(1995) 03 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : O.W.P No. 325 of 1988

Kasturi Lal Gupta — APPELLANT

Vs

State and others — RESPONDENT

Date of Decision : 16-03-1995

Acts Referred:

Jammu and Kashmir Excise Act, 1958 — Section 24A

Citation : (1995) JKLR 116 : (1995) KashLJ 200 : (1995) SriLJ 227

Hon'ble Judges : B.A.Khan, J

Bench : Single Bench

Advocate : Puneet Gupta , Advocates appearing for the Parties

Judgement

1. Petitioner is a licensee dealing in liquor. He is resisting the recovery of Rs.4,701.82 found due against him by the respondents. He accordingly

seeks quashment of office order dated 2081983 passed by respondent No.2 and the final attachment notice dated 2221988 issued by respondent

No.3 for the recovery of the assessed fee as arrears of land revenue under Sec. 64 of the Land Revenue Act.

2. It appears that assessed fee on IMFL/ Beer was raised vide SRO407 dated 3071983. As a consequence the licensees were asked to pay the

assessed fee within the stipulated time by office order impugned dated 2081983. It seems that the petitioner did not respond and was consequently

put on notice on 1711 198 7 asking him to liquidate the arrears. A certificate of recovery was thereafter issued against him and finally the

attachment notice dated 2221988 was issued by respondent No.3 proposing to sell his movable property. The petitioner has challenged the action

primarily on the grounds: (i) that no notice was given to him before the final notice of attachment was issued by respondent No. 3; (ii) that office order of respondent No. 2 is uttra vires the provisions of the Excise Act as the period for payment of assessed fee could be specified only by the

Government; (iii) that the amount demanded is not recoverable under Sec.24A and consequently cannot be recovered as arrears of land revenue.

3. Respondents, in their objections have submitted that the petitioner was required to pay the assessed fee by 25th of the month next to which the

payment related and was also liable to pay a sum equal to two per cent of such amount of each month or part thereof for payment made after the

prescribed date. Penal interest at the rate of two per cent was also recoverable from him for utilizing the Government money after it became due. It

is submitted that Sec.24A of the Excise Act is not a replacement of Sec. 24 and the arrears of assessed fee is recoverable as arrears of land

revenue under both the provisions. It is also asserted that the notices were issued to the petitioner requiring him to liquidate the arrears before the

final attachment notice was given to him.

4. Heard learned counsel for the petitioner. No one appeared for the respondents.

5. The only point canvassed by Mr. Puneet Gupta, learned counsel for the petitioner, before me was that while Sec, 24 of the Excise Act made the

arrears of assessed fee and penal interest recoverable as arrears of land revenue, Sec.24A did not provide so. He argued that since it was the

respondents' case that the liability had arisen against the petitioner under Sec. 24A, the arrears even if admitted, including the penal interest, could

not be recovered as arrears of land revenue as the Legislature has deliberately omitted to incorporate the expression "" as if they were arrears of

land revenue"" occurring in Sec.24 in Sec.24A.

6. In the circumstances it becomes necessary to refer to the relevant sections to appreciate this submission. Sec. 24 of the Excise Act, so far as it is

relevant, reads thus:

24. All duties, taxes, fines and fees payable to the State direct under any of the foregoing provisions of this Act or of any license or permit issued

under it, and all amounts due to the State by any grantee of a privilege, or by any farmer under this Act or by any person on account of any

contract relating to the excise revenue, may be recovered from the person primarily liable to pay the same or from his surety {if any) as if they were

arrears of land revenue........

In 1974, Section 24A was inserted in the Excise Act. It reads thus :

24A. Notwithstanding anything contained in this Act, if any tax or other amount due under this Act is not paid by the licensee or other person,

from whom it is due within the time specified for the payment therefor or within a period of three months from the date of demand whichever is

earlier, the licensee or other person from whom the tax or other amount is due shall be liable to pay in addition to the tax or amount due, a 2% of

such tax or amount for each month or part thereof after the period specified for its payment.

'A perusal of the two provisions shows that while Sec. 24 is the basic provision, Sec. 24A is an addition. Sec.24 provides for recovery of all

duties, taxes, fines and fees payable to the State direct under three categories viz: {0 under any of the provisions preceding it or (ii) of any license

or permit issued under the Act and (iii) all amounts due to the State by a grantee of privilege, or by any farmer under the Act or by any person on

account of any contract relating to the Excise Revenue. It further says that all this can be recovered as arrears of land revenue. This section is

couched in general terms and does not prescribe any time frame or a penalty in case of a default. This contingency is met by the newly added

Sec.24A which is wider in scope and has an overriding effect. It lays down that if any tax or other amount due under the Excise: Act is not paid by

the licensee or other person, from whom it is due within the time specified for payment therefor or within three months from the date of demand,

the defaulter shall incur a penalty equivalent to 2% of the amount payable for each month or part thereof after the period specified for its payment.

As is evident, the expression "" any tax or other amount due under the Act"" is of wide amplitude and all embracing and covers all that may be due to

the State under the Excise Act and the Rules made thereunder. Such amount is payable within the period specified in the demand notice or order

passed by the competent authority or within three months from the date of demand whichever is earlier. Any default beyond the prescribed time

limit results in penalty.

7. On this analytical examination, it is safe to conclude that Sec. 24A is not a replacement or substitute of the basic provisionS.24, It is only an

addition providing for more stringent conditions to enforce the liability which is created under any of the provisions of the Excise Act. Therefore,

where the basic provision provides for recovery of dues as arrears of land revenue, any addition to it must be deemed to carry all conditions with

it. It is wrong to contend that while Sec.24 provides for recovery of dues as arrears of land revenue, its Sec. 24A does not because it excludes

appendage i.e. the expression "" as if they were arrears of land revenue"" occurring in the principal Section. The subsequently inserted provision need

not have carried this expression as it was not a substitute for Sec.24, nor had it repealed or erased this Section in anyway. Consequently so long as

Sec. 24A is treated as an addition to Sec. 24, it carries within it all the terms and conditions of the later provision including that the dues and the

penalty incurred is recoverable as arrears of land revenue. Any contrary view would lead to absurd results.

8. Proceeding on this premise, it become easy to hold that Mr. Gupta's thesis proceeds on a serious misconstruction and misappreciation of the

relevant provision and that the penalty leviable under Section 24A is as much recoverable as arrears of land revenue and any other sum including

any assessed fee to the State under the Excise Act.

9. The other contentions raised in the petition, even though not argued, also proceed on misappreciation of the relevant provisions of the Excise

Act. It is fallactious to contend that the impugned office order dated 2081983 is ultra vires the provisions of the Excise Act or the rules made

thereunder. On the contrary, this order is very much covered by Sec.20 of the Act. Similarly the allegation of violation of the principles of natural

justice is also belied by the record which reveals that the petitioner was given reasonable notice to pay the arrears before the final attachment

notice was issued against him.

10. Therefore, all in all I find no merit in this petition which represents a defaulter's last ditch effort to ward off the recovery of the amount due

against him. It is accordingly dismissed for the reasons stated above.

11. Interim direction shall stand vacated.

