

(1979) 10 RAJ CK 0021
In the Rajasthan High Court
Case No : Civil Writ Petition No. 317 of 1971

Jai Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-10-1979

Acts Referred:

Constitution of India, 1950 — Article 200, 226

Citation : (1980) RLW 227 : (1980) 46 STC 56

Hon'ble Judges : C.M. Lodha, C.J.;Milap Chand Jain, J

Bench : Division Bench

Advocate : Basant Raj Mehta, for the Appellant; S.C. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

C.M. Lodha, C.J.—By this petition under Article 226 of the Constitution, the petitioner has prayed that the rate of 10 per cent sales tax on country liquor, fixed by the notification dated 8th March, 1969 (exhibit 4), issued by the Government of Rajasthan in exercise of the powers conferred upon it by Section 5 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act"), may be declared as null and void. It has also been prayed that Rs. 7,124.45 recovered from the petitioner by the State of Rajasthan as sales tax on the basis of the aforesaid notification be ordered to be refunded.

2. The petitioner was granted licence for the exclusive privilege to sell, by retail, country liquor under Rule 67-1, Chapter VII-B, of the Rajasthan Excise Rules, 1956, for the year 1969-70, at Village Rohit in District Pali on condition of payment of a lump sum of Rs. 46,000, to be paid in twelve equal monthly instalments. It is alleged in paragraph 3 of the writ petition that the instalments are realised by the excise department as component price of the liquor sold from the warehouse to the petitioner for retail sale. It is further alleged in paragraph 5 of the writ petition that the sales tax is being charged from the petitioner on total price (issue price) of the liquor which includes the cost price and also the licence

fee, which is adjusted ultimately towards the excise duty on the liquor. The petitioner has challenged the levy of sales tax under the notification (exhibit 4), referred to above, on the following three grounds :

(i) that sales tax can be charged only on the cost of the country liquor, but not on the licence fee paid for the exclusive privilege of selling country liquor in a particular area ;

(ii) that sales tax is leviable on the first point under Rule 15 of the Rajasthan Sales Tax Rules, 195⁵. Consequently, the petitioner, who purchases country liquor from the State Government is not liable to pay sales tax inasmuch as the first point of sale is by the Ganganagar Distillery to the State Government; and

(iii) that amending Act No. 13 of 1964, whereby exemption from levy of sales tax on country liquor, granted in the original Act, was removed, did not receive the assent of the President.

3. The writ petition has been opposed on behalf of the State of Rajasthan and the Sales Tax Officer, Pali, though no counter has been filed to the writ petition. Shri S. C. Bhandari, the learned counsel for the respondents, has however, contended that none of the points raised by the learned counsel for the petitioner has any substance.

4. For determination of the first point, namely, whether the sales tax is being charged on the cost price or on the sale price, it may be useful to refer to the definition of "sale price" contained in the Act. Section 2(p) defines "sale price" as follows:

2. (p) "Sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in case where such cost is separately charged and the expression "purchase price" shall be construed accordingly :

Provided that when a hire-purchase agreement fructifies into a sale, the market price of the goods on the date on which the goods were transferred under the hire-purchase agreement shall be deemed to be the sale price of the goods so sold.

5. In this connection, we may also refer to the definition of the terms "turnover" and "taxable turnover". Section 2(t) of the Act defines "turnover" as under:

2. (t) "Turnover" means the aggregate of the amount of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract.

6. Section 2(s) defines "taxable turnover" as under :

2. (s) "Taxable turnover" means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods,-

(i) on which no tax is leviable under this Act,

(ii) which have already been subjected to tax under this Act,

(iii) which have been sold to persons outside the State for consumption outside the State, and

(iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the Rules made thereunder :

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other packing material received along with such goods at the time of purchase thereof by him the taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed manner, be one per cent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods and of such bardana, container or material:

Provided further that when any dealer has purchased any goods without paying any tax on the strength of any declaration furnished by him and the said goods are used by him for any purpose other than the one mentioned in the declaration, the purchase price of such goods shall be included in his taxable turnover.

7. Thus, the point is whether the licence fee forms part of the sale price. On this point, there is the admission of the petitioner himself contained in paragraphs 3 and 5 of the writ petition that the sales tax is being charged on total price (i e., the issue price) of the liquor which includes the cost price and also the licence fee, which is adjusted ultimately towards the excise duty on the liquor. It is not the case of the petitioner that excise duty is paid directly to the excise authorities by the petitioner. It is further clear from the notification dated 6th August, 1968 (exhibit 2), produced by the petitioner along with his writ petition that the rates of issue prices are exclusive of the price of container, but inclusive of the excise duty levied under the Government notification. Thus, the licence fee, which is adjusted towards the excise duty on the liquor, forms part of the consideration for the sale of the liquor, paid by the petitioner to the State Government and is, therefore, sale price. Consequently, it is included within the term "turnover" as denned in the Act. The learned counsel for the petitioner has relied upon *Mcdowell and Company Ltd. Vs. Commercial Tax Officer VII Circle, Hyderabad*, but that case is completely distinguishable on facts inasmuch as there the excise duty or countervailing duty was being paid by the purchasers of liquor directly to the excise authorities before removal thereof from the distilleries and was not included in the bills of sale as consideration for the sales. In the instant case, the excise duty is being charged or received by the dealer, i.e., the State

Government, as a part of the consideration for sale. In this view of the matter, we do not see any substance in this contention.

8. As regards the second point, namely, that sales tax is not leviable on the second point of sale, it is sufficient to point out that the State- of Rajas-than, in exercise of its powers under Rule 15, has issued Notification No. 316, whereby it has been directed that tax shall be payable on the point of sale from the warehouse to the retail-sale licensees in respect of country liquor. Thus the second ground is also devoid of force.

9. This brings us to the third and the last objection. It may be pointed out that this objection has not been made a ground of attack in the writ petition. On the other hand, the objection raised in this connection is that the notification issued by the State Government authorising the levy of sales tax has not received the assent of the President. The learned counsel for the petitioner, however, submitted that the word "notification" has been mentioned inadvertently ; otherwise what was intended to be urged was that amending Act No. 13 of 1964, whereby the exemption granted by the original Act from levy of sales tax on liquor was removed, is bad on account of not having been assented to by the President. In our opinion, the petitioner is not entitled to raise this objection when he has not taken it in the writ petition nor has amended the writ petition by inserting this ground, even though eight years have passed since the writ petition was filed. However, we may observe that the point has no substance. It is true that the original Act received the assent of the President, but at the same time there is no denying the fact that the tax in question falls under item 54 of List II of State List, Schedule VII, appended to the Constitution, which reads as under :

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I.

10. Article 200 of the Constitution provides, inter alia, that where a Bill has been passed by the Legislative Assembly of a State, it shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President. In the present case, the amending Act was assented to by the Governor as he did not think it proper to reserve the Bill for consideration of the President. Thus, the amending Act did not require the assent of the President as provided under Article 200 of the Constitution.

11. The learned counsel for the petitioner could not lay his hands on a single authority wherein it has been held that if an Act made by the State Legislature, which it is competent to make, is assented to by the President, then any amendment made therein must also receive the assent of the President. On the other hand, in view of the provisions of Article 200 of the Constitution, it appears to us that in the present case the amending Act cannot be declared as ultra vires merely because it has not received the assent of the President even though it

has been assented to by the Governor. Thus the point has no substance even on merits.

12. The result is that this writ petition fails and is hereby dismissed, but without any order as to costs.