(2023) 09 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 247 Of 2003

M/S Wine Centre — APPELLANT

Vs

State Of J&K — RESPONDENT

Date of Decision : 22-09-2023

Acts Referred:

Jammu And Kashmir Liquor License And Sales Rules,1984 — Rule 20, 24A, 27
Jammu And Kashmir General Sales Tax Act,1962 — Section 8(2)
Jammu And Kashmir Excise Act, Samvat 1958 — Section 24A

Citation : (2023) 09 J&K CK 0035

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : Rahul Pant, Anirudh Sharma, K. D. S. Kotwal

Final Decision : Disposed Of

Judgement

M A Chowdhary, J

1. Petitioner M/S Wine Centre through medium of this petition asserted that it was a licence holder of Vend No. 80-OFF at Link Road, Jammu; that by virtue of SRO-68, licence fee of Excise Vends was enhanced by the Government, from Rs. 50,000/- to Rs. 5.00 lacs in the city of Jammu; that as a consequence of this enhancement, the petitioner did not find viable to run his Licence Vend at Link Road, Jammu and he informed the respondents that he is not in a position to run the shop there; that he filed an application for shifting of his premises from Link Road to Bus Stand; that for this period i.e from 1995 to 1997 his shop remain closed and no business was transacted by him.

2. It was further pleaded that in pursuance to the application filed by him, he was permitted to shift his premises from Link Road to Bus Stand, Jammu subject to the condition that the petitioner will clear all the outstanding i.e Licence Fee for the years 1995-96 to 1997-98; that being aggrieved of this condition, the petitioner filed a writ petition bearing OWP No. 298/1997, wherein at the interim stage, the petitioner was directed to deposit an amount of Rs. 6.00 lacs with the

Excise Commissioner for the present and execute an undertaking to his satisfaction that in case he fails in the writ petition and in case the litigation pending on the raising of the Licence Fee goes in favour of the Revenue, he would deposit the remaining amount found due within six months after the outcome of the subject matter; that the said writ petition came to be disposed of by this Court on 26.02.2002 with a direction that the petitioner would prefer a representation with the respondents seeking relief from the Excise Commissioner in respect of the contention raised by him, however, it was alleged that the representation which had already been filed was not considered by the Excise Commissioner till date.

3. Next it was pleaded, that in the meanwhile SRO-64 and SRO 68 were challenged by some of the petitioners before this Court; that vide Govt. Order No. 123-F of 1998 dated 07.04.1998 thereby uniform Licence Fee of Rs. 3.00 lacs should be charged from all the licensee with the condition that the outstanding amount shall be recovered in a maximum of 36 monthly installments beginning from April 1998 and no installment shall be less than 1/36th of the total amount of arrears subject to further condition that the interest @ 2% per month shall be charged from 1st of April, 1998 till the outstanding is fully recovered, with further stipulation that no interest shall be charged from the date of stay granted by the Court to 31.03.1998, as such, the petitioner's petition calling into question SRO-68 of 1995 was disposed of vide order dated 26.02.2002 and the petitioner deposited the balance amount of Rs. 8.50 lacs with the respondents which was the Licence Fee for the period from 1995 to 1997.

4. It was further alleged that the respondents vide their Communication No. 1251-53/CRS dated 17.03.2003 directed the petitioner to pay the penal interest of Rs. 14,49,000/- within a period of 15 days from the date of receipt of the notice.

5. Petitioner being aggrieved of the aforesaid Communication dated 17.03.2003 directing the petitioner to pay the penal interest, filed this petition and challenge the impugned order on the ground that the impugned order of recovery of interest has been passed without hearing the petitioner, having been worked out arbitrarily as the same is not discernable from the notice itself as to how the respondents have worked out the amount of Rs. 14.49 lacs; that power to recover the interest as contemplated under Section 8(2) of the General Sales Tax Act which clearly states that the liability to pay interest is incurred only if the tax is not paid within the period specified in the Demand Notice; that the interest becomes due only from the last date fixed for payment of tax mentioned in the Demand Notice and it cannot be claimed from the date the tax is due; that in the instant case no Demand Notice had been served till date and only the impugned communication has been issued; that the only Demand Notice which has been received is dated 17.03.2003 and the petitioner had already paid the whole amount of interest; that assuming but not admitting the petitioner was required

to pay Licence Fee from 1995 to 1997 during the period his shop remain closed, as such, the Govt. Order No. 124-F of 1998 dated 07.04.1998 is not applicable to the petitioner's case as he had deposited entire amount on account of Licence Fee for the period from 1995 to 1998 recoverable in the maximum 36 installments beginning from April, 1998 onwards and Clause-iv of the order clearly shows that no interest shall be levied from the date of stay to 31.03.1998; that the petitioner had obtained the stay order and his case was clearly governed by the order and the stay order had been extended upto 18.03.2002 and thereafter he paid the whole amount to the respondents. It was finally prayed that the writ of certiorari be issued quashing Notice of Demand issued under No. 1251-53/CRS dated 17.03.2003 and writ of mandamus directing the respondents not to charge interest from the petitioner from 01.04.1995 on the principal amount which stands already deposited.

6. Pursuant to notice, the respondents filed objections asserting therein that as per the rules, licence fee of the shop in the area had been declared as Rs. 5.00 lacs; that the petitioner had not surrendered the licence and he cannot say that his shop remained closed in the years 1995 to 1997; that the petitioner was supposed to deposit the licence fee which he had not deposited, as he had filed representations on the basis of the directions passed by this Court pursuant to the aforesaid SRO, however, the petitioner did not choose to avail the benefit; that the Government vide Govt. Order No. 124-F of 1998 dated 07.04.1998 issued an amnesty, however, the petitioner did not avail the amnesty, accordingly, he could not get the relief as the period of amnesty was already over. It was admitted that the petitioner had deposited the licence fee after dismissal of his petition but he had not deposited the additional sum to which it was obligated to pay under Section 24-A of the Excise Act.

7. It has been further pleaded that the provisions of GST Act are not applicable to the Excise Tax and as per the provisions of Section 24-A of the Excise Act, the amount is not as an interest but is as additional sum; that the petitioner itself chose not to take the benefit of Government Order No. 124-F of 1998 and now cannot say that he wants to take benefit of the said order. The petitioner, after filing of the objections by the respondents, filed the rejoinder asserting therein that the petitioner's licence expired on 31.03.1995 and it was not renewed thereafter as his license premises had remained closed and his business was stopped in the year 1995, as such, its licence was determined due to its non renewal, therefore, in absence of licence renewal in favour of the petitioner for the financial years 1995-96, 1996-97 and 1997-98 and there being no licence for the aforesaid financial years, there would be no question of paying any licence fee; that the contentions of the respondents that the petitioner never surrendered his licence is not supported by any rules under the J&K Liquor Licence and Sales Rules, 1984; that the licence is issued for one year and is required to be renewed thereafter for another financial year, as specifically provided under Rule 27 of the Rules 1984 aforesaid, the licence determines on the close of the financial year, for which, it is granted if it is not renewed further

and there being no licence in existence and for the aforesaid period, the respondents were not legally entitled to claim the licence fee for the aforesaid years.

8. It was further pleaded that under the similar set of circumstances similarly situated licensee of M/S Kundal Brothers Wine Shop New Plot, Jammu, could not pay the hiked licence fee and thus its shop remained closed for the three financial years i.e 1995 to 1998 and it was only thereafter the licence was renewed and the licensee was allowed to transact his business in liquor; that the respondents accordingly worked out the liability of the licensee on account of licence fee to the tune of Rs. 15.00 lacs i.e @ Rs. 5.00 lacs per annum. On representation, the matter was considered by the then Excise Commissioner, who after referring to the J&K Liquor Licence and Sales Rules, 1984 opined that since there was no renewal of licence from the year 1995 till 1997, the licence stood determined on account of non renewal, as such, there was no question of raising any demand on account of licence fee from M/S Kundal Brothers Wine Shop; that on a reference, the Finance Department vide its communication No. ET-E/11/98 dated 8th September, 2004 expressed its agreement with the opinion expressed by the Excise Commissioner as well as the General Administration Department and accordingly, respondent No.2 vide his communication dated 01.12.2004 asked the subordinate authorities not to recover the arrears of licence fee from the aforesaid licensee. A copy of the licence of the petitioner, on perusal also indicates that there was no renewal of licence for the years 1995-96, 1996-97 and 1997-98.

9. It has been further pleaded that in view of the interim order passed in OWP No. 298/1997 dated 25.04.1997, a sum of Rs. 6.00 lacs was deposited by the petitioner besides an undertaking to deposit the remaining amount within six months after the outcome of the subject matter was known; that the petitioner after disposal of his writ petition as not pressed allowing him liberty to operate his remedy and persuade the concerned authority for appropriate relief by filing fresh representation and simultaneously an amount of Rs. 8.50 lacs was also deposited, although not even a single penny on account of licence fee for the financial years in question was payable, yet under duress and the circumstances created by the respondents, the petitioner deposited the whole prescribed licence fee and complied with Order No. 4/Exc. Of 1997 dated 21.04.1997 of the respondent No.2 and there remained nothing outstanding against the petitioner; the impugned Demand Notice pertains to the interest, which as per the respondents is payable for late deposit of licence free, whereas the fact of the matter is neither the licence fee for the aforesaid period ever became payable nor the interest thereon.

10. Learned senior counsel for the petitioner argued that though petitioner had a licence for the Excise Vend at Link Road, Jammu, the petitioner in view of enhancement of the licence fee from Rs. 50,000/- to Rs. 5.00 lacs in the year 1995 could not transact his business and his shop remained closed since March,

1995 as he did not opt for renewal of his licence; the petitioner later on applied for shifting his place of business from Link Road to Bus Stand, Jammu, which was granted to him in the year 1998, as such, for a period of three financial years from 1995 to 1998, neither the licence fee was payable nor any other amount thereon.

11. Mr. K.D.S.Kotwal, learned Dy AG appearing for the Revenue, fairly admitting that the petitioner had not carried on business in absence of the renewal of its licence for the period in question, however, it had not taken the advantage of the Government Policy granting amnesty in terms of Govt. Order No. 124-F of 1998 dated 07.04.1998, as on one hand, it had taken a plea that a policy was not applicable to its case being a non-licensee and now taking a u-turn and seeking benefits of the order so as to absolve it from the penal consequences, for making late payment of the licence fee. He has further argued that under the principles of the law of taxation, once the tax liability is admitted as in the case of the petitioner who had paid the licence fee, the natural consequence is of subjecting the same to the penal interest for the liability not being paid in admitted time limit. It was prayed that the petition be dismissed.

12. It is not disputable that the petitioner's business in liquor remained closed for three financial years at Link Road, Jammu and that the licence was also not renewed after March, 1995, which as per Rule 27 stood determined in absence of any renewal on expiry of the financial years. It is not the respondents case that the licence gets automatically renewed without its cancellation or suspension, therefore, for the period of three financial years from 1995-1998, the petitioner having no licence to run the business of liquor, it was not liable to pay the licence fee for that period. It seems that the petitioner under the hope and expectations that his application for shifting of his business from Link Road to Bus Stand, Jammu shall be considered which was ultimately allowed by the respondents had paid an amount of Rs. 8.50 lacs as licence fee for that period besides an amount of Rs. 6.00 lacs deposited earlier in terms of Court's order. The petitioner, has thus, deposited the amount of Rs. 14.50 lacs on account of licence fee and on withdrawal of his petition and till then interim order passed by this Court was operating which had conditioned that the petitioner shall pay an amount of Rs. 6.00 lacs and remaining amount shall be payable after the disposal of the writ petition. Earlier, the petition of the petitioner is stated to have been decided on 26.02.2002 and the payment was also made by the licensee with regard to licence fee, though under the Policy of the licence, the petitioner was not obligated to pay the same in view of the opinion formulated by the Excise Commissioner in the case of M/S Kundal Brothers which was accepted by the Finance Department vide Communication No. ET-E/11/98 dated 8th September, 2004, having identical facts.

13. The impugned communication requiring the petitioner to remit penal interest of Rs. 14.49 lacs in terms of Section 24-A of the J&K Liquor Licence and Sales Rules, 1984 can be ordered to be deposited only on non-payment of the licence

fee. Since the licence fee had been deposited by the petitioner in terms of the Court order, the same cannot be said to be a delayed payment so as to incur the penal consequences of paying interest in terms of Section 24-A of the J&K Excise Act. Rule 20 of the J&K Liquor Licence and Sales Rules, 1984 provided that licence unless renewed is determined on 31st March at the end of the financial year.

14. In the aforesaid backdrop of the case, it is ordered that the petition filed by the petitioner is allowed and the impugned Demand Notice No. 1251-53/CRS dated 17.03.2003 issued by the respondents to the petitioner, is hereby quashed. No costs.

15. Disposed of.