

(2011) 01 KAR CK 0225

In the Karnataka High Court

Case No : Writ Petition No's. 27454-27456 of 2009 (T-RES)

Indian Machine Tool Manufacturers" Association

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Karnataka Tax on Luxuries Act, 1979 — Section 2 (1A), 2 (4B), 2 (5B), 3 C

Citation : (2011) 42 VST 388

Hon'ble Judges : Ram Mohan Reddy, J;B. Sreenivase Gowda, J

Bench : Division Bench

Advocate : Arshad Hidayathul, for A. Ramaa, Venkatesh and Vikram A. Huilgol, for the Appellant; S. Sujatha, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—A learned single judge by order dated February 8, 2010, referred these petitions to the Division Bench to be heard along with W. P. No. 623 of 2002, since the questions raised therein are identical to the questions that arise for decision making in these petitions.

2. The petitioner has assailed the notices of even date December 1, 2008, annexures G and G1, and notice dated September 1, 2009, annexure L, of the fifth and sixth respondents, respectively, and seek a declaration that the petitioner's premises is not a "marriage hall" as denned under the Karnataka Tax on Luxuries Act, 1979 (for short, "the Act"), sequentially not chargeable to luxury tax, in addition to a declaration that section 3C read with section 2(5B) of the Act is ultra vires entry 62, List II of the Seventh Schedule to the Constitution of India or in the alternative to read down the provision to include only those halls that are used for the purpose of marriages, receptions or matters related thereto.

3. The petitioner claiming to be an apex body of the machine tool industry

secured the approval of the State Government to establish the Bangalore International Exhibition Centre (hereinafter referred to as "BIEC") to create a state of art exhibition centre to further facilities in Bangalore for promoting business of machine tools manufacturing industries, as a consequence trade and commerce, with the support of a Rs. 30 crores grant from the Ministry of Commerce, Government of India under the Industrial Infrastructure Upgradation Scheme as approved by the Government of Karnataka under the Infrastructure Policy, 1997.

4. The petitioner when issued with, a notice dated October 1, 2008, annexure A, by the fifth respondent to register under the Act and pay taxes due with effect from January 2007 u/s 3C read with the definition of the term "marriage hall" u/s 2(5B) of the Act, responded by reply dated October 10, 2008, annexure B, resisting the proposed levy of luxury tax contending that the facilities in "BIEC" were for hosting exhibitions of high value machinery and related equipment without effecting sales. The fifth respondent issued yet another notice dated October 14, 2008, annexure C, rejecting the petitioner's contention and sought payment of tax for the years 2007-08 and 2008-09 (up to October 2008) together with a proposal to levy penalty u/s 7 of the Act, and if not complied within three days, therefrom, would be presumed that the petitioner has no objection to the proposed assessment, while threatening to pass a confirmation order. In the petitioner's reply dated October 17, 2008, annexure D, the request for extension of 30 days time was on the premise that an appointment was sought with the Commissioner of Commercial Taxes to appraise him of the matter. This was followed by a letter dated October 24, 2008, annexure E, addressed to the Government of Karnataka setting out particulars of the activities carried on by the petitioner the notices issued; the efforts of the petitioner to bring in huge revenues for the State and hence sought intervention by exempting tax liability under the Act. Similar letters dated November 6, 2008 and November 10, 2008, annexures F and F1, were addressed to the Principal Secretary and Commissioner of Commercial Taxes, respectively. While things stood thus and there being no response from the State and its functionaries, the fifth respondent issued revised notices dated December 1, 2008, annexures G and G1, to the petitioner invoking sections 4A, 6(3) and 7 of the Act reiterating its earlier demand and proposing to levy Rs. 7,43,55,940 as tax and Rs. 5,90,000 as penalty for the years 2007-08 and 2008-09, with a threat to pass orders of confirmation, if not paid within three days. The petitioner once again responded to the notice by reply dated December 8, 2008. Annexure H stating that the matter was pending consideration before the Government of Karnataka and higher forum and to await response therefrom. After exchange of correspondence between the petitioner and the Government of Karnataka, the fourth respondent by letter dated August 10, 2009, annexure J, intimated that the petitioner's claim for exemption was rejected, as the petitioner was liable to tax under the Act in respect of exhibitions hosted at "BIEC". The Government by letter dated July 27, 2009, annexure K, accepted the report of the Commissioner,

and sequentially the 6th respondent by notice dated September 1, 2009, annexure L called upon the petitioner to comply with the orders for payment of tax and penalty under the Act.

5. The Constitution Bench of the apex court in, *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , having held, tax on luxury can only be levied on "activities of indulgence, enjoyment and beyond necessities of life", i.e., services and not a levy on goods, articles or property, it is submitted section 3C read with section 2(5B) of the Act cannot but be a charge on luxuries provided in a "marriage hall" and not on income generated from renting "BIEC".

6. According to the petitioner, in the absence of an allegation that "BIEC" was let out on hire or put to use for marriage, or reception or matters related therewith, not falling within the description of either seminar, convention, banquet, meeting or exhibition-cum-sale hall, as in the definition of the term "marriage hall" u/s 2(5B) of the Act, the impugned notices do not satisfy the condition precedent for levy of luxury tax u/s 3C of the Act.

7. Further, it is urged that section 3C of the Act is applicable where charges are collected for providing luxury in marriage hall in excess of Rs. five thousand for a day, attracting a levy of tax at the rate of 15 per cent of the charges calling forth a critical examination of the definition of the term "marriage hall" u/s 2(5B) of the Act. The activity of providing luxury, i.e., services for marriages, receptions and matters related therewith in the halls mentioned in the definition clause, it is urged, are alone chargeable to tax. In other words convention halls, seminar halls, exhibition-cum-sale halls referred to in section 2(5B) after the words "and includes" will have to be put to use for marriage, reception and matters related therewith in order to attract the levy of luxury tax. More so, in view of the substitution of the words "and includes seminar, convention, banquets, meeting or exhibition-cum-sale hall or such other hall as specified by the Commissioner", by Act No. 44 of 1999, with effect from April 1, 1999. The intention of the Legislature, it is stated, was to bring within the tax fold, such of those halls, the buildings of which provide accommodation for marriages, reception and matter relating therewith. Reliance is placed upon paragraphs 31, 32 and 33 of the decision of the apex court in *Commissioner of Central Excise, Pondicherry Vs. ACER India Ltd.*, .

8. It is the further contention of the petitioner that levy of tax can only be on services ministering to the "enjoyment, comfort or pleasure extraordinary to necessities of life" in context of marriage hall or reception hall connected with marriage or reception held in the hall, while there can be no levy on the income earned from letting out "BIEC" for holding exhibitions to promote industrial machine tools and hence the notices are beyond the scope of the provisions of the Act. It is contended that accepting the report of the Commissioner to cover "BIEC" to fall within the definition of "marriage hall", the State acted ultra vires the powers conferred on it under entry 62, List II, Seventh Schedule to the Constitution of India which is without jurisdiction and calls for striking down

section 2(5B) as unconstitutional to the extent of bringing within its purview, "every hall", chargeable to tax u/s 3C of the Act.

9. Alternatively, it is contended that if the definition of "marriage hall" is not liable to be struck down then it would have to be read down to exclude letting out of halls, per se, in the light of the decision of the apex court in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, .

10. The petition is opposed by filing statement of objections dated December 15, 2009 of the respondents, inter alia, contending that "BIEC" is put to use for exhibition-cum-sale where dealers exhibit their wares and sales are effected thereof tantamounting to renting out of the halls and hence subject to payment of tax under the Act.

11. The issue of notices, proposition notice and correspondence between the parties are admitted and that recovery of tax, it is stated, was due to the rejection by the State of the petitioner's request for exemption from the levy of luxury tax. At paragraph 7 of the statement of objections, it is stated that applying the enlarged definition of the term "marriage hall" in section 2(5B) the petitioner-association having let on hire BIEC for exhibition-cum -sale, seminars, conferences, etc., and collected hire charges of more than Rs. 5,000 per day, is liable to pay luxury tax. At paragraph 8 it is stated that since rent per day for letting out on hire, the halls for seminars, conferences, banquets, etc., is more than Rs. 5,000 per day, the proprietor of the "marriage hall", including the hall, is required to pay tax on the charges/ rents collected and therefore, the petitioner is bound to register itself and file the prescribed returns irrespective of whether the proprietor is a private or commercial body.

12. At paragraph 9 it is stated that "the State Legislature as identified an accommodation provided in a seminar hall, convention hall, etc., as luxury based on the charges payable for it beyond the specified amount", and "the levy of tax on the charges collected for providing a luxurious and conducive accommodation which is a service provided to seat the visitors in comfortable chairs for the purposes of watching the proceedings and participating in the proceedings constitutes "luxury" and therefore, the said services would not be exempt from payment of tax, by placing reliance upon the decision in Express Hotels Private Ltd. Vs. State of Gujarat and Another, , more appropriately to the finding "that to identify the luxury on the basis of hire charges payable for accommodation is rational and not ultra vires". So also reliance is placed upon the decision of this court in Sri Ramaseva Mandali Trust (R), Bangalore v. Assistant Commissioner of Commercial Taxes [2003] 133 STC 574 (Karn) and Magaji Bhavarsa Kamakshi Bai Kalyana Soudha Samudaya Bhavan, Nanjangud v. Assistant Commissioner of Commercial Taxes [2006] 146 STC 473 (Karn), observing that levy of tax on "marriage hall" charging not less than Rs. 5,000 is reasonable classification, and that section 3C of the Act is intra vires.

13. It is next stated that in Godfrey Phillips India Ltd. and Another Vs. State of

U.P. and Others, , the apex court while affirming the decision in Express Hotels Private Ltd. Vs. State of Gujarat and Another, , insofar as levy of luxury tax on services, nevertheless dissented from levy of tax on goods on grounds of conflict with other legislative entries and therefore, the imposition of tax on luxuries provided in auditorium and conference hall is valid. The availment of facilities such as healthy atmosphere in a spacious locality surrounded by large open space, parks full of trees, adequate lighting, toilet facilities, etc., at high costs, it is contended, cannot constitute necessity of life but luxury. It is lastly contended that the letting out of halls for exhibition-cum-sale by similarly circumstanced firms, having obtained temporary registration certificates under the Karnataka Value Added Tax Act, 2003, the petitioner cannot claim exception.

14. The learned senior counsel for the petitioner points out to sections 2(5B), 3C, 2(1A), 2(4B) and the Karnataka Taxation Laws (Amendment) Act, 1999, Karnataka Act No. 4 of 1999 to advance the following contentions :

(i) The substitution for the words "whether or not such marriage or reception or matters related therewith regularly conducted" with the words "and includes seminar, convention, banquets, meeting or exhibition-cum-sale hall or such other hall as may be specified by the Commissioner, whether functions are conducted in such halls regularly or not" by Karnataka Act No. 4 of 1999, in section 2(5B), definition of "marriage hall", must be read and understood as if the inclusive portion is governed by the latter phrase "whether functions are conducted in such halls regularly or not", meaning thereby that "BIEC" admittedly not put to use for marriage function or reception or matters related thereto regularly or not being an exhibition-cum-sale hall does not fall within the amended definition of the term "marriage hall".

(ii) The words "commodity or services specified in the Schedule", when substituted by the word "services" by Karnataka Act No. 5 of 2006, with effect from April 1, 2006 in the definition of the term "luxuries" in section 2(4B) was to render the section intra vires entry 62, List II and to keep in consonance with the decision of the apex court in Godfrey Phillips India Ltd.'s case [2005] 139 STC 537 (SC), the intention of the Legislature was to tax services, i.e., activities of indulgence, enjoyment or pleasure and therefore the tax sought to be levied on rental income from letting on hire BIEC is not "services".

(iii) According to the learned counsel the notices impugned levying tax on rental income from hiring BIEC and not "services", the proceedings is ultra vires and without authority of law.

(iv) Reliance is placed upon the following decisions :

(a) Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, , more appropriately paragraphs 31, 75, 85 and 96;

(b) New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar, ;

(c) Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., .

15. Per contra, learned counsel for the Revenue, while reiterating the averments in the statement of objections and notices impugned, maintains that the building "BIEC" though constructed as a concept for promoting sale of industrial products and as an exhibition-cum-sale hall, is included within the definition of the term "marriage hall" u/s 2(5B) by Karnataka Act No. 4 of 1999. Elaborating on the said contention, learned counsel submits that the definition of the term "marriage hall" includes an exhibition-cum-sale hall amongst others, whether functions are conducted regularly or not. In other words, the exhibition-cum-sale hall need not necessarily be put to use for marriage or reception or matters related therewith. The learned counsel hastens to add that "luxuries", meaning, activities of enjoyment or indulgence which is extensively or which is generally recognised as being beyond the means and necessities of life, since provided by BIEC, attracts the levy of tax u/s 3C of the Act. The learned counsel places emphasis on the terms "or not" in section 2(5B) to contend that even if marriage reception or matters relating therewith are not conducted in BIEC, nevertheless, falls within the definition of the term "marriage hall". The building where even if accommodation is not provided for marriage, reception and matters related therewith, but provided for conventions, seminars, banquets, meetings or exhibition-cum-sale, are activities of indulgence, enjoyment or pleasure and hence the charging section is intra vires is the contention. It is next contended that the operation of the charging section cannot be determined or restricted by the definition clause, by placing reliance upon the decision of the Co-ordinate Division Bench in Magaji Bhavarsa Kanwkschi Bai Kalyana Soudha Samudaya Bhavan, Nanjangud's case [2006] 146 STC 473 (Karri).

16. In reply, learned senior counsel for the petitioner submits that the decision in Magaji's case [2006] 146 STC 473 (Kam) rendered having regard to the provisions of law under the unamended Act, and prior to the decision of the apex court in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, is impliedly overruled to the extent that it is contrary to the law laid down in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, and hence inapplicable to the facts of this case as well as the amended provisions of the Act. The learned counsel submits that, in Express Hotels Private Ltd. Vs. State of Gujarat and Another, , the apex court observed that the concept of "luxury" in entry 62 of List II of the Seventh Schedule to the Constitution of India, cannot be limited merely to tax things tangible and corporeal in their aspects as "luxuries", while in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, , there was a departure by observing that the language of entry 62 does not permit the levy of tax on goods or articles and the word "luxury" refers to activities of indulgence, enjoyment or pleasure.

17. Having heard the learned counsel for the parties, perused the pleadings, examined the notices impugned and the provisions of the Act the following three questions arise for decision-making :

(1) Whether BIEC, an exhibition-cum-sale hall is a building where

accommodation is provided for marriage or reception or matters related therewith and functions are conducted in such halls regularly or not, is a "marriage hall" within the definition of the said term u/s 2(5B) liable to be imposed u/s 3C of the Act ?

(2) Whether letting out BIEC on hire, for exhibition-cum-sale, is a luxury, meaning services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life, within section 2(4B) attracting the impost u/s 3C of the Act ?

(3) Whether, in the facts and circumstances, the luxury tax levied and demanded in the notices, annexures G, G1 and L, on the rental income from hiring BIEC and for services rendered therein are legal, valid and sustainable ?

18. The apex court in *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, , while upholding the constitutional validity of the Act in Gujarat, observed that entry 62, List II of the Seventh Schedule to the Constitution of India, encompasses all the manifestations or emanations of the notion of "luxuries", when differentiated between the luxury and necessity, cannot be confined to goods and articles. However in *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , the apex court observed thus (page 576 in 139 STC) :

Given the language of entry 62 and the legislative history we hold that entry 62 of List II does not permit the levy of tax on goods or articles. In our judgment, the word "luxuries" in the entry refers to activities of indulgence, enjoyment or pleasure...

19. It is true that a co-ordinate Division Bench of this court in *Magaji's case* [2006] 146 STC 473 (Kam) , following the decision in *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, , upheld the constitutionality of the Act observing that the charging section creates a charge on luxury provided in a marriage hall and is not restricted, to the luxuries only in respect of commodities or services for which the other section has taken care, having regard to the provisions of the Act as it stood then.

20. Consequent upon the decision in *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , the provisions of the Act were amended so as to fall in line with the law declared.

21. The definition of "marriage hall" in section 2(5B) prior to its amendment by Karnataka Act No. 4 of 1999 read thus :

2(5B) "Marriage hall" means, kalyana mantap, shadi mahal, community hall, a building or part of a building where accommodation is provided for marriage or reception or matters related therewith, whether or not such marriage or reception or matter related therewith are regularly conducted.

22. By the Karnataka Amendment Act No. 4 of 1999, the definition of "marriage hall" was amended to read thus :

"Marriage hall" means, kalyana mantap, shadi mahal, community hall, a building or part of a building where accommodation is provided for marriage or reception or matters related therewith, and includes seminar, convention, banquets, meeting or exhibition-cum-sale hall or such other hall as may be specified by the Commissioner whether functions are conducted in such halls regularly or not.

23. "Charges for marriage hall" is defined in section 2(1A) to read thus :

"Charges for marriage hall" include charges for air-conditioning chairs, utensils and vessels, shamiana, electricity, water, fuel, interior or exterior decoration or any amount received by way of donation or charity or by whatever name called in relation to letting out the marriage hall but do not include any charges for food and drinks.

Explanation.--If any question arises whether any charges are charged for marriage hall, such question shall be referred to the Commissioner and the decision of the Commissioner shall be final and shall not be called in question in any court.

24. Section 3C provides for levy and collection of tax on charges for marriage hall, which reads thus :

3C. Levy and collection of tax on charges for marriage hall.--Subject to the provisions of this Act, where charges for luxury provided in a marriage hall are not less than five thousand rupees per day there shall be levied and collected a tax at the rate of ten per cent of such charges.

25. The Act defines "luxury" u/s 2(4B) to mean, "services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life".

26. In the matter of interpretation of taxing statutes, there is no more doubt that the power conferred on the Legislature to levy tax must be widely construed to include choice of articles, person, manner and rate of tax. While so construing a fiscal statute, care must be taken to ensure that it does not provide a chance to escape and a means for evasion of tax. It is also a recognised rule of interpretation of statutes that the expressions used therein should ordinarily be understood in a sense in which they best harmonise with the object of the statute, and which effectuate the object of the Legislature, as observed by the apex court in *New India Sugar Mills Ltd. Vs. Commissioner of Sales Tax, Bihar*, . In the case of *Commissioner of Sales Tax* [1961] 12 STC 182, it was observed thus (page 190 in 12 STC) :

... In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency.

27. A bare reading of the definition of the term "marriage hall" discloses that the Legislature indeed, sought to include amongst others, an exhibition-cum-sale hall, the building or part of the building, where accommodation is provided for marriage reception or matters related therewith, where functions are conducted in such halls regularly or not, chargeable to luxury tax u/s 3C of the Act in respect of luxuries as defined u/s 2(4B) including charges for the item in section 2(1A). However, essentially what falls for interpretation are the expressions "a building or a part of a building where accommodation is provided for marriage or reception or matters related therewith and includes exhibition-cum-sale hall"; and "whether functions are conducted in such halls regularly or not", in section 2(5B), defining the term "marriage hall".

28. It is useful to refer to paragraph 75 of the decision in *Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others*, , which reads thus (page 569 in 139 STC) :

Having rejected the second premise contended for by Mr. Salve, the next question is whether the language of entry 62, List II would resolve the issue. The juxtaposition of the different taxes within entry 62 itself is in our view of particular significance. The entry speaks of "taxes on luxuries including taxes on entertainments, amusements, betting and gambling". The word "including" must be given some meaning. In ordinary parlance it indicates that what follows the word "including" comprises or is contained in or is a part of the whole of the word preceding. The nature of the included items would not only partake of the character of the whole, but may be construed as clarificatory of the whole.

29. That an inclusive definition is generally not exhaustive is a statement of the obvious. The meaning of "marriage hall" in section 2(5B) of the Act, is thus comprehended to include halls, building or part of the building where accommodation is provided for the purpose of marriage, reception or matters related therewith. The Amendment Act seeks to amplify the meaning by including exhibition-cum-sale hall, which, but for the building or part thereof where accommodation is provided for marriage or reception or matters related therewith, where functions are conducted regularly or not, could not be included in the definition of "marriage hall" in section 2(5B) of the Act.

30. There can be no rigidity that an exhibition-cum-sale hall ex hypothesi be considered to fall within the meaning of section 2(5B) of the Act. The question in each case should be, whether in the light of the cumulative facts, as established, an exhibition-cum-sale hall is a building or a part of the building where accommodation is provided for marriage or reception or matters related therewith, whether functions are conducted in such halls regularly or not ?

31. Yet again, the legislative intendment to bring seminar, convention, banquets, meeting or exhibition-cum-sale halls or such other halls, as may be specified by the Commissioner, whether functions are conducted in such halls or not, to a charge of luxury tax, is dependent upon the established facts, i.e., the building or

part thereof where accommodation is provided for marriage or reception or matters related therewith. In other words, buildings or part thereof where accommodation is provided for marriage or reception or matters related therewith, whether functions are conducted in such halls regularly or not, are subject to the charge of luxury tax.

32. If the Legislature did intend to bring within the fold of luxury tax, all the seminar, convention, banquets, meetings or exhibition-cum-sale halls or such other halls, as may be specified by the Commissioner, though not a building or part thereof where accommodation is provided for marriage or reception or matters related therewith, whether functions are conducted in such halls regularly or not, then there was no difficulty to do so, as has been done in respect of "hospital" and "hotel" falling within the definition section 2(3) and 2(4) of the Act.

33. Thus viewed, the classification made by the State Legislature is founded on an intelligible differentia distinguishing the persons or things that are grouped together from others left out of the group and that differential has a rational nexus to the object sought to be achieved by the Act.

34. In the factual matrix, it is not in dispute that BIEC building was conceived as an exhibition-cum-sale hall 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" u/s 2(5B) chargeable to luxury tax u/s 3C of the Act.

35. The first question is answered accordingly.

36. In the view that is expressed supra, we defer consideration of the second question, in an appropriate case.

37. Sequentially, the third question is answered in the negative. The revenue is not justified in making a demand for payment of luxury tax on BIEC by notices annexures G, G1 and L, which are illegal.

38. Although a faint effort was made by the Revenue to contend that Magaji's case [2006] 146 STC 473 (Karn) squarely applies to the facts of this case, suffice it to state that, the decision was rendered by the co-ordinate Division Bench, following the decision in Express Hotels Private Ltd. Vs. State of Gujarat and Another, in the context of the provisions of the Act as stood prior to the amendment as also the decision in Godfrey Phillips India Ltd. and Another Vs. State of U.P. and Others, .

39. In the result, the petitions are allowed. The proceedings initiated by the 39 respondents, culminating in the notices, annexures G, G1 and L, impugned, are quashed.