(2016) 01 KAR CK 0240

In the Karnataka High Court

Case No : Writ Petition No. 101366 of 2015 [T-RES]

Srinivas Bar and Resturant APPELLANT

Vs

The State of Karnataka and Others RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Citation : (2016) 01 KAR CK 0240

Hon'ble Judges : B.S. Patil, J.

Bench : Single Bench

Advocate : H.R. Kambiyavar, Advocate, for the Appellant; M. Kumar, AGA, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Patil, J.—1. Though this matter is listed for orders regarding non-amendment of the memorandum of Writ Petition, learned counsel for both parties submitted that similar writ petitions filed have already been dismissed on merits. In this background, learned counsel for petitioner submits that amendment of writ petition has been sought to lay challenge to recovery proceedings consequent upon the order passed in similar writ petitions.

2. Having regard to the fact that similar writ petitions have already been dismissed, it is not appropriate to allow the petitioner to seek amendment and lay challenge to the cause of action that has accrued to him subsequently. If he has any legal right, it is open to him to lay challenge to the subsequent action initiated separately.

3. So far as this writ petition is concerned, petitioner is challenging the validity of clauses (8) and (9) of the Karnataka Value Added Tax (Amendment) Act, 2014 (Karnataka Act No. 15 of 2014) dated 28.02.2014, as ultra vires. Consequential relief seeking a declaration that the notification dated 28.02.2014 vide Annexure ''D'' ultra vires the provisions of the amended Act is also sought, so also the notices issued demanding tax have been challenged.

4. At the outset, during the course of submissions, learned counsel for petitioner has brought to the notice of this Court that in Writ Petition No. 27825 of 2014 and connected cases, this Court has upheld the challenge made to validity of amendment made.

5. This Court, having dealt with the entire subject matter and the issues involved, has held in paragraphs 45 to 48 of the judgment, referred to above, as under:

"45. Turning my attention back to the facts on hand, it can be seen from the terms of the licence conditions issued to a dealer in Form No. CL-2, the liquor is sold across the counter to consumers at the sale price not exceeding the MRP indicated on the label of the container or the bottle vide Rule 3(2). Whereas, no such restriction of MRP is imposed on Bars and Restaurants, Clubs, Star Hotels, Hotel, Boarding Houses and Lodges covered under the impugned notification where liquor is sold to the customers or served in loose quantities with food articles in the licenced premises as stipulated in the conditions of the licence. The CL-9 holder licences provide the facilities of varying degrees of comforts to different class of elite customers and as such, they would have the advantage of fixing the sale price with value addition without any restriction. It is in this background, as already noticed herein above, from the statement of objects and reasons, levy of tax on sale of liquor including Beer, Fenny, Liqueur and Wine came to be introduced. Thus, it could be seen that State legislature in its economic wisdom of taxation has chosen to provide for levy of tax on liquor sold by certain dealers namely, Bar and Restaurants operating in urban areas i.e., licence issued in Form No. CL-9 and in respect of Star Hotels, Clubs and Hotel, Boarding Houses and Lodges located anywhere in the State considering the potential for tax collection being huge, and at the same time, exemption has been extended to similar licence holders running Bar and Restaurants by operating them in rural areas considering the fact of low value addition between the price at which liquor is purchased and sold to customers in rural areas.

46. However, a Hotel, Boarding House or Lodge holding licence in CL-7 though located in rural area would also serve liquor only to the residents of the Hotel and their guests who are elite customers and they can afford to pay more for the comfort they enjoy with varying degree of facilities. Thus, condition of licence itself enables the licence holder to fix the price of the liquor irrespective of MRP on account of substantial value addition and as such, the legislature has brought this class of dealer also to taxation. However, Bar and Restaurants located in the same rural area which would not cater to the elite class of customers or customers of economic superiority have been exempted by virtue of notification dated 28.02.2014.

47. At this juncture, it would be appropriate to note that licence fee fixed for a dealer holding licence in Form No. 9 and operating in urban areas is Rs. 6.00 lakhs, whereas, licence fee prescribed for a similar licence holder who is running Bar and Restaurant business in rural area is Rs. 2.00 lakhs though both the class

of licence holders run the same business. This exemption is extended to Bar and Restaurants operating in rural areas considering the fact of no value addition between the price at which liquor is purchased and sold to customers in rural areas. However, a Hotel, Boarding House and Lodge holding licence in Form CL-7 though located in rural area, liquor is served only to the residents of the Hotel and their guests who obviously would come from far off places. The customers of this category are affordable class who are willing to pay more for the comfort with varying degree of facilities. Hence, it enables the dealer to fix the rates of liquor without any restriction. Thus, the Legislature with the sole intention of capturing substantial value addition taking place on liquor consumed in the premises of a Boarding House and Lodge, has brought this class of dealer under the net of tax, but Bar and Restaurants located in rural area which do not have the advantage of catering to the class of customers of economic superiority are exempted. Thus, the impugned notification dated 28.02.2014 which exempts liquor sold by dealers holding licence in Form No. CL-9 operating in rural areas in comparison with liquor sold by a person operating a Boarding House and Lodge in a rural area holding licence in Form No. CL-7 would form separate class of dealers. The State Legislature in its economic wisdom of taxation having chosen to provide for levy of tax on liquor sold by certain licence holders, considering the potential for tax collection on the huge value addition while exempting others whose sale price is regulated by the MRP indicated on the label of the container cannot be construed as discriminatory. The classification of dealers based on value addition criteria for the purpose of tax levy and exempting the dealers based on area criteria cannot be held to be discriminatory.

48. In view of the aforestated discussion, this Court is of the considered view that contentions raised by the petitioners are without merit and they are hereby rejected.

Hence, I proceed to pass the following:

ORDER

(1) Writ petitions are hereby dismissed.

(2) Rule discharged.

(3) Costs made easy."

6. For the reasons stated in the judgment referred to above and in the light of view already expressed by this Court, accepting the same, this Writ Petition is also dismissed.

Learned Additional Government advocate is permitted to file memo of appearance within three weeks from today.

