
(2014) 06 KAR CK 0029

In the Karnataka High Court

Case No : W.P. Nos. 22422-22512, 24164-24401, 24402-24891/2014 c/w W.P. Nos. 22513-22557, 24962-25321, 22087-22108 and 22583-22758/2014 (Excise)

K.T. Meharwade and Company

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Karnataka Stamp Act, 1957 — Section 2(11), 2(j), 3, 30, 46-A

Citation : (2014) 4 AKR 81 : (2014) ILR 3770 : (2014) 4 KCCR 3106

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Mohan Bhat, Advocate for the Appellant; T.K. Vedamurthy, HCGP, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—Since common questions of fact and that of law arise for decision making, with the consent of the learned counsel for the parties petitions are clubbed together, heard finally and disposed of by this order.

2. Petitioners are recipients of licences issued by the Deputy Commissioner under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 framed under the Karnataka Excise Act, 1965, for short "Excise Act". The common grievance of the petitioners is over the Official Memorandum dated 19.3.2014 and the order thereto issued by the Commissioner of Excise making a demand to recover stamp duty under the Karnataka Stamp Act, 1956, on renewal of the licences, with retrospective effect from the year 2005.

3. Heard learned counsel for the petitioners. Petitioners' counsel asserts that the Apex Court having held in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , that there is no fundamental right to do trade or business in intoxicants, while the state under its regulatory powers has the right to prohibit absolutely every form of activity in relation to intoxicants, its

manufacture, storage, export, import, sale and possession and in all manifestations, since those rights are vested in the state, hence licences are issued under the Karnataka Excise (Sale of Indian and Foreign Liquor) Rules, 1968 for short "Rules". In addition, it is stated that a Division Bench of this Court in *M/s. Jagadale and Sons, Bangalore and Vs. State of Karnataka and Others*, etc., , observed, that liquor business is not per se lawful except when carried on under licence or permit and therefore, no right inheres in any individual to carry on trade in noxious or dangerous drugs and the moment the licence expires, is cancelled or withdrawn, the right or privilege gets extinguished, hence such a privilege granted cannot be elevated to the status of a right either for the purpose of Article 19(1)(g) or for the purpose of Article 301, while the activity of dealing in liquor is held to be "extra commercium". Learned counsel points to the following observation of the Division Bench:

"The free flow of dealings, i.e., trade and commerce which are sought to be protected by Art. 301, cannot be extended to dealings in goods which are inherently dangerous to health and morality of the people and hence cannot be considered as recognised articles of trade. The effect of the Rules is to activate the functioning of the State in the sphere of its own privileges." xxxxxx "Its effect on the inter-State trade, commerce or intercourse assuming Article 301 is attracted, is only incidental, remote and not direct."

4. In the light of the observations supra, it is submitted that no right is created by the issue of a licence under the Rules so as to fall within the definition of the term "instrument" u/s 2(J) of the Karnataka Stamp Act, 1957, for short "Stamp Act" so as to attract stamp duty either under Article 32-A or under Article 53-A relating to transfer of licence in the schedule to the Stamp Act. It is further submitted that even if a licence is construed to be an instrument chargeable to duty, then under the first clause of the proviso to Section 3 of the "Stamp Act" any instrument executed by the State Government is exempted from payment of stamp duty. In addition, it is submitted that Section 46-A of the "Stamp Act" relating to recovery of stamp duty not levied or short levied may be done so within a period of five years from the date on which the duty became payable, after service of notice on the person from whom duty was payable requiring him to show cause as to why proper duty or the amount required to make up the same should not be collected from him. It is lastly submitted that neither the Karnataka Excise Act, 1965 nor the Rules invest a jurisdiction in the Excise Commissioner to demand and recover stamp duty/deficit stamp duty on licences for past renewals under the "Stamp Act".

5. It is on the aforesaid premise that learned counsel submit that the Official Memorandum dated 19.3.2014 and the Order dated 15.4.2014 of the Excise Commissioner are illegal and without authority of law.

6. Learned HCGP for the State reiterates the statements in the statement of objections inter alia questioning the maintainability of the petitions; that the Act and Rules provide for issue of licences and their renewals and that each licence is

nothing but a permission to sell liquor as otherwise it would be unlawful; that Article 32-A of the "Stamp Act" introduced in the year 1995-96 permits the levy of stamp duty on the licences for movable and immovable property and therefore, the licences in question fall under the said Article. In Paragraph 5, it is stated that rate of stamp duty for CL-2 and CL-9 licence, transfer of licence under Rule 17-B of the Rules, applicable is different for different years. It is the further objection of the State that stamp duty is required to be paid by the licensee under Rule 17-B of the "Rules" at the time of renewal of licence or at the time of transfer of licence. According to the State, the licence issued by the Department of Excise attracts Section 30 of the "Stamp Act", since it imposes a burden of payment of stamp duty on the licensee, hence the proviso to Section 3 is inapplicable.

7. At paragraph 10, it is stated that since CL-2 and CL-9 licences as well as transfer of licences under Rule 17-B of the Rules do not require registration, the department of Stamps and Registration have no information and therefore, the said Department made a request to the Government to furnish all such details or in the alternative direct the department of Excise to collect the stamp duty payable by the licensee and make over the same under a particular head of account to the Department of Stamps and Registrations. It is in this premise, it is stated that the Government of Karnataka, Department of Excise issued notices to collect stamp duty from the licensees and hence seeks to sustain the impugned demand as being well merited, fully justified and not calling for interference.

8. The preamble to the "Excise Act" reads that it is expedient to provide for a uniform law relating to the production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka. Section 63 of the Excise Act provides for recovery of Government dues, including excise revenue or amounts due to government on account of any contract, relating to excise revenue as an arrears of land revenue. "Excise Revenue" is defined u/s 2(11) as "revenue derived or derivable from any duty, fee, tax, rent, fine, or confiscation imposed or ordered under the provisions of this Act or any other law for the time being in force, relating to liquor or intoxicating drugs." Rule 8 of the Rules provides for fees to be paid for several kinds of licences issued under the Rules, while Rule 8-A provides for additional fee, to be retained by the Government to be used for providing infrastructure projects.

9. Neither the "Excise Act" nor "Rules" provide for demand and recovery by the Excise Commissioner, "Stamp duty" payable on the licence, as and by way of excise revenue, hence not an "Excise due" or "Government due". A distinction is to be drawn between "Excise revenue" and "stamp duty" under the "Stamp Act", since undoubtedly taxable event in case of Excise duty is on manufacture of goods, while "stamp duty" is on instruments susceptible of duty under the "Stamp Act", hence the two are different imposts.

10. To a question of the court as to whether the order impugned can be

sustained in the absence of application of mind to relevant provisions of the law, the jurisdiction of the Excise Commissioner and his competence to issue the notice of demand and recovery of the stamp duty, learned HCGP submits that the Comptroller and Auditor General of India having made an observation that stamp duty was not collected from the licencees led to the opinion that licencees under the Rules are required to pay stamp duty under Article 32-A and 53-A of the schedule to the "Stamp Act" following which Inspector General of Stamps and Registration in the State of Karnataka requested the Government to issue necessary directions to the department of Excise, in the absence of material particulars of the licencees since licences were not registered, to recover and remit the same to its account.

11. There is little dispute that the orders impugned do not indicate either investing a jurisdiction in the Excise Commissioner or his competence to issue a demand notice to recover stamp duty under the "Stamp Act". It is in the statement of objections, that the State asserts over the competence and jurisdiction of the Excise Commissioner, though neither the Excise Act nor the Rules empower nor invest such a jurisdiction. Neither the Excise Act nor Rules invest a jurisdiction in the Excise Commissioner to demand and recover stamp duty payable either under Article 32-A or 53-A of the schedule to the "Stamp Act" by treating the licence as an instrument falling within the definition of the said term u/s 2(j) of the "Stamp Act".

12. It is to be noticed further that the impugned demand being a public order, publicly made said to be in exercise of statutory authority cannot be construed in the light of the explanations subsequently given in the statement of objections. The Apex court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, , observed thus:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

In that view of the matter, the construction and interpretation of the impugned demand cannot go beyond what is said in the demand notices and not what is said in the statement of objections.

13. In the circumstances, it cannot but be said that the Official Memorandum and impugned demands are illegal, arbitrary and without authority of law.

14. In the result, these petitions are allowed. The Official memorandum dated 19.3.2014 and the impugned demands are quashed. This order does not preclude the Inspector of General of Stamps and Registration in the State of Karnataka from examining the issue in question.

Any sum collected as stamp duty pursuant to the aforesaid Official Memorandum from any of the licencees in the State of Karnataka, the Excise Commissioner is directed to refund the same forthwith.