
(2012) 12 KL CK 0066

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5623 of 2009 and connected cases

Kerala Fine Arts Society

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Kerala Tax on Luxuries Act, 1976 — Section 17A, 4(1)(i)

Citation : (2013) 1 KLJ 607 : (2013) 1 KLT 430

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : B.S. Krishnan and K. Anand and Latha Krishnan, for the Appellant;
Sebastian Champappilly, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The issues raised in these Writ Petitions are connected. Therefore, these cases were heard together and are disposed of by this common judgment. W.P. (C) No. 5623 of 2009 is treated as the leading case.

2. The petitioner is a society registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Ext. P1 is its Bye-laws. Petitioner owns an Auditorium, viz., Fine Arts Hall, Ernakulam. On 22.4.2008, third respondent inspected the Auditorium of the petitioner and prepared a Shop Inspection Report. It was found that the petitioner was letting out the Auditorium on rent for cultural programmes " as well as other functions like Marriages, Meetings, Receptions etc.

3. Thereupon notice was issued to the petitioner calling upon them to produce the books of accounts for the years 2005-2006 to 2008-2009. On verification of the books of accounts, it was found by the respondents that they had received Rs. 5,45,700/-, Rs. 6,40,150/-, Rs. 9,43,280/- and Rs. 61,200/- respectively during the aforesaid assessment years. Thereupon, Ext. P7 notice was issued to the petitioner under S. 17A of the Kerala Tax on Luxuries Act, 1976 (hereinafter

referred to as "the Act"). To that notice, petitioner filed Ext. P8 reply. Objections raised were overruled and Exts. P9 to P13 orders were passed imposing penalty on the petitioner as provided under S. 17A of the Act, being double the amount of luxury sought to be evaded by them. It was thereupon, they filed this Writ Petition.

4. In the Writ Petition, petitioner seeks a declaration that the Act is inapplicable to the Society and therefore tax is not liable to be paid. In the alternative, they also seek a declaration that S. 4 of the Act is ultra vires the Constitution and beyond the legislative competence of the State. As a consequence, they also seek the quashing of Exts. P9 to P17 penalty orders and other notices issued to them.

5. In so far as the prayer of the petitioner to declare the Act unconstitutional is concerned, that issue has already been considered by this court and in the judgment in M/s. Windsor Castle v. Commercial Tax Officer (Works Contract) and Anr. (2012 (20) KTR 321) the constitutionality of the Act has been upheld. Therefore, this issue is no more res Integra.

6. Now what remains is the contention of the petitioner that the Act is inapplicable to the petitioner society. This contention is raised on the basis that as per S. 4 and S. 2(f), these provisions will apply only in respect of Auditoriums where accommodation for residence for consideration is provided. It is contended that such a facility is not provided by the petitioner to attract the provisions of the Act.

7. In my view, these contentions will have to be answered in the light of the provisions of the Act. S. 2(f) and S. 4(1)(i) of the Act being relevant, are extracted for easy reference.

2. Definitions-In this Act, unless the context otherwise requires-

(a) xxx

(b) xxx

(bb) xxx

(c) xxx

(ca) xxx

(d) xxx

(dd) xxx

(de) xxx

(df) xxx

(e) xxx

(ee) xxx

(f) "Luxury provided in a hotel, house boat, hall, auditorium, Kalyanamandapam or place of like nature" means accommodation for residence or use and other amenities and services provided in a hotel or house boat or hall or auditorium or Kalyanamandapam or place of like nature (the rate of charges of accommodation for residence and other amenities and services provided excluding charges of food and liquor is one hundred and fifty rupees per day or more).

4. Levy and collection of luxury tax.

(1) Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called, the "luxury tax", in respect of any luxury provided,-

(i) in a hotel, house boat, hall, auditorium or Kalyanamandapam or including those attached to hotels, clubs, Kalyanamandapam and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition;

8. Reading of S. 4(1)(i) of the Act makes it clear that subject to the provisions of the Act, luxury tax shall be levied and collected in respect of any luxury provided in places including Auditoriums which are used for conducting functions whether public or private. S. 2(f) which defines the luxury provided in a Hotel, Auditorium etc., is defined to mean accommodation for residence or use and other amenities or services provided in places including Auditorium or places of like nature where the rate of charges realised excluding the charge for food and drink, is Rs. 150/- per day or more. Therefore, if an Auditorium is used and other amenities are provided and rate of charges realised is in excess of Rs. 150/- per day, that is a luxury as provided under S. 2(f) of the Act. In so far as the contention of the petitioner that luxury can be said to be provided only in a case where accommodation for residence is provided is concerned, having considered this contention, I must confess my inability to accept this plea. The word "accommodation" does not always mean that it should be for residence alone. Any act of providing something to meet a need is an accommodation. Therefore, if the Auditorium is made available for the use of those who want it, that is an accommodation and a luxury as provided under S. 2(f) of the Act. Petitioner does not have a case that they are not letting out their Auditorium for rent That Auditorium is used for various functions such as cultural programmes, Receptions, Public Meetings, etc. Respondents have found that the petitioner is providing electricity, water supply etc., for the use of the customers. Such amenities provided by the petitioner, certainly is a luxury as provided under S. 2(f) of the Act attracting the provisions of S. 4(1)(i) of the Act.

9. It is further clear from S. 4(1) which in mandatory terms require registration of Hotels etc. S. 4(B)(1) and 4(B)(2)(c) being relevant reads thus:-

4B. Registration of Hotels etc.-- (1) "Every proprietor of a hotel having not less than five rooms to be rented for accommodation for residence or otherwise and

of every house boat, hall, auditorium, Kalyanamandapam and place of the like nature shall get his hotel, house boat, hall, auditorium, Kalyanamandapam or place of the like nature registered under the Act and the registration renewed annually".

(2) An application for registration or renewal shall be made to such authority in such manner and within such period as may be prescribed and shall be accompanied by a fee as specified below:

(a) xxx

(b) xxx

(c) Halls, Auditorium, Kalyanamandapams etc,-

(i) Within the local area of a municipal corporation - One thousand rupees

(ii) Within the local area of a Municipal Council, or Township by whatever name called - Seven hundred and fifty rupees

iii) Within the local area of a grama Panchayath - Five hundred rupees.

10. These provisions of the Act therefore do-not admit of any ambiguity that an Auditorium like the one owned by the petitioner is liable to pay luxury tax under the Act. Therefore, the second prayer in the Writ Petition to declare that Act is inapplicable to the Auditorium of the petitioner has to be rejected and I do so. As a consequence, the prayer of the petitioner to quash Exts. P9 to P17 also should be rejected and I do so.

11. However the fact remains that these Writ Petitions were filed challenging Exts. P9 to P14 and the consequential notices levying penalty on the petitioner and they have not availed of the statutory remedy under S. 7 of the Act. Although I have rejected the contention of the petitioner regarding the applicability of the Act, I am inclined to give the petitioner an opportunity to pursue the statutory remedy so that factual contentions of the petitioner could be agitated before the appellate authority. Therefore, I direct that if petitioner files appeal against Exts. P9 to P13 orders within one month from today, the concerned appellate authority shall entertain the appeals, ignoring the delay that has occurred in the meanwhile. Subject to this, the Writ Petition will stand dismissed.

12. In so far as W.P.(C) No. 28685 of 2009 is concerned, Ext. P15 is the penalty order against which petitioner has already availed of the appellate remedy by filing Ext. P23 appeal. Therefore, no order as in the case of leading case is warranted. For the aforesaid reasons, this Writ Petition is dismissed. In so far as W.P.(C) No. 32917 of 2009 is concerned, petitioner inter alia challenges Exts. P12 to P14 penalty orders passed against them. Although on merits, the issue is fully covered by the judgment in W.P.(C) No. 5623 of 2009, since the Writ Petition was entertained and was pending in this court, it is directed that it will be open to the petitioner to pursue the appellate remedy against the aforesaid orders. If such

appeals are filed within one month from today, that will be considered by the appellate authority ignoring the delay that is involved.