
(2004) 09 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 14205 of 2004 in Civil Writ Petition No. 6432 of 2003

Pan India Network Infravest Pvt. Ltd.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 265, 301
Haryana General Sales Tax Act, 1973 — Section 2

Citation : (2005) 139 PLR 685 : (2005) 1 RCR(Civil) 118

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : Sudhir Chandra and Amarjit Singh, for the Appellant; Rajesh Sethi, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is an application with a prayer for staying the operation of Notification dated 18.6.2002 (Annexure P5) and the subsequent proceedings in pursuance thereto during the pendency of the writ petition. The notification dated 18.6.2002 (Annexure P-5) is subject matter of challenge in the main writ petition which was admitted by the Division Bench on 29.4.2003 and the same was ordered to be listed for hearing within two years. It is appropriate to mention that although prayer for staying the operation of Notification dated 18.6.2002 (Annexure P-5) was made but no order has been passed on the prayer. The challenge in the Notification is to the note which provides that the tax has to be calculated on the face value of the lottery ticket. The applicant-petitioner is an agent of the Online Computerised Lottery being the sub-agent of the marketing agents/distributors of the States of Sikkim, Karnataka and Maharashtra to market their respective online lotteries which are organised, promoted and conducted in accordance with the provisions of Lotteries (Regulation) Act, 1988.

2. After the admission of the petition, the Haryana Tax Tribunal, Chandigarh (for brevity, "Tribunal") has passed the order on 27.5.2004 which has been appended with the application as Annexure P-11. On the basis of the order passed by the Tribunal, the request for staying the operation of the Notification has been renewed.

3. Notice of the application was issued and a detailed reply has been filed.

4. Mr. Sudhir Chandra, learned counsel for the applicant-petitioner has vehemently argued that according to Section 2(f) of the Haryana General Sales Tax Act, 1973 (for brevity, "Act"), the expression "goods" has been defined to mean every kind of movable property but it has excluded specifically actionable claims. The learned counsel has emphasised that the face value of the lottery ticket has to be splitted which would comprise of two components, namely, the goods which are taxable and the actionable claim which is not taxable. For the aforementioned purpose, the authorities under the Act have to identify, the amount of actionable claim in the lottery tickets by referring to the prize money which has to be awarded on the announcement of the draw of lotteries and that has to be excluded from tax. In support of his submission, the learned counsel has placed reliance on a Division Bench judgment of the Karnataka High Court in the case of Nirmal Agency v. C.T.O. (1992) 86 S.T.C. 450 and a judgment of the Supreme Court in the case of H. Anraj Vs. Government of Tamil Nadu, . The learned counsel has submitted that the provisions for payment of 20% sale tax on the face value of the lottery ticket is in direct contravention of the judgment of Supreme Court in H. Anraj's case (supra) and the Karnataka High Court in Nirmal Agency's case (supra).

5. Mr. Rajesh Sethi, learned Deputy Advocate General, Haryana, has argued that the recovery of tax cannot be stayed by passing an interim order unless it is shown that it is not authorised by law as per the mandate of Article 265 of the Constitution. The learned counsel has pointed out that the petitioners have failed to disclose the material facts as the appeal against Order dated 3.12.2002 (Annexure P-7) was decided on 25.2.2003 and against assessment Order dated 7.2.2003 (Annexure P-8), which was decided on 30.4.2003. He has also submitted that the order of the Tribunal has not been made subject matter of challenge in the main petition by the petitioner. Learned counsel has invited my attention to an order passed by the Supreme Court in the case of Sunrise Associates v. Govt. of NCT of Delhi, (2000) 10 SCC 420 and argued that the judgment in the case of H. Anraj (supra) has been doubted and the matter has been referred to a Constitution Bench. Relying on the observations made in para 4, the learned counsel has argued that the Supreme Court has prima facie expressed the view against splitting the transaction of a sale of a lottery ticket into two parts, namely, the right to participate in the draw of lottery, and secondly, the right to win the prize which is dependent on chance.

6. After hearing counsel for the parties, perusing the orders of assessment dated 3.12.2002 and 7.2.2003 (Annexure P-7 and P-8) and the judgments cited at the

Bar, I am of the considered view that there is no prima facie case made out for grant of interim order in favour of the applicant-petitioner because it is well settled that once the goods are sold then the sale is complete and the sale tax imposed on such a sale becomes payable. Any event subsequent to their completion of sale resulting into any other transaction would not to my mind effect the liability to pay tax. I am further of the view that tax has to be imposed on the sale price realised from the vendee. Moreover, after the admission of the writ petition on 29.4.2003 no material event has taken place warranting revival of the prayer for stay. If on merits, the notification dated 18.6.2002 was prima facie illegal then the Division Bench would have considered the prayer for issuance of interim directions. It is well settled that unless imposition and recovery of tax is prima facie found to be arbitrary and violative of Article 14 of the Constitution or it is prima facie found that the tax imposed is not authorised by law under Article 265 of the Constitution, realisation of tax ordinarily is not stayed. Having found prima facie that there is not serious or patent illegality in the notification dated 8.6.2002, I am of the view that the applicant-petitioner does not deserve to be granted any interim directions.

7. The judgment of the Supreme Court in H. Anraj's case (supra) on which reliance has been placed by the learned counsel for the applicant-petitioner is not an authority for the proposition that no tax on the face value of a lottery ticket could be imposed. The judgment supports the view that lottery ticket becomes taxable after the completion of sale. It is pertinent to mention that the Supreme Court in H. Anraj's case (supra) has considered the question whether the sales tax could be levied by the State Legislature on the sale of lottery tickets in the concerned State. The notifications under the Tamil Nadu General Sales Tax Act, 1959 as well as the Bengal Finance Sales Tax Act, 1941 were upheld. However, the notification dated 31.3.1984 issued by the State of Tamil Nadu was struck down being violative of Articles 14, 19(1)(g) and 301 of the Constitution because in respect of the lottery tickets of the Government of Tamil Nadu effective exemption from payment of sales tax was granted to the purchaser of lottery while on the other hand the lottery tickets issued by the other States and sold within the State of Tamil Nadu were subjected to tax. As a consequence the sale of lottery tickets of other States within the State of Tamil Nadu were at great disadvantage as compared to sale of lottery ticket belonging to Tamil Nadu State Government because the lottery ticket of Tamil Nadu Government would be available to the purchaser @ Re. 1/- but the lottery ticket of any other State Government of the face value of Re. 1/- would have to be purchased by the purchaser at Rs. 1.20 P.

8. The judgment in H. Anraj's case (supra) has brought out two rights of a purchaser of lottery ticket namely the right to participate in the draw and right to claim the prize contingent upon his being successful in the draw. However, the sale of goods in the form of lottery ticket is complete when the ticket is sold irrespective of anything else and every sale of goods is liable to payment of sales tax. For the aforementioned view I draw support from the following observations

of their Lordships which read as under:-

".....In other words, a sale of a lottery ticket confers on the purchaser thereof two rights (a) a right to participate in the draw and (b) a right to claim a prize contingent upon him being successful in the draw. Both would be beneficial interest in movable property, the former "in praesenti" and the latter "in futuro" depending on a contingency. Lottery tickets, not as physical articles, but as slips of paper or memoranda evidence not one but both these beneficial interests in movable property which are obviously capable of being transferred, assigned or sold and on their transfer, assignment or sale both these beneficial interests are made over to the purchaser for a price. Counsel for the dealers sought to contend that the concept of a lottery cannot be sub-divided into two parts, namely, a right to participate and a right to receive the prize but the two together constitute one single right. It is not possible to accept this contention for the simple reason that the two entitlements which arise on the purchase of a lottery ticket are of different character, inasmuch as the right to participate arises in praesenti, that is to say, it is a choate or perfected right in the purchaser on the strength of which he can enforce the holding of the draw while the other is an choate right which is to materialise in future as and when the draw takes place depending upon his being successful in such draw. Moreover, on the date of the purchase of the ticket, the entitlement to participate in the draw can be said to have been delivered unto the possession of the purchaser who would be enjoying it from the time he has purchased the ticket and as such it would be a chose in possession while the other would be an actionable claim or a chose in action as been held in *Janes v. Cater* 8 QB 134:115 ER 825 and *King v. Connare* 61 C.L.R. 596, on which counsel for the dealers relied. It is thus, clear that a transfer of the right to participate in the draw which takes place on the sale of a lottery ticket would be a transfer of beneficial interest in moveable property to the purchaser and, therefore, amounts to transfer of goods and to that extent, it is no transfer of an actionable claim, to the extent that it involves a transfer of the right to claim a prize depending on a change of chance? it will be an assignment of an actionable claim."

The view of the Division Bench of the Karnataka High Court in the case of *Nirmal Agency* (supra) that the entire consideration was not liable to sales tax but only that portion which related to the right of the purchaser of the ticket to participate in the draw of lottery ticket was liable has been doubted by the Supreme Court in the reference made in the case of *Sunrise Associates* (supra). Therefore, with utmost respect to the Division Bench of the Karnataka High Court, I am not inclined to follow that view because it has been doubted in the case of *Sunrise Associates* (supra) and infact the judgment of the Supreme Court in *H. Anraj* 's case (supra) has laid down that the entire consideration paid for the purchase of a lottery ticket was liable to sales tax.

For the reasons stated above, the application filed by the applicant-petitioner is dismissed. However, it is made clear that any observation made in this order

shall not be construed as an expression of opinion on the merits of the case.