
(1961) 02 MAD CK 0011

In the Madras High Court

Case No : Tax Case No. 128 of 1958 (Revision No. 67)

K.M. Goel, Proprietor

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 14-02-1961

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1961) ILR (Mad) 991 : (1961) 74 LW 686 : (1961) 12 STC 527

Hon'ble Judges : Srinivasan, J;Rajagopalan, J

Bench : Division Bench

Advocate : K. Srinivasan, D.S. Meenakshisundaram and A. Devanathan, for the Appellant; The Advocate-General and G. Ramanujam, for The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Srinivasan, J.—By Section 2 of the Madras Act XV of 1949, Section 3(1), the charging section of the Madras General Sales Tax Act, 1939, was amended by the addition of a proviso in these terms :-

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding house or restaurant, the tax shall be calculated at the rate of 41/2 pies for every rupee if the turnover relating to these articles is not less than Rs. 25,000.

2. The constitutionality of this proviso was challenged in A. R. Kirshna Iyer v. State of Madras [1956] 7 S.T.C. 346. It was contended therein that the impugned proviso offended against Article 14 of the Constitution. This Court upheld the contention holding :

In our opinion, the distinction between two classes of dealers in articles of food and drink with an annual turnover of Rs. 25,000 and more, i.e., (i) dealers in such articles of food and drink sold in hotels, boarding houses and restaurants; (ii) dealers in such articles of food and drink sold elsewhere, has no reasonable

or just relation to the object of the Act, which is to tax the turnover of the sales of a dealer. The apparent discrimination, which results in one class of such dealers being singled out for levy of tax at a higher rate, has not been explained by any classification with a reasonable basis, having a just and reasonable relation to the object of the Act. We are of opinion that the proviso to Section 3(1)(b) of the Act offends Article 14 of the Constitution and is, therefore, void and unenforceable against the first petitioner.

3. In another decision of this Court in *State of Madras v. Kanchilal* [1956] 7 S.T.C. 606, Krishnaswami Nayudu, J., sitting singly had to consider whether the turnover of sales of articles of food and drink sold at a sweetmeat stall fell for chargeability within the terms of the proviso above extracted. The learned Judge held therein that,

The three terms, hotel, boarding house and restaurant, imply that what is supplied as and by way of meals, refreshments and drinks are intended to be consumed at the place where facilities are provided for such consumption, and they do not refer to a stall, where such facilities are not provided, since in a stall sweetmeats are sold for the purpose of being taken away from there and not for the purpose of consuming there. It is not suggested that in the sweetmeat stall in question, provision is made for the purchasers to sit and consume the articles. The inclusion of food and drink in the proviso further reinforces the view that what is supplied or sold is intended for consumption at the place, since drink at any rate is not ordinarily intended to be taken home. Taking the language of the clause "articles of food and drink sold in a hotel, boarding house or restaurant", the irresistible inference that could be come to is that the articles of food and drink are intended ordinarily to be consumed at the place, which cannot be the case in the case of a street-stall as in the present case....

4. It was accordingly held that the proviso would not apply to a sweetmeat stall which did not partake of the characteristics of a hotel, boarding house or restaurant.

5. These decisions were followed by an amendment of the Madras General Sales Tax Act. By Section 3 of Act XV of 1956, the proviso was amended, and in the form in which it stood at the relevant time, it ran thus:

Provided that if and to the extent to which such turnover relates to articles of food or drink or both sold in a hotel, boarding house, restaurant, and stall or any other place, the tax shall be calculated at the rate of 4-1/2 pies for every rupee, if the turnover relating to those articles is not less than Rs. 25,000.

6. The petitioner in the present case is the proprietor of a sweetmeat stall. The net assessable turnover was determined at Rs. 65,007. Since the amendment of the proviso by Act XV of 1956 came into effect on 8th October, 1956, the assessing authority ascertained the quantity of turnover in respect of the periods 1st April, 1956 to 7th October, 1956, and 8th October, 1956 to 31st March, 1957, in so far as it related to sales of articles of food or drink ; he determined them

respectively at Rs. 29,971 and Rs. 33,841. The first of these turnovers was assessed to tax at 3 pies a rupee and the second at 4 1/2 pies. This order of assessment was appealed from and the ground was taken that the selection of prepared foods alone for being subjected to a higher rate of tax as distinct from other raw products, which were also articles of food and drink, amounted to discrimination. This contention was not accepted. The appeal failed. When the matter came to the Appellate Tribunal, the Tribunal dismissed the appeal holding that it had no authority to question the validity of the provisions of the Act and the Rules. The matter has now come to this Court by way of a revision u/s 12-B(1) of the Act.

7. In the revision before us, it has been contended that the amendment of the provision by Act XV of 1956 has not had the effect of removing the discriminatory nature of the imposition of tax and that notwithstanding the enlargement of the expression "hotel, boarding house or restaurant" by the addition of "a stall or any other place", the constitutional objection that was raised to the levy at the enhanced rate still continues to prevail. In addition, it is urged that though the object of the amended proviso was apparently to cover sales of all such articles at whatever place they may be sold, the department is enforcing the Act to levy the enhanced tax only in respect of sales in hotels, boarding houses, restaurants or stalls. It was further claimed that such articles were sold at other places such as general provision stores, oilmen stores and they were not subject to enhanced levy.

8. Another ground on which the constitutionality of the amendment is attacked is that the prescription of a minimum turnover of Rs. 25,000 operates as an unreasonable discrimination, placing dealers with a turnover exceeding Rs. 25,000 in an unfavourable position in the conduct of their business as compared with dealers with turnovers of less than Rs. 25,000. This arbitrary classification, according to the petitioner, has no reasonable relation to the object intended to be achieved by the Act, viz., to tax dealers in articles of food and drink at a higher rate. It may be mentioned that this objection was also raised in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346 but that question was left open as unnecessary for determination in the view the learned Judges took on the other contention advanced in that case.

9. The first question that we have to determine is, whether in the amended form in which the proviso has been enacted, it has succeeded in avoiding the taint of unconstitutionality which was held to attach to it as it stood prior to the amendment. The learned counsel for the petitioner contends that the addition of the words "stall or any other place" to "hotel, boarding house or restaurant" does not have the effect of bringing to enhanced levy of tax, sales of articles of food and drink wherever they may be sold. The expression "any other place", according to the learned counsel, should be construed on the principle of *ejusdem generis* ; and if that is so interpreted, it must mean only places of the kind referred to in the particular expressions preceding that phrase. On the other

hand, the learned Advocate-General appearing for the State, argues that "any other place" is a general phrase which must be given its full meaning, and considering that the amendment was effected for the purpose of removing the effect of the decision in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346 the amplitude of the general phrase should not be restricted in the manner contended for by the petitioner. As it stands, the learned Advocate-General argues, the statute has not left out of its operation any dealer who deals in articles of food or drink or both. The question accordingly reduces itself to a consideration of the proper interpretation of this phrase.

10. The argument on behalf of the State is that words of limitation should not be read into a statute, if that can be avoided. But this general principle is still subject to other special rules of construction of which the *eiusdem generis* rule is an accepted one. In *Craies on "Statute Law"* (5th Edn.) at page 168, the author observes:

This rule of law, generally known as the *eiusdem generis* rule, was thus enunciated by Lord Campbell in *R v. Edmundson* [1859] 28 L.J.M.C. 213, . "I accede", said he "to the principle laid down in all the cases which have been cited, that, where there are general words following particular and specific words, the general words must be confined to things of the same kind as those specified". It is really a question of the assumed intention of the statute.

11. At page 170:

The *eiusdem generis* rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of intention of the Legislature. The modern tendency of the law, it was said, is "to attenuate the application of the rule of *eiusdem generis*"

12. While it is true that these observations indicate that the *eiusdem generis* rule is to be applied with caution, the principle is nevertheless set out as below :

To invoke the application of the *eiusdem generis* rule, there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply. "Unless you can find a category", said Farwell, L.J. "there is no room for the application of the *eiusdem generis* doctrine", and where the words are clearly wide in their meaning, they ought not be qualified on the ground of their association with other words.

13. Relying upon some of these observations, the learned Advocate-General argues that the words preceding the general phrase "any other place" do not indicate the existence of any common feature, and that in the absence of such a feature, the *eiusdem generis* rule would not be attracted. We are unable to agree. There is a clearly discernible common denominator running through the expression "hotel, boarding house or restaurant", which indicates that they are

places where articles of food and/or drink are prepared and sold, principally, almost exclusively, for consumption on the premises, where provision for such consumption is also made. Even apart from this, the two cases that we have referred to earlier have set at least this point beyond the pale of controversy. In dealing with this aspect of the matter, the learned Judges observed in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346 that the normal expectancy of consumption on the premises of the articles sold is one of the distinct features of sales in a restaurant, an observation which applies equally well to hotels or boarding houses. In *State of Madras v. Kanchilal* [1956] 7 S.T.C. 606 also, this feature was prominently portrayed as differentiating it from a stall. It is clear therefore that in the case of the particular expressions preceding the general one, the intention of the Legislature was to deal with places where prepared articles of food and drink were sold for ready and immediate sale and consumption, whether they were consumed on the spot or not. Articles of food and drink sold at such places do not normally keep for a long time, (sic) articles for example tinned foods. It is impossible, therefore, to accept the contention of the learned Advocate-General that there is no category, a distinct category, indicated by those expressions. It seems to us, therefore, that these specific words "hotel, boarding house or restaurant or stall" are not so widely different in character, in so far as the immediate consumability of the articles that are sold in those places is concerned, that one can say that these places differ so greatly from each other that a common feature does not exist. This seems to us to be a proper case where the *ejusdem generis* principle is necessarily and forcibly attracted.

14. The further argument on behalf of the State is that if the *ejusdem generis* rule is only to serve as a guide or clue to the intention of the Legislature, consistent with the principle that the words of a statute should not be restrictively construed, we should hold that the intention of the Legislature was to bring within the net of taxation all places where articles of food and drink are sold. It seems to us however that it is one thing to refer to the intention of the Legislature and quite a different one to conclude whether that apparent intention has been really given effect to by the words and expressions employed by the Legislature. We are clearly of opinion that in the context in which the expression "any other place" is found, even if the Legislature can be presumed to have intended that all places where articles of food or/and drink are sold were to be brought within the ambit of the higher rate of tax, they have failed to achieve that object.

15. We are accordingly left in the same position as when the decision of this Court in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346 was rendered. On the principles laid down in that decision, it follows that the taint of unconstitutionality has not been removed by the amendment of 1956.

16. The learned Advocate-General has invited our attention to the unreported decision in Tax Case No. 164 of 1958, where the learned Judges dealt with this

proviso from a different angle. That was a case where a manufacturer of aerated waters supplied quantities of soda water bottles to different retail customers. The learned Chief Justice said :

In our opinion, such a sale cannot be deemed to be a sale of drink as such. No doubt, the words "as such" are not contained in the proviso, but the meaning of the proviso is obviously that it is only when there is a sale of articles of food or articles of drink or both are sold that tax is leviable.... We cannot agree with the learned Additional Government Pleader that the addition of the words "or any other place" by the recent amendment placed a totally different connotation on the words food and drink which would have the effect of rendering sales like the sale in question leviable to enhanced tax. It is not necessary for us to decide for the disposal of this case whether the amendment has succeeded in overcoming the difficulty pointed out in *State of Madras v. Kanchilal* [1956] 7 S.T.C. 606 or the grounds on which the proviso was struck down in *A. R. Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346.

17. It is enough for us to say that this decision did not deal with the aspect of the matter with which we have been called upon to deal. It has been conceded by the learned Advocate-General that articles of food or drink sold by dealers other than those operating hotels, boarding houses and restaurants have not all been subjected to the higher rate of tax. According to the learned Advocate-General, however, exemption from such higher levy in these cases has been granted by the Government in the exercise of their powers u/s 6(1) of the Act, which is, according to him, a clear indication that but for this exemption such dealers would be subject to the higher rate of levy. Such notifications exempting co-operative milk supply societies, manufacturers of syrups, squashes and essences or aerated waters, dealers in articles of food such as biscuits, jam, canned fruits etc., in sealed containers and oilman stores have been brought to our notice. It is not necessary for us to consider whether any of such dealers as those contemplated in these exemption notifications would at all be liable to the higher rate of tax but for these exemptions. These notifications purporting to be in the exercise of powers of the Government granting exemption, whether such exemption was needed or not, do not carry the matter further in the matter of construction of the terms of the statute. If at all, this argument may be of value only for the purpose of establishing that no inequality in the enforcement of the Act is caused by the administration and the provision should not be struck down on that ground.

18. The learned Advocate-General further argued that the decision in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346 should be reconsidered. In *Kadiyala Chandrayyar v. State of Andhra* [1957] 8 S.T.C. 33 the Andhra Pradesh High Court upheld the validity of the proviso holding that the classification mentioned in the section was founded on intelligible differentia distinguishing dealers like the assessee (a hotel) from other dealers, and that it had a rational relation to the object sought to be achieved and that, therefore, it was not void as offending

against Article 14 of the Constitution. That the Andhra Pradesh High Court came to a conclusion different from the one arrived at by this Court is by itself no ground for reconsideration of *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346. Learned counsel for the petitioner pointed out that the Madras view has been followed in Mysore in *Seetharamaiah v. Assistant Sales Tax Officer, Bangalore City* [1957] 8 S.T.C. 611. We are unable to agree with the learned Advocate-General that the Madras decision requires reconsideration.

19. Relying upon *Stewart Dry Goods Co. v. Lewis* 294 U.S. 550 a decision of the Supreme Court of America, the further contention has been advanced that the differentiation of dealers on the basis of turnover of Rs. 25,000, levying the higher tax on dealers with a turnover of Rs. 25,000 and above from dealers with a turnover of less than Rs. 25,000, is also unreasonable and has no rational relation to the object of the taxation. This point was left specifically undetermined in *Krishna Iyer v. State of Madras* [1956] 7 S.T.C. 346. In the view that we have taken on the other arguments, it is not necessary for us to enter into this question and we do not propose to express any opinion on this contention.

20. It follows that the amended proviso offends against Article 14 of the Constitution and has to be declared unconstitutional on that ground. The petition is allowed. The petitioner will be entitled to his costs. Counsel's fee Rs. 100.