

(2015) 01 KAR CK 0169

In the Karnataka High Court

Case No : Writ Petitions 59421-59424/2013 (T)

Indian Machine Tool Manufacturer's Assn.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Karnataka Tax on Luxuries Act, 1979 — Section 2(1-A), 2(1-C), 2(4-B), 2(5), 2(5-B)

Citation : (2015) 81 VST 197

Hon'ble Judges : H.G. Ramesh, J.

Bench : Single Bench

Advocate : Arshad Hidayatullah, Senior Advocate for Thomas Vellapally, for the Appellant; A.S. Ponnanna, Addl. Advocate Gen. and S.V. Giri Kumar, AGA, Advocates for the Respondent

Judgement

H.G. Ramesh, J.—Petitioner, an industry association promoting the cause of machine tool industry in the country and established the Bangalore International Exhibition Centre (BIEC) where industrial exhibitions of machine tools and conferences to promote trade and commerce are held from time to time, is before this Court seeking to quash the order dated 5.12.2013-annexure T and the demand notice dated 6.12.2013-annexure U passed by the 5th respondent and also to declare that the petitioner's premises at the BIEC is not a "marriage hall" as defined under the Karnataka Tax on Luxuries Act, 1979 and therefore, not chargeable to luxury tax. In the alternative, petitioner has sought for declaring" that S. 3-C r/w S. 2(5-B) of the KTL Act as ultra vires Entry 62 of List II of VII Schedule to the Constitution or to read down to include only those halls that are used for the purpose of marriages, receptions or matter related thereto.

2. The 5th respondent/Assistant Commissioner of Commercial Taxes (Luxury Tax 2) issued a notice under S. 4-A of the Karnataka Tax on Luxuries Act, 1979 calling upon the petitioner to register itself under the provisions of the Act and to pay taxes under the Act on the ground that all activities conducted by the petitioner in the BIEC fall within the purview of S. 3-C of the Act read with the

definition of "marriage hall" as provided under S. 2(5-B) of the Act and the rental charged for the holding of the exhibition therein would amount to "charges for marriage hall" within the meaning of S. 2(1-A) of the Act. To the notice dated 2.10.2008, though the petitioner replied, the 5th respondent issued another notice stating that the petitioner's contentions were incorrect and petitioner was liable to get itself registered under the provisions of the Act and quantified the petitioner's tax liability for the period 2007-08 and 2008-09 (up to October 2008) and also proposed to levy penalty under the provisions of S. 7 of the Act. The claim and demand raised on the petitioner in the year 2009 was challenged before this Court in WP 27454-56/2009 and by order dated 22.1.2011, the Division Bench of this Court categorically held that the BIEC building of the petitioner was conceived to showcase the promotion of sale of various industrial machinery manufactured by industrialists globally and not a building or part thereof where accommodation is provided for marriages or reception or matters related therewith so as to fall within the definition of the term "marriage hall" under S. 2(5-B) chargeable to luxury tax under S. 3-C of the Act. Despite the judgment of this Court, the 5th respondent is again insisting on the petitioner paying luxury tax on charges received for letting out the BIEC during the period 1.4.2012 to 26.11.2012, on account of the amendment to the definition of "marriage hall" under S. 2(5-B) of the Act by the Karnataka Taxation Laws (Amendment) Act 2012 which came into effect from 1.4.2012.

3. According to the State, petition is not maintainable either on law or on facts and petitioner has got alternative and efficacious remedy under the Act. It is stated, petitioner already filed WP 49960/2013 with respect to the notice issued in respect of luxury tax, that matter was decided on 8.11.2013 holding that, at the most a direction could be issued to the competent authority and the 5th respondent to consider the reply in the light of the observations made in the order and in terms of Circular No. 1/2012-13, GST CR 11/2011-13 dated 3.4.2012 and the respondent authority was also directed to consider the reply and additional reply, however, the petitioner would register under the provisions of the Act from 1.4.2012 under protest without prejudice to its contentions. In view of the observation made by the learned Single Judge, petitioner had applied for registration under the Act on 14.11.2013 before the 5th respondent. Again on 15.11.2013, petitioner filed additional reply. The 5th respondent examined the original reply dated 25.10.2013 and additional reply dated 15.11.2013 in detail with reference to the proposition notice and provisions of the Act. The 5th respondent even visited the premises of the petitioner on 19.11.2013 for further queries and verifications, heard the person-in-charge of the business premises and recorded the proceedings as per annexure R1. After detail examination of the reply-both the original as well as additional reply, as also the verification of the facts at the business premises of the petitioner, 5th respondent has come to the conclusion that petitioner squarely falls under the purview of the definition of "marriage hall" in S. 2(5-B)(ii) and liable to luxury tax under S. 3-C of the Act and passed assessment order under S. 6(3) of the Act on 5.12.2013.

Incidentally, petitioner was also issued registration under the Act on 22.11.2013. It is also stated, some other similarly placed organizations and companies viz., Karnataka Trade Promotion Organization have got themselves registered under the Act from 1.4.2012 and paying luxury tax as applicable under the provisions. Stating that though petitioner is covered under the provisions of S. 2(5-B)(ii), is unnecessarily litigating over the liability. Petitioner an apex body of the Machine Tool Industry in India, established the BIEC and is providing facility for industrial exhibitions of machine tools and conferences to promote trade and commerce and has constructed halls in its premises for renting the same for the purpose of running exhibitions, seminars, conferences etc. With effect from 1.4.2012 although petitioners are liable to luxury tax, so far they have not registered under the Act and paid tax thereon. The judgment of the Division Bench of this Court in WP 27454-561/2009 decided on 22.1.2011 referred by the petitioner is prior to the amendment made to S. 2(5-B) of the Act i.e., 1.4.2012 and has no relevance to the present amended provisions. According to the respondent, the above judgment is not applicable to the case on hand as the amendment made to S. 2(5-B) is with effect from 1.4.2012 and the petitioner falls under the purview of luxury tax under S. 2(5-B)(ii) and (iii) and is liable to get registered under the 1979 Act and pay taxes. The charging section creates charge on the luxury provided to the marriage halls and is not restricted to luxuries only in respect of commodities or services for which other section has taken care. The charges for luxuries provided in a marriage hall have been subjected to tax in accordance with the charges made subject to the minimum of Rs. 5,000/- per day. The definition of "charges for marriage hall" has provided to include certain charges so that charges which are collected are not bifurcated. It is their case, the definition clause includes under S. 2(5-B), activities are functions other than marriage or matters related thereto that are organized for official, social or business function which are conducted in such places regularly or not. The definition clause does not only mean kalyana mantapa, shadi mahal, community hall, building but also includes seminar, convention, banquets, meeting of exhibition hall or a temporary structure where accommodation is provided for marriage or reception. The petitioner is only interpreting the said definition in a restrictive manner which cannot be accepted. As per the 5th respondent, exhibition halls fall under the definition of marriage hall as defined under S. 2(5-B) and the charges collected by the petitioners are charges collected for luxuries provided and such exhibition halls fall within S. 2(1-A) and S. 3-C thereby, petitioner is liable to pay tax under the Act. By extending the definition of "marriage hall" petitioner is liable to pay luxury tax as per the provisions of the Act for the period 1.4.2012 to 26.11.2012 and the order passed by the 5th respondent is justifiable. Accordingly, it is submitted, petition is not maintainable.

4. The specific argument of the senior counsel representing the petitioner is, the assessment of tax on BIEC falls within the definition of Marriage Hall as defined under S. 2(5-B) and the rental charged for holding exhibitions therein would amount to charges for marriage hall within the meaning of S. 2(1-A). Similar

demand raised during 2009 has been challenged before this Court in the earlier writ petition filed. The said writ petition was disposed of on 22.1.2011 and it is categorically held by the Division Bench that the BIEC building of the petitioner was conceived to showcase the promotion of sale of various industrial machinery manufactured by industrialists globally and not a building or part thereof where accommodation is provided for marriages of reception or matters related therein. Despite the aforesaid binding inter parties judgment, the 5th respondent is insisting upon the petitioner to pay the luxury tax.

5. It is also the argument of the Senior counsel that the charge of luxury tax wider S. 3-C of the Act is attracted only on the charges for luxury provided in a marriage hall. According to him, S. 3-C makes a distinction between charges for a marriage hall and charges for luxuries provided in a marriage hall and all charges for a marriage hall cannot attract the charge of luxury tax unless they qualify as luxuries. There is no definition of charges for luxuries provided in a marriage hall unlike the specific definition for charges for luxuries provided in a hospital under S. 2(1-C) or luxury provided in a hotel under S. 2(5) or for luxuries provided in a club as per explanation 1 to S. 3-D. Therefore, charges for luxuries provided in a marriage hall has to be read with the definition of luxuries under S. 2(4-B) i.e., services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life as is held in the case of Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, . It is submitted the judgment of the Division Bench in WP 27454-56/2009 has not been challenged by the respondent and as such, it has become final and binding.

6. The respondent State has replied that as per S. 2(5-B) as amended with effect from 1.4.2012, "marriage hall" means a kalyana mantap, shadi mahal, community hall, a building or part of a building or a temporary structure or a property where accommodation is provided for marriage or reception or matter related therewith or for organizing any official, social or business function whether functions are conducted in such place regularly or not. Referring to this definition, it is submitted, the judgment of the Division Bench of this Court in WP 27454-56/2009 was rendered prior to the amendment and luxury tax is applicable for hotels, lodging houses, clubs and holiday resorts. The judgment rendered earlier in the case of Magaji Bhavarsa Kamakshi Bai Vs. Assistant Commissioner of Commercial Taxes, District Circle-1 and Another, still holds the field with regard to charge of luxury tax on marriage hall charging rental of above Rs. 5,000/- under S. 3-C, though the Division Bench judgment impliedly tried to over rule the judgment in Magaji's case. Luxury tax is being charged not only on marriage halls but also on other similar activities wherein luxury is provided as in the case of clubs or hotel with a special feature of providing AC and other business convenience. It is stated, the accommodation provided by the petitioner is for organizing official, social or business function which are conducted in such place regularly or not. The amendment takes away the effect of judgment in WP 27454-56/2009 read with the ratio laid down in Magaji's case with regard to charging of luxury tax above the rental of Rs. 5,000/-. Thus,

it is made specific, the amendment which came into effect from 1.4.2012 to the charging section 3-C, takes away the effect of the judgment of the Division Bench rendered on 22.1.2011. Of course in the case of Express Hotels Private Ltd. Vs. State of Gujarat and Another, , the goods and articles which were chargeable goods under different category and which come under Entry 62 of List II of VII Schedule to the Constitution were distinguished In the decision in Godfrey Phillips case, it is said, the goods and articles come under different Entry and it cannot be chargeable and only service is chargeable.

7. The submission of the respondent's counsel is, the concept of tax on luxuries underwent a sea change and it is an incorporeal aspect. The enjoyment of the comfort provided amounts to luxury and the decision in Magaji's case cited supra still holds the field.

8. In view of the arguments advanced on behalf of the parties, this Court has to consider whether the amenities provided by the BIEC which organizes business functions or exhibitions is chargeable to luxury tax and whether it falls within the expanded definition of "Marriage Hall" under amended S. 2(5-B). What is being noted is in an unreported decision of this Court, Magaji's case was impliedly overruled. But, the fact remains that charging rent above Rs. 5,000/- for marriage hall and similar activities and functions forms the basis and appears to be reasonable classification so far as charging for luxury provided similar to several other hotels, holiday resorts and clubs where luxury tax is being charged. Under the expanded definition of the amended section, the exhibitions so held with the amenities/facilities provided also has to be treated as extra comforts and when the rental is above Rs. 5,000/- for providing luxuries to be charged though it is sought to be argued by the petitioner's counsel that, what is provided under S. 3-C of the Act is only to attract charges on luxuries provided in marriage hall.

9. Further, according to the petitioner's counsel, Magaji's case follows the judgment in Express Hotels case. However, Express Hotel's case was impliedly over ruled by the subsequent judgment of the Supreme Court in Godfrey Philips case. Also, in the case of the petitioner, the Division Bench of this Court has held that Magaji and Express Hotel cases are no longer good law.

10. Further according to the counsel, the judgment in Magaji's and Express Hotel's case are impliedly overruled by the judgment of this Court on 22.1.2011 in the case of the very petitioner itself. There is no such extra comforts being provided so as to be exigible to luxury tax. The charges for marriage hall and charges for luxuries provided in a marriage hall cannot attract luxury tax unless they qualify as luxuries. However, looking into the amendment to S. 2(5-B) of the Act which came into effect from 1.4.2012 wherein "marriage hall" is defined to mean various types of activities carried out viz., business functions, official and social likewise, organizing exhibitions provided with luxury for seminar, convention and banquets or similar such activities are also covered. The exhibition halls come under the expanded definition of marriage hall and the very

fixing of rental of not less than Rs. 5,000/- per day is a criteria for imposing luxury tax. Further, what is being clarified in Godfrey Phillips case is, only goods and articles provided cannot be charged and it is only services which are chargeable. The Division Bench of this Court has not accepted the contention of the State in charging luxury tax. However, after amendment of S. 2(5-B) of the Act, the finding of the Division Bench has been undone by inclusion of exhibition halls in the definition of "marriage hall". Though petitioner had been exempted from paying tax on the ground that there is no provision provided under the charging section 3-C, petitioner cannot seek the aid and assistance of the Division Bench judgment rendered during January 2011 as the ratio laid down therein on 22.1.2011 is nullified by way of amendment which came into effect from 1.4.2012 and by virtue of the same, exhibition halls also come within the definition of S. 2(5-B) of the Act and as such, exigible to luxury tax. As such, the impugned order passed by the 5th respondent stands to reason. Apart from that, as is held in Magaji's case by the Division Bench of this Court that charging rental above Rs. 5,000/- would attract luxury tax, which has not been undone, in the circumstances, I do not find any reason to interfere with the order passed by the 5th respondent for the period 1.4.2012 to 26.12.2012. However, if there is any difference in the arithmetical calculation, the same could be set right by the 5th respondent after hearing the petitioner, if need be. In other words, the petitioner can approach the 5th respondent seeking proper calculation if there is any irregularity.

11. Petitions are accordingly disposed of.