

(1998) 11 KAR CK 0018

In the Karnataka High Court

Case No : Writ Petition No"s. 27337 of 1998 and C/W 25580-82 of 1998 and etc. etc.

Ramanshree Shopping Arcade Pvt. Ltd. and etc.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-11-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 245, 246, 300A
Karnataka Tax on Luxuries Act, 1979 — Section 2 (1), 2 (4)B (1), 2 (5)

Citation : AIR 2000 Kar 33 : (1999) 114 STC 92

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : M.V. Sheshachala, Padubidri Raghavendra Rao, Rammohan Rao, S. Narayan and G.K.V. Murthy, for the Appellant; Dee"sa, Addl Govt. Advocate and Smt. Sujatha, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—All these petitions are disposed of by this common order. The controversy is with regard to the validity of Section 2(1) of the Karnataka Tax on Luxuries Act, 1979 for levying tax in respect of telephone charges which are alleged to be unreasonable, arbitrary, and in violation of Articles 14, 19(1)(g), 245, 246 and 300A of the Constitution of India. Section 2(1) of the Act reads as under :

"(1) "Charges for lodging", include charges for air-conditioning, telephone, television, radio, music, extra beds and the like but do not include any charges for food, drink or other amenities;

Luxury has been defined in Section 2(4)B(1) as under

"Luxuries" mean commodities or services specified in the schedule ministering to enjoyment, comfort or pleasure extraordinary to necessities of life."

Luxury provided in a Hotel has been defined u/s 2(5) of the Act as under :

"Luxury provided in a hotel" means,--

(i) accommodation for lodging provided in a hotel, the rate of charges for which (including charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable, but excluding charges for food and drinks) is not less than one hundred and fifty rupees per room per day;

(ii) provision in hotels, whether to resident or others of such facility as health club, beauty parlour, swimming pools, conference hall and the like for which charges are separately made;

Section 3 is the charging section which provide tax on luxury provided in a hotel. The relevant provisions are as under :

"Levy and collection of tax on luxury provided in a hotel : (1) subject to the provisions of this Act, there shall be levied and collected a tax on the luxury provided in a hotel in respect of every room (to be known as "luxury tax") at the following rates."

2. It is contended by the learned Counsel for the petitioner that tax on telephone charges was not collected earlier because of a circular issued by the Commissioner on 15-2-1983 by which it was made clear that no tax is leviable on telephone charges as telephone charges are not charges for lodging and the department has not taken any action till 1996-97.

3. It is submitted that under VII Schedule of the Constitution. List I empowers the Parliament for enacting law regarding posts and telegraphs and telephones, wireless, broadcasting and other like forms of communication and as such the State Legislature is not competent to enact a law by including telephone charges in the ambit of luxury provided in a hotel.

4. It is also submitted that under Entry 97 of List I to the II Schedule of the Constitution Parliament has enacted the law by which the service tax is levied and it amounts to double taxation.

5. Mr. S. Narayan, learned Counsel, submits that luxuries have been defined u/s 2(4)B(1) and in the schedule appended to the Act only cigarette and tobacco products have been specified as luxuries, since telephone charges are not included and specified in the schedule no tax could be levied.

6. Mr. GKV Murthy, has referred to the decision given in the case of Pardeep Aggarbatti v. State of Punjab AIR 1998 SC 171 on the point that if articles are specified separately and others are grouped together in respect of items which are grouped together each word in the entry draws colour from the other words therein. This interpretation was taken by the Apex Court on the principle of nosiest a sociis. While interpreting the word "luxury" it was held by the Apex Court that it has no application to Dhoop and Agarabatti.

7. Petitioners have also drawn my attention to form No. 1BH under which basic

Information of accommodation and tariff is required to be given which does not contain any details about the telephone call charges. It is submitted when the words "luxury provided in a hotel" is defined u/s 2(5) are in respect of amenities for which charges are compulsorily payable and since the telephone charges are only in respect of the actual calls made at the discretion of the customer, it will not come within the purview of the charging section. The word "telephone charges" and "charges for lodging" and "luxury provided in a hotel" should be interpreted to cover only the service that has been rendered in receiving the calls and not for outgoing calls.

8. Reliance is also placed on the decision given in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, , wherein the Apex Court has made the following observations :

"Thus the charging Section and the computation provisions together constitute an integrated code. When there is a case in which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt, there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation. Whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head."

9. On behalf of the respondents it is stated that u/s 2-A Commissioner has power to give instructions which are to be followed by the authorities and that telephone charges are included in the definition "luxury provided in a hotel" and that this Court in W.P. No. 193/1994 has held that the charges for telephone are included in the definition.

10. I have considered over the matter.

Section 3(1) is the charging section which create liability of tax on the "luxury provided in a hotel". The definition of "luxury provided in a hotel" u/s 2(5) includes the charges for air-conditioning, telephone, television, radio, music, extra beds and other amenities for which charges are compulsorily payable. It is contended that the charges in respect of telephone are not compulsorily payable. The contention that luxury is defined u/s 2(4)(B) and Cigarette and tobacco product as specified in the schedule will not effect the charging Section 3(1) which provides the charge on "luxury provided in a hotel". Had it been the tax on luxuries only then perhaps the contention of the learned Counsel for the petitioner could have been considered. But the charge is on the "luxury provided

in a hotel" which include various amenities including "telephone" as per definition u/s 2(5) of the Act.

11. Tax on luxuries contemplated under Entry 62 of the List II came for interpretation before the Apex Court in *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, . After taking into consideration the definition of "luxury" as set out in *Encyclopedia Britannica* and in *Webster's Comprehensive Dictionary*, and the *New Dictionary of Thoughts* it was observed that the concept of tax on luxuries in Entry 62. List II cannot be limited merely to tax things tangible and corporeal in their aspect as "luxuries". It is true that while frugal or simple food and medicine may be classified as necessities, articles such as jewellery, perfume, intoxicating liquor, tobacco, etc. could be called articles of luxury. But the legislative entry cannot be exhausted by these cases, illustrative of the concept. The entry encompasses all the manifestations or emanations, the notion of "luxuries" can fairly and reasonably can be said to comprehend the element of extravagance or indulgence that differentiates "luxury" from "necessity" cannot be confined to goods and articles. There can be elements of extravagance or indulgence in the quality of services and activities.

Observations in the case of *A.B. Abdul Kadir and Others Vs. State of Kerala*, were also taken into consideration wherein it was observed :

The word "luxury" in the above context has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word "luxury" is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well off."

12. In the above case Section 2(4) of Gujarat Tax on Luxuries (Hotels and Lodging Houses) Act, 1977 were challenged which includes charges for air-conditioning, telephone, radio, music, extra beds and the like. Similar definition exists under Karnataka Tax on Luxuries Act, 1976 in Section 2(1) definition "Charges for lodging". The explanation as appended in the definition of Gujarat Act also exists in the Karnataka Act. It was held in the aforesaid case as under :

There are in-built checks on the power under Explanation to Section 2(a). The expression "and the like" would require to be construed ejusdem generis. The genus or the class of items envisaged by the preceding words not having been exhaustive of the genus or the class, the legislature therefore, has supplied the words "and the like" so as to bring in any other item of the same class or genus. This by itself, is a clear guide for the exercise of the power. Another relevant

consideration is the identity and status of the repository of the power. The power is given to high authority like the State Government. In these circumstances, it cannot be said that the power is an uncanalised power and is an arbitrary or unreasonable one, there are statutory guides governing its exercise and the guidelines are governed by well-settled principles of interpretation. There is no substance in contention (e)."

13. The validity of including telephone charges was not specifically disputed in the case of Express Hotels Private Ltd. Vs. State of Gujarat and Another, , but the principles which have been laid down in the said case include the facilities as well. Apart from the hotels which do not provide the facility of telephone, the hotels which provide telephone facility therefore provide a better amenity to the customer which could be considered to be a "luxury provided in a hotel" and it cannot be considered that Entry 62 List II to the Constitution of India does not cover the receipts of account of telephone charges collected from the customer for outgoing calls.

14. The contention that definition of charges for lodging or luxury provided in a hotel was only to incoming calls and not for outgoing calls. By the expression used in the definition, the contention that Entry 31 List I to Seventh schedule only empowers the Parliament to enact a law with regard to post and telegraph and telephone was also of no substance because such an entry is In a different context than the entry No. 62 which empowers the State legislature to enact a law levying taxes on luxuries. The Finance Act 1994 for the services rendered by telephone is in respect of charges which are collected by telephone department under Entry 31 List I of the VII Schedule. Inclusion of charges for telephone in the luxury provided in a hotel cannot be considered to be beyond jurisdiction of the State Legislature. The contention that basic information of accommodation and tariff in Form No. 1BH does not contemplate the information reading the telephone charges collected has also no substance because the daily account of occupancy of rooms and collection of tax has to be given in form 2H. Column 6 of the said form relates to rate of charges for accommodation for residence per day per room. Column 10 relates to total amount of charges for accommodation for residence. This has reference to the number and date of bill as has been provided in Column 13 and this is beside the accommodation charges. The other charges which falls in the category of "luxury provided in a hotel" have to be included thereunder.

15. The contention that the computation provisions are difficult for implementing for which reliance was also placed on the judgment given in the case of Commissioner of Income Tax, Bangalore Vs. B.C. Srinivasa Setty, in that very judgment it is provided that in such a situation the charging section would prevail. It is also not established that the computation provisions are not capable for being implemented and thus this contention has also no force.

16. The last contention which has been raised is with regard to charges for cleaning the cloth. Those charges are in the nature of maintenance provided by

certain hotels and are of a luxury nature. The petitioner has filed W.P. 2977/1996 for challenging the action of the respondent in charging the tax. In view of the judgment of the Apex Court in the case of Express Hotels Private Ltd. Vs. State of Gujarat and Another, , it is considered that it is an amenity and thus falls within the definition of "luxury provided in a hotel".

17. Another point which require consideration by this Court is that in the circular dated 15-2-1983 issued by the Commissioner it was considered that the telephone call charges are not charges for lodging and are therefore not liable for luxury tax. On the basis of this circular it is contended that no tax was levied in the past and no proposition notice was issued. Learned Government Advocate could not refute this contention that in the past no such charges were levied. It is also not brought to my notice that the circular has been withdrawn. The hotel owners might have not collected the tax for the "luxury provided in a hotel" in respect of telephone charges in view of the circular. It would be harsh and unreasonable to charge the tax for the previous period. In these circumstances the following order is passed in the light of the judgment in Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., .

ORDER

I do not find that any case for interference is made out for declaring the provisions of Section 2 (1) and (5) as ultra vires to the competence of the State Legislature. Petitions are dismissed. However the circular dated 15-2-1983 which is considered to be not in accordance with the provisions of the Act is quashed prospectively from 1-4-1998 onward. Petitioners are not liable for tax on telephone charges till 31-3-1998.