

(1962) 03 AP CK 0010

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No"s. 28, 29 and 37 of 1961

State of Andhra Pradesh

APPELLANT

Vs

Sri Chintalapudi Ramachandra Row and Others

RESPONDENT

Date of Decision : 28-03-1962

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1962) 13 STC 697

Hon'ble Judges : Venkatesam, J; Satyanarayana Raju, J

Bench : Division Bench

Advocate : The Third Government Pleader, for the Appellant; A.L. Narayana Row, N. Rajeswara Row, M.S.R. Sastry, Y.G. Krishnamurthy and V. Sitharama Row, for the Respondent

Final Decision : Allowed

Judgement

Venkatesam, J.—All these three tax revision cases raise an identical question regarding the construction of the proviso to Section 3(1)(b) of the Madras General Sales Tax Act of 1939 (hereinafter referred to as "the Act"). T.R.Cs. Nos. 28 and 29 of 1961 relate to different periods of the assessment year 1953-54, while T.R.C. No. 37 of 1961 relates to the assessment year 1954-55. The respondent in T.R.C. No. 29 of 1961 was the proprietor of Sri Ravindra Restaurant, Vijayawada, from 1st April, 1953 to 31st October, 1953, while the respondent in T.R.C. No. 28 of 1961, Chintalapudi Ramachandra Row and Veeramachaneni Gangiah, were the proprietors of the hotel from 15th November, 1953 till the end of the assessment year. The respondent in T.R.C. No. 37 of 1961 is the proprietor of a hotel called Brindavan Vilas of Vijayawada.

2. The facts which are not in dispute are that Ravindra Restaurant was a military meals hotel which was serving to its customers meals, vegetables, mutton, curries, dal, chatni, karam, as also rasam (charu), sambar, buttermilk, ghee and drinking water. The liquids rasam, sambar, etc. were served or sold in this hotel apart from meals. The other hotel, Brindavan Vilas, which is a vegetarian hotel,

serves meals, vegetable curries, dal, chatni, charu, pulusu, curd, buttermilk, ghee and drinking water to its customers and the liquids aforesaid are served or sold in this hotel.

3. The assesseees in all these cases submitted their returns and were assessed to tax by the Commercial Tax Officer, Vijayawada, at the rate of four and half pies per rupee under the proviso to Section 3(1)(b) of the Act. The assesseees contended that the proviso to Section 3(1)(b) did not apply to the case, but that the tax should have been levied at the rate of three pies for every rupee of the turnover as per Section 3(1)(b), and carried the matter in appeal to the Deputy Commissioner of Commercial Taxes, Guntur, who rejected their claims. A further appeal was preferred to the Sales Tax Appellate Tribunal, Guntur.

4. The Tribunal, in the first instance, by its order dated 23rd January, 1956, appointed the Commercial Tax Officer, Vijayawada, as Commissioner to take evidence and send his report on the four questions referred to by it.

5. He submitted his report that Ravindra Restaurant is a military meals hotel, though it is named as a restaurant, and that it was serving and selling the articles stated above. The report also stated that Brindavan Vilas is an Arya Vaisya Meals Hotel serving the articles stated supra. On receipt of these findings, and on a consideration of the arguments advanced on behalf of the State and the assesseees, the Appellate Tribunal, by its order dated 25th August, 1956, held by a majority of two members that it is the proviso to Section 3(1)(b) that applied to the case. But following the decision of a Bench of the Madras High Court in Krishna Iyer v. The State of Madras [1956] 7 S.T.C. 346 and in the absence of any decision of the Andhra High Court on that point, they held that the said proviso is invalid as it offended Article 14 of the Constitution, and that the levy of the tax at the higher rate is illegal, and allowed the appeals. The other member of the Tribunal expressed the view that there is a principle underlying the scheme of taxation in the Sales Tax Act, and that the levy of the higher rate of tax on articles of food and drink sold in a hotel, restaurant or boarding house than on those outside, say, on the road-side or by a hawker, is based on a sound principle and classification, and is valid. The majority view was given effect to and the appeals were allowed, and the order of assessment modified by levying the tax at the ordinary rate of three pies per rupee.

6. Feeling aggrieved by this order, the State has preferred the three revisions, challenging its correctness.

7. The decision in Krishna Iyer v. The State of Madras [1956] 7 S.T.C. 346 Mad is to the effect that the distinction made under the proviso to Section 3 (1)(b) between the two classes of dealers in articles of food and drink with an annual turnover of Rs. 25,000 and more, i.e., (1) dealers in such articles of food and drink sold in hotels, boarding houses and restaurants, and (2) dealers in such articles of food sold elsewhere, has no reasonable or just relation to the object of the Act, which is to tax the turnover of the sales of a dealer, and that as the

apparent discrimination, which results in one class of such dealers being singled out for the levy of tax at a higher rate, has not been explained by any classification with a reasonable basis, having a just and reasonable relation to the object of the Act, the proviso to Section 3 (1) (b) offends Article 14 of the Constitution, and is void and unenforceable.

8. The contention of the learned Government Pleader is that this is a decision rendered by the Madras High Court after the formation of the Andhra High Court at Guntur, and is not binding on this Court. He also invited our attention to a decision of this Court in Kadiyala Chandrayya Vs. State of Andhra, taking a contrary view.

9. In order to fully appreciate the contention on behalf of the State, it may be useful to extract Section 3 (1)(b) of the Act with its proviso.

3(1) Subject to the provisions of this Act-

(b) the tax shall, except in the case of goods specified in Sub-sections (2-A) and (2-B), be calculated at the rate of three pies for every rupee in such turnover :

Provided that if and to the extent to which such turnover relates to articles of food and drink sold in a hotel, boarding house or restaurant, the tax shall be calculated at the rate of four and a half pies for every rupee, if the turnover relating to those articles is not less than twenty-five thousand rupees.

10. In Kadiyala Chandrayya v. The State of Andhra [1957] 8 S.T.C. 33 Subba Rao, C.J., (as he then was) and Manohar Pershad, J., referred to Krishna Iyer v. The State of Madras [1957] 8 S.T.C. 33 and dissented from it. The learned Judges observed that in Krishna Iyer v. The State of Madras [1956] 7 S.T.C. 346 the learned Judges of the Madras High Court pointed out that three lines of classification run through the impugned provision, and considered only the second classification, viz., the distinction between dealers in articles of food and drink sold in hotels, boarding houses and restaurants and other dealers in such articles, and held that it was sufficient to deny the validity of the impugned provision, but they could not agree with that view. Subba Rao, C. J., and Manohar Pershad, J., laid down :

In the present case, the object to provide for the levy of a general tax and to apportion the burden equitably between different categories of persons has a reasonable nexus with the classification adopted by the Legislature. The question can be considered from the standpoint of the citizen as well as from the standpoint of the State. From the standpoint of the State, the classification can be justified on the ground of equitable apportionment of the burden and easy realization of the tax. Articles of food and drink are more in demand than other articles. Even in the case of the former, there will be a larger demand in restaurants, boarding houses and hotels than in other places like way-side shops. There may be small or big dealers even in such commodities, who run hotels or keep boarding houses. The State also can reasonably recover taxes at higher

rates from prosperous dealers than from impecunious ones. From the standpoint of the dealer also, there is justification for the varied rates. The articles sold, the place where the business is carried on and the expectation of large profits are the characteristics of dealers who are distinct from dealers not covered by the proviso.

11. In this view, their Lordships held :-

The characteristics of the dealer covered by the proviso should be cumulatively considered and, if so looked at, the said characteristics will afford a reasonable basis of classification which has a rational nexus with the object sought to be achieved. We, therefore, hold that the classification is founded on intelligible differentia distinguishing dealers like the assessee and that it has a rational relation to the object sought to be achieved.

12. This decision is binding on us, and nothing has been urged on behalf of the respondents persuading us to take a different view. The objection on the ground that the impugned provision offends Article 14 of the Constitution, therefore, fails.

13. It was then argued for the respondents that rasam, buttermilk, curd etc., the liquids served in these hotels, are usually mixed in food, and are more or less side dishes, or accessories to the main item of food, e.g., cooked rice etc., and that they cannot be classed as articles of drink, which have to be confined only to liquids, like aerated water and beverages. This contention does not appeal to us. It is common experience that articles of food and articles of drink are undistinguishable and mutually overlapping. The meaning of the word "drink" in the Oxford Concise Dictionary is given thus: "Liquid swallowed or absorbed ; beverage ; intoxicating liquor..." The word "article" according to that dictionary means "particular thing". An article of drink, therefore, means any particular liquid swallowed or absorbed, and it is difficult for us to confine the expression only to aerated water or beverages. The fact that they are mixed with a solid like rice or other food does not make it any the less an article of drink. Both solids as well as liquids served in these hotels answer the description of food. It is not possible to confine the meaning of the word "food" only to a solid, but not drink, as both of them have food value. We cannot accept the contention that the words "articles of food and drink" are expressions indicating categories exclusive of each other. In this view, when the drinks served in a hotel answer the description of food, the meals hotels which serve solids and liquids as part of the meals, vegetarian or non-vegetarian, would necessarily be governed by the proviso to Section 3 (1) (b).

14. The other contention that, even assuming that the liquids mentioned above, viz., sambar, rasam, buttermilk, etc. are articles of food, inasmuch as they are only served along with food but not sold independently, there cannot be said to be a turnover of sales of those articles of drink, is equally unsustainable. It may be true that rasam, sambar, buttermilk, etc. are not generally sold separately in these hotels, but on that ground it cannot be said that there is no sale of these

liquids, or articles of drink. It does not require much of an argument to say that the hotel proprietor would, in fixing the cost per each meal, take into account the cost of every one of these articles of drink served as accompaniments to the food. In that view, there is certainly a "sale" of those articles of drink as well. A contrary construction on the proviso is not only not warranted, but would lead to manifestly incongruous results. For all these reasons, we cannot accept the contention on behalf of the assesseees that the turnover in question does not relate to articles of food and drink sold in those hotels. We hold that the proviso to Section 3 (1) (b) of the Act governs these cases.

15. The decision of the Tribunal in each of these cases is, therefore, set aside, and the Tax Revision Cases are allowed. Inasmuch as the decision of this Court in Kadiyala Chandrayya Vs. State of Andhra, was rendered subsequent to the order of the Tribunal, we make no order as to costs.