passed by the second respondent. Further they have sought to declare the amendments to Rule 41-G of the Karnataka Entertainments Tax Rules, 1959 brought about by Notification dated 8-11-2006 as being arbitrary, discriminatory, illegal, ultra vires and without authority of law; to quash Annexure-D, dated 15-2-2010 passed by the second respondent-authority; to declare that amendment of Section 4-D of the Karnataka Entertainments Tax Act, carried out by Karnataka Act No. 5 of 2006 denying inter alia the MSOs the right to seek compounding of tax u/s 4-D as arbitrary, unreasonable and violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India and also to declare Rule 41-G as unconstitutional, illegal, without authority of law and having no rationale or nexus to the Scheme and scope of Sections 4-D and 4-E of the Karnataka Entertainments Tax Act, 1958, by virtue of amendment by Karnataka Act No. 5 of 2006. The petitioners are Multisystem Operators (for short, "MSOs") registered under the provisions of Section 4-D of the Karnataka Entertainments Tax Act, 1958 (hereinafter referred to as, "KET Act"). Since the Act was silent as to the number of points,

subscribers etc., a fixed rate of tax of Rs. 6,500/- was paid by the petitioners. The KET Act went through series of amendments by way of incorporation of various definitions, charging section etc. by Karnataka Act No. 5 of 2006, which came into effect from 1-4-2006. The grievance of the petitioners is by the aforesaid amendment, composition of facilities available from 1995 onwards upto 2006 has been withdrawn which takes away the compounding benefit given to the petitioners earlier on the ground that the petitioners are having installations/connections of more than 500 and since it is declared as per the Amendment Act No. 5 of 2006 that MSOs having more than 500 connections have to be assessed u/s 4-C, they are not entitled for the benefit of composition of tax u/s 4-D. Hence, the present petitions.

2. Sri K.P. Kumar, learned Senior Counsel appearing on behalf of the Counsel for the petitioners submits that MSOs are governed by Section 4-C of the Act whereas the cable operators who have less than 500 connections are governed by Section 4-D of the Act so as to seek the benefit of composition of payment of consolidated amount instead of individual tax. Thus, it is contended that MSOs and other Cable Operators who have more than 500 connections have to pay entertainment tax based on number of connections and those operators who have less than 500 connections are assessed u/s 4-D, which according to them is discriminatory and that the aforesaid amendment has been introduced only to harass the petitioners and to extract more tax from the petitioners. It is also contended that as per the mandate, the respondent-authority has not placed the amendment to Rule 41-G before the Legislature, thereby there is violation of Section 18(3-A) of the KET Act and when a statute requires certain thing to be done in a certain manner, it shall be deemed to have been prohibited the doing of that thing in any other way. Further, it is submitted that earlier for the purpose of composition at least 500 connections were, required which has been undone by the impugned amendment, which is arbitrary and the distinction made between small operators and Multisystem Operators is unreasonable and arbitrary. In this connection, reliance is placed on the decision of the Kerala High Court in the case of Asianet Satellite Communications Ltd Vs. P.R. Raghuvier Das and another decision in Orissa Rural Housing Development Corporation Ltd. Vs. Assistant Commissioner of Income Tax, wherein at Page 5 of the judgment it is observed as under:

Law is well-settled that when the statute requires to do certain thing in certain way, the thing must be done in that way or not at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim *expressio unius est exclusio alterius*, meaning thereby that if a statute provides for a thing to be done in particular manner, then it has to be done in that manner and in no other manner and following of other course is not permissible.

Reliance is also placed on the decision of the Apex Court in Patna Improvement Trust Vs. Smt. Lakshmi Devi and Others,

3. It is submitted by the learned Senior Counsel that after the amendment was effected, notices dated 30-10-2006 were issued to them u/s 9(2) and 9(3)(b) of the KET Act, demanding payment of entertainment tax of Rs. 39,000/- for the period from April to September 2006 and this was with reference to Section 4-C of the KET Act. The petitioners have paid the taxes without any default and delay u/s 4-C of the KET Act at the rate of Rs. 6,500/- per month. The learned Senior Counsel further submits that the petitioners were served with a preliminary endorsement purporting to be the final endorsement dated 15-2-2010 by the second respondent seeking for certain information of petitioners' business as a Local Cable TV Operator and thereby directing the petitioners to pay tax u/s 4-C rather than Section 4-D by invoking Rule 41-G of the KET Rules and also one more final endorsement was served on the petitioners on 8-3-2010, which was received by the petitioners on 14-3-2010 reiterating the very same contents of the previous notice and demanding the petitioners to surrender their registration certificate dated 28-10-2002 for necessary fresh endorsement/amendment to bring the services of the petitioners u/s 4-C of the Act read with Rule 41-G. There was also threat by the second respondent to initiate legal action for non-compliance. Thus, it is contended that changing over the permission for composition from Section 4-D to Section 4-C by virtue of amendment Act No. 5 of 2006 is illegal, discriminatory and violative of Article 19(1)(g) of the Constitution.

4. According to the learned Additional Government Advocate Section 4-C is a charging provision and Section 4-D is only option and discretion given to the Cable Operators who have less than 500 connections. The said classification is made to accommodate cable operators in the rural area and other places and submits that taking into consideration the cable operators who have less than 500 connections and depending upon the area of operation, certain amount has been fixed and option is given to adopt Section 4-C or Section 4-D depending upon the number of connections and also submitted that it is a reasonable classification so as to bring the cable operators under the Entertainment Tax net on uniform basis. If it is done in large scale, the connection has to be taxed based on individual connection in terms of Section 4-C and exemption and composition could only be exercised by those small operators who have less than 500 connections and therefore, this exemption cannot be held to be either discriminatory or arbitrary and it is done only to protect the interest of small operators. Further, the learned Additional Government Advocate submits that Rules framed under the Act have also been placed before both the Houses and in this connection, reliance is placed on the letter dated 28-2-2013 of the Under Secretary to Government of Karnataka, Legislature, to contend that the matter was placed before both the houses of Legislature and there was due deliberation and on that basis, Rules were upheld by accepting the amendment brought to the KET Act and Rules and as such, there is compliance of Section 18(3-A). Therefore, it cannot be held to be arbitrary or illegal as it is a policy decision.

5. Sections 4-C, 4-D and 18(3-A) of the KET Act reads as under:

[4-C. Special provisions in respect of certain entertainments.--Notwithstanding anything contained in [Sections 3 and 3-A], 4, [4-B or 4-G] and subject to such rules as may be prescribed, there shall be levied and paid entertainments tax at the following rates 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 any manner whatsoever namely:-

Provided that no tax shall be payable under this section, if the period of connection provided to a connection holder in any month is less than fifteen days]:

[Provided further that no tax shall be payable under this section, if the proprietor is providing television signals under the Direct To Home scheme:

Provided also that subject to such conditions as may be prescribed, no tax shall be payable under this section, if the proprietor is receiving television signals from a Multisystem Operator paying tax u/s 4-G.

Explanation.--(1) A Multisystem 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 u/s 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 u/s 4-G.]

[4-D. Composition of tax payable u/s 4-C--In lieu of the tax payable u/s 4-C [any proprietor other than a Multisystem 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:

TABLE

....

18. [(3-A) A rule under this Act may be made with retrospective effect and when such rule is made, the reasons for making the rule shall be specified in a statement laid before both Houses of the State Legislature. Subject to any modification made under sub-section (4), every rule made under this Act shall have effect as if enacted in this Act].

6. The distinction made is only to see that large number of operators would pay based on the number of connections and giving a sort of concession to small operators asking them to pay composition tax at the fixed rate for various places

in the State of Karnataka. In any way, this fixation of the slab at different places in respect of small scale operators who have less than 500 connections is to encourage the trade/profession among the small cable operators. So far as Multisystem Operators are concerned, as their area of operation is big and they earn more income, it has decided to impose tax based on the number of connections at the rate of Rs. 15 or Rs. 20 per connection if the number of connections is more than 500 depending upon the area, which cannot be said to be arbitrary or illegal or in violation of Article 14 of the Constitution. In that view of the matter, the challenge made to the amendment brought into the Act and Rules are not maintainable. However, it is for the petitioners to approach the respondents-authorities, if need be, seeking for extension of benefit of Section 4-D or to fix the upper limit. With the above observations, the petitions are disposed of.