(1991) 08 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 1801 of 1974

State of Karnataka and others APPELLANT

Vs

V.S. Narayana Swamy RESPONDENT

Date of Decision : 21-08-1991

Acts Referred:

Karnataka Excise (Sale of Indian and Foreign Liquors) Rules, 1968 — Rule 8(1)
Mysore Excise Act, 1901 — Section 23
Mysore Excise Act, 1965 — Section 22

Citation : AIR 1992 SC 151 : (1991) 3 JT 523 : (1992) 1 PLJR 25 : (1991) 2 SCALE 383 : (1991) 4 SCC 268 : (1991) 3 SCR 700 : (1991) 2 UJ 673

Hon'ble Judges : Ranganath Misra, C.J;Kuldip Singh, J;M.H. Kania, J

Bench : Full Bench

Advocate : R.N. Narasimhamurthy, Navin Singh and M. Veerappa, for the Appellant;

Final Decision : Dismissed

Judgement

Ranganath Misra, CJ.

1. The appeal is by special leave. Challenge is to the Judgment of the Karnataka High Court declaring Rule 8(1) of the Karnataka Excise (Sale of Indian & Foreign Liquors) Rules, 1968 in so far as it relates to levy of licence fee for retail vending of authorised Indian and foreign liquors and directing refund of such levy collected within three years prior to 2.8.1971 when the Writ Petition was filed.

2. Respondent, an excise contractor, had taken in auction the exclusive privilege to sell liquors in retail at an approved shop premises. He was issued the appropriate licence under the provisions of the law on payment of licence fee in terms of Item 2 of Rule 8(1) of the aforesaid Rules. Respondent filed a writ petition before the Karnataka High Court challenging the vires of Section 23(d) of the Mysore Excise Act, 1965 (hereafter 'Act' for short) and Rule 8(1) as being beyond the legislative competence of the State Legislature. The High Court did not accept the contention of the respondent in regard to Section 23 but held that

Rule 8(1) authorising the levy of a licence fee for the retail off shop was without authority of law.

3. Section 23(d), as far as relevant, provides:

23. Ways of levying such duties-

Subject to such Rules regulating the time, place and manner, as may be prescribed, excise duty and countervailing duty u/s 22 shall be levied in one or more of the following ways, as may be prescribed, namely:

(a) ...

(aa) ...

(b) ...

(c) ...

(d) by fees on licences in respect of manufacture or sale of any excisable articles.
4. Rule 8 made under the rule making powers, under the Act, inter alia, provides:

8. Fee to be paid-

(1) The licence fee for the several kinds of licences shall be as follows, namely:

1 ...

2 ...

3 ...

5. The High Court rightly did not accept the challenge to Section 23(d) of the Act. What is authorised u/s 23(d) is imposition of a fee of licence in respect of manufacture or sale of any excisable articles. Rule 8(1) has obviously gone beyond the enabling provision in the section by requiring a licence fee to be paid for the premises where the licensed shop is located. Such a fee would not have the support of Section 23(d). It is unnecessary to refer to precedents for support for this conclusion. It may be possible for the Legislature to make a statutory provision for a licence fee of the type contemplated under the Rules but without authority of the statute a rule of the type impugned should not have been made. We find no merit in this appeal and it is, therefore, dismissed.

6. Respondent did not appear inspite of service of appeal notice. We make no order for costs.