(1984) 09 KAR CK 0024

In the Karnataka High Court

Case No : W.P. Nos. 9342/83 & connected cases

Hotel Sanman and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 12-09-1984

Acts Referred:

Constitution (Forty-Sixth Amendment) Act, 1982 — Section 6

Citation : (1985) 29 KarLJ 104

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. As the questions that arise for determination in these cases are interconnected, I propose to dispose of them by a common order.

2. In these cases, the petitioners either separately or cumulative have challenged Sections 5 and 6 of the Karnataka Sales Tax Act of 1957 (''the Act'') and Explanation 3-A to Section 2(t) of the Act inserted by the Karnataka Sales Tax (AMENDMENT) Act, 1983 (Karnataka Act 23 of 1983) (''the Amendment Act'').

3. The petitioners are engaged in the business of running hodging houses, restaurants or hotels at the placed mentioned in their respective petitions.

4. I will first examine the challenge to Section 6 and then Section 5 and finally Explanation 3-A to Section 2(t) of the Act.

5. The validity of Section 6 of the Act is challenged by the petitioners on the ground that the same stands repealed by implication by the Constitution 46th Amendment Act of 1982 (''the 46th Amendment'').

6. Sri B.V. Katageri, learred counsel for the petitioners contends that Sectien 6 of the Act impliedly stands r pealed by the 46th Amendment. In support of his contention Sri Kalageri strongly relies on the rulings of the Supreme Court in Shamarao v Parulekar and others v District Magistrate, Thana, Bombay and others (AIR 1952 Supreme Court 324) and Ch. Tika Ramji and others v The State of Uttara Pradesh and others (AIR 1956 Supreme Court 676).

7. Section 6 of the Act which is a separate charging section, as also explained by a Full Bench of this Court in Patil v Commissioner of Commercial Taxes 43 S.T.C. 419), provides for levy of purchase tax under the circumstances specified therein. The 46th Amendment, does not at all deal with the levy of purchase tax under any sales Tax enactment in the country and the levy of purchase tax in the Act at all. The 46th Amendment has no relevance to the levy of purchase tax under Section 6 of the Act. On any legal principle, it is inconceivable and impossible to hold that Section 6 of the Act stands repealed by the 46th Amendment.

8. Every one of the rulings relied on by Sri Katageri do not really bear on the point and assist him.

9. On the above discussion, I held that there is no merit in this contention of Sri Katageri and I reject the same.

10. Section 5, the principal charging Section of the Act, was within the legislative competence of the State even without the protective umbrella of the 46th Amendment. The46th Amendment, far from supporting the case of the petitioners supports the revenue to uphold the validity of Section 5 of the Act as made within the legislative competence of the State. Section 5 does not offend any other provision of the Constitution justifying its invalidation. The validity of Section 5 or similar provisions in other Sales Tax enactments have been upheld by the Supreme Court and a reference to all those cases is hardly necessary. I, see no merit in the challenge of the petitioners to Section 5 of the Act and I reject the same.

11. Explanation 3A added to Section 2(t) of the Act that has been given retrospective effect from the very date the Act came into force challenged by the petitioners reads thus:

"Explanation (3A)-Every transaction of supply by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (Whether or hot intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration, shall be deemed to be a sale of those goods by the person making the supply and purchase of those goods by the person to whom such supply is made"

The challenge to this provision is based on the ground that it has been given retrospectivity without providing for reimbursement of the taxes payable by the dealers to the State under the Act.

12. Explanation 3A is a virtual reproduction of Article 366, 29-A(f) and clause 6 of the 46th Amendment. Explanation 3A has been enacted ex abundanti cautela without providing for re-opening of assessments or creating any new liabilities thereto under the Act against any dealer at all. On this short ground, the challenge of the petitioners which is misconceived is liable to be rejected.

13. Clause 4 of the 46th Amendment adds a new definition in Article 366 of the Constitution. Clause 6 of the 46th Amendment declares that the new definition added to Article 366 shall have retrospective effect in every sales Tax law of the country from its very inception. By clauses 4 and 6 of the 46th Amendment, a State Legislature, whatever be the earlier postition, as to its competancy, becomes competent to legislate explanation 3A retrospectively and at all times. From this it follows that the State legislature was competent to insert Explanation 3A to Section 2(t) of the Act retrospectively.

14. When once this Court holds that the State legislature was competent to enact, the fact that it did not provide for reimbursement does not really touch on its validity. On the principles enunciated by the Supreme Court in Rai Rama Krishna and others v State of Bihar and others (AIR 1963 Supreme Court 1667) the new explanation added to Section 2(t) of the Act does not suffer from any invalidity.

15. On the above discussion, it follows that Sections 5, 6 and Explanation 3A added to Section 2(t) of the Act by the Amendment Act are valid. With this the challenge of the petitioners to the assesment orders made against them on the sole ground of invalidity of those provisions also falls to the ground. But, this cannot and does not prevent the petitioners from challenging them or show cause to the proposition notices on such other grounds that are available to them except the validity of the provisions which the appellate or the assessing authority has to examine them to their own merits.

16. In the light of my above discussion, I hold that these writ petitions are liable to be rejected. I, therefore, reject these writ petitions. But, in the circumstances of the cases, I direct the parties to bear their own costs.

17. Sri S. Rajendra Babu, learned Government Advocate who had taken notice for the respondents, at my direction, is permitted to file his memo of appearance for them within 4 weeks from this day.

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(A) KARNATAKA CO-OPERATIVE SOCIETIES ACT, S. 69 - Auction to recover deficiencies against the Society officials to be taken under S. 69 and not under S. 70.

(B) KARNATAKA CO-OPERATIVE SOCIETIES RULES, R. 31(7)(a) - Starting point of limitation for filing of appeal - Whether only from the date of notice or from the date of knowledge of order under appeal.

HELD: The appellant having had knowledge of the date of pronouncement of the order on 5-4-1971 and notice under R. 31(7)(a) having been served on 6-4-71, the Limitation would start on 5-4-1971 or at any rate on 6-4-71. (para 20)

When the question of limitation is involved, but is overlooked and disputed under S. 70 were held not maintainable as it attracted S. 69 of the Act and accordingly appeals were allowed. (para 42)