(2007) 06 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No. 8859 of 2007

Shree Renuka Sugars Ltd. APPELLANT

Vs

The State of Karnataka RESPONDENT

Date of Decision : 15-06-2007

Acts Referred:
Constitution of India, 1950 — Article 14, 301, 304

Citation : (2007) 9 VST 35

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : K.G. Raghavan for Prabhuling K. Navadgi, for the Appellant; R.B. Sathyanarayana Singh, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petitioner, who is a dealer under the provisions of the Karnataka Value Added Tax Act 2003, (for short ''the Act'') is a manufacturer of Sugar and incidentally produces molasses which is a bye-product from which it is claimed by the writ petitioner that denatured spirit is manufactured and in the sale of which the petitioner has found many stumbling blocks, the latest according to the writ petitioner being levy of tax at 20% under the Act, as amended by the Amendment Act No. 6/2007, with which the petitioner is aggrieved.

2. It is the apprehension of the writ petitioner that the provisions of this Act was brought into force in terms of the notification dated 30.3.2007 published by the 2nd respondent will be an act adverse and in feet detrimental to the industrial and business activity of the petitioner and having regard to the background leading to this legislation, petitioner has approached this Court questioning the constitutional validity of the Act as amended in Amendment Act 6/2007 insofar as it relates to the inclusion of the denatured spirit at Serial No. 4 to the IV schedule of the Karnataka Value Added Tax Act, 2003, contending that inclusion of denatured anhydrous alcohol at Serial No. 3 in Schedule-IV to the said Act as

unconstitutional and ultra vires of the Constitution of India. Petitioner has also sought for an incidental prayer to quash the notification (column - 2) at Annexure-J bearing No. FC 115 CSL 2007 (5) dated 30.03.2007 published by respondent No. 2, which is one for withdrawing an earlier exemption, which the petitioner enjoyed prior to the introduction of this amending Act.

3. Submission of Sri. K.G. Raghavan, learned Sr. Counsel for the petitioner, is that if one should look at the background of the facts and circumstances leading to the above legislation and also the background of litigation that ensued between the petitioner and the State, it is very obvious that the demand is nothing but an attempt to regulate the activity of manufacture the denatured spirit by the writ petitioner, which is clearly an instance of colourable exercise of legislative power as the State Government does not have the legislative competence to regulate either the manufacture or the trade of denatured spirit which is exclusively within the province of the union parliament.

4. Elaborating learned Counsel submits that it is clearly an instance of colourable exercise of legislative power, and in this regard relies upon the judgment of this Court rendered in W.A.No. 1824/2006 on 15.11.2006 copy at Annexure-E to the petition, which was again challenged in appeal by the very writ petitioner in the context of attempt on the part of the State to regulate the distribution of the denatured spirit manufactured by the writ petitioner.

5. Learned Counsel for the petitioner submits that the denatured spirit is essentially used as industrial alcohol which cannot be subject matter for legislation for levy of tax or regulation by the State Government; that the denatured spirit which was being manufactured and sold by the writ petitioner found a new customer when it was found that it can be used for producing alternative fuel and as a part of it, in the manufacture of 5% ethanol based petroleum product, which perhaps has better efficiency or more conducive to environmental protection and as such there was great demand from this sector for supply of denatured spirit; that the State Government, which was worried about the inadequate supply of potable spirit i.e., alcohol to the liquor manufacturing units in the State which in turn gives considerable revenue to the State exchequer was keen on diversion of denatured spirit or the spirit manufactured by the writ petitioner not going this way i.e., towards the persons manufacturing ethanol based petroleum products and to ensure that has come up with the present amendment to the Act, which is though sought to be projected as a revenue raising measure in letter and spirit and in effect is a measure to regulate the trade of denatured spirit. It is the submission that though the State Government does not have the legislative power either to issue a license or impose any condition restricting the petitioner''s right to trade in denatured spirit, nevertheless, it has interfered in the matter of manufacture of denatured spirit and it was in this context the writ petitioner had approached this Court earlier and met with success. The legislation and the executive orders under which such regulation was sought to be enforced on the petitioner was

held to be unconstitutional by this Court following the judgment of the Supreme Court in the case of Synthetics and Chemicals Ltd. and Others Vs. State of U.P. and Others, and Vam Organic Chemicals Ltd. and Another Vs. State of U.P. and Others, .

6. Learned Counsel submits that the State after having failed in its attempt to directly regulate the manufacture and trade of denatured spirit by the petitioner and like persons, has now resorted to the indirect method of levying tax at an unreasonably high rate under the provisions of the Act, to stifle or control the trade in denatured spirit in an indirect way and employing the VAT Act for that purpose is nothing but a colourable exercise of the legislative power. It is submitted that the present legislation is a clear case of an instance of colourable exercise of legislative power and therefore the provision is in feet and in reality an attempt to legislate the subject matter beyond the competence of State Legislature and accordingly unconstitutional. It is also the submission of the learned Counsel for the petitioner that the attempt is indirectly an attempt to impinge free movement of goods affecting trade and commerce and is virtually in the teeth of Article 301 r/w Article 304 of the Constitution of India.

7. Learned Counsel for the petitioner also submits that the provision is virtually discriminatory as the levy of tax affects the business of the petitioner alone and no one else and it is virtually one imposed to destroy the business of the petitioner and is obviously discriminatory and is in violation of Article 14 of the Constitution of India.

8. It is not in dispute that the provision is one, which falls under a taxing statute and it seeks to levy tax on the transaction of sale of denatured spirit by the writ petitioner. Insofar as the levy of tax under the provisions of the Act is in respect of a transaction of sale of any product whether the product and its manufacturing movement etc. is within the competence of the State Legislative or otherwise it is not in dispute that the levy of tax is on the transaction of sale. Whenever the sale transaction or purchase transaction of a particular product takes place within the State the product is identified for the purpose of levy and the rate of tax which is fixed with reference to the product which is the subject matter of sale. In the present case the product is denatured spirit. The complaint of the petitioner is because the rate of tax is pitched so high so as to make it unprofitable for the petitioner to effect sale of denatured spirit, particularly, to maintain the contractual obligation with the buyers of denatured spirit.

9. If the levy of tax in respect of any transaction is at a lesser rate say 2%, 3% or 5% it cannot be disputed as one not within the legislative competence. It is because the rate of tax becomes a little higher or so high so as to make it unprofitable for the petitioner to carry on its trade, the petitioner is complaining that it is unconstitutional being an instance piece of colourable exercise of legislative power !

10. Though Sri. Raghavan, learned Sr. Counsel would submits that when once it

is contended mat the legislation itself is an instance of colourable exercise of legislative power, it cannot make any difference even if the levy is at a lesser rate, it is obviously not so. The rate of tax at which a product is taxed cannot be the criteria for determining the legislative competence. I am unable to accept this argument for the reason that in the matter of levy of taxation the question is as to whether the State had legislative competence and if so the legislation cannot be characterized as one beyond the competence of State legislature. Though it is also submitted that taxation at such high rate would become unreasonable, levy of tax can be termed as oppressive only when it partakes the character of confiscation and not otherwise.

11. The rate of tax is within the legislative wisdom and it is not for the Court to examine the rate of tax, particularly for testing the legislative competence of the levy of tax. May be so in a given situation, the levy of tax would affect some individuals, some sectors, some manufacturers or as in the instant case only a single manufacturer but by such a possibility itself the legislation does not become unconstitutional or beyond the legislative competence. Even assuming as submitted by the learned Counsel for the petitioner the effect of levy of such tax can indirectly affect the business and manufacture of denatured spirit and can also be characterized as a regulation which could be understood as a piece of legislation, which can indirectly regulate the business activities of the petitioner, even then so long as the provisions of the statute is within the legislative competence and in the instant case the levy of tax being on the transaction of sale which is undisputedly within the legislative competence of the State and it is only the effect of levy of tax that is sought to be used to attribute either lack of legislative competence or un-constitutional is through the device of colourable exercise of power, I am unable to accept the argument that the provision should be struck down as unconstitutional. The provision being a direct provision for levy of tax in respect of sale transaction etc., it cannot be held either as though it is one beyond the legislative competence or unconstitutional.

12. In the light of the above position, the provision cannot be held to be discriminatory just because the petitioner is the only tax payer, who becomes liable to pay tax.

13. Therefore, it cannot be accepted that the levy in terms of the amended provisions which is challenged in this writ petition is unconstitutional either on the ground of lack of legislative competence or on the ground of discrimination.

14. Accordingly this writ petition is dismissed.

