

(1965) 03 KL CK 0019
In the High Court Of Kerala
Case No : A.S. No. 504 of 1962

State of Kerala

APPELLANT

Vs

M/s. Spencer and Co. Ltd.

RESPONDENT

Date of Decision : 29-03-1965

Acts Referred:

Citation : (1965) KLJ 706

Hon'ble Judges : T.K. Joseph, J; Anna Chandy, J

Bench : Division Bench

Advocate : K.P. Abraham, George Kurien and K.P. Pathrose, for the Respondent

Final Decision : Dismissed

Judgement

Joseph, J.—The only question which arises for decision is whether the suit is barred by Article 16 of the Indian Limitation Act. The facts necessary for the decision of the case may be stated: Spencer and Company Limited, the plaintiffs, were wholesale and retail licensees for foreign liquor in this State. They had places of business at Mattancherry, Quilon, Peermade and Vandiperiyar where they had stocked the commodity. On 26-2-1957 the State Government issued a notification raising the duty on foreign liquor from Rs. 35/- to Rs.50/- per proof gallon and making it applicable to the stock in hand. The plaintiff protested, but as the protest proved of no avail, they paid the enhanced duty on the stock as on 31-1-1957 to the Excise authorities. Thereafter they filed this suit for recovery of the sum paid as excess duty together with interest at 6 per cent per annum from the date of collection of the same.

2. The defendant, the State of Kerala, contended inter alia that the suit was barred by Article 16 of the Limitation Act. It is unnecessary to state the other contentions of the defendant as the same were overruled by the trial court and there is no appeal in respect of the same. The trial court held that the notification was ultra vires, that the levy was illegal and that the defendant was liable to refund the sum collected. The plea of limitation was also overruled. The

state has therefore preferred this appeal.

3. Article 16 of the Indian Limitation Act reads:

Against Government to recover money paid under One When the payment protest in satisfaction of a claim made by the year is made.

Revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears

In order that this should apply, four conditions have to be satisfied: (1) the suit must be against the Government, (2) it must be for recovery of money paid under protest, (3) such payment should have been made in satisfaction of a claim made by the revenue authorities on account of arrears of revenue and (4) or on account of demands recoverable as such arrears. So far as the first point is concerned there is no controversy. There was some dispute as to whether the money was paid under protest but it was held that it was so paid and the finding is not objected to. The dispute is about the remaining conditions.

4. One of the points which appears to have been taken in the court below was whether Art. 16 would apply where the claim was for a sum not legally recoverable. There is difference of opinion among the High Courts on this point, and we do not wish to rest our decision on the view that Art. 16 will not apply where the sum claimed is an illegal demand. In our opinion conditions (3) and (4) referred to above are not satisfied in this case. The contention of the plaintiffs-respondents is that even though amounts payable under the Abkari Act may be recoverable as arrears of public revenue there was no demand by the revenue authorities in this case and that the claim had not fallen into arrears. The expression "revenue authorities" has to be construed in the sense of authorities concerned with the collection of revenue. An amount may fall due to the Excise Department but the collection thereof has to be made by the revenue authorities. This may arise in the case of other departments of the Government also. Thus, if an insufficiently stamped document is produced in a court of law, the court orders the levy of stamp duty and penalty; and if the same is not paid the document is impounded and sent to the revenue authorities for realisation of stamp duty and penalty. The fact that a court of law orders the levy of stamp duty and penalty does not make the court a revenue authority. The same is the case here. So far as the claim for enhanced duty on foreign liquor was concerned the Excise Department ordered the plaintiffs to pay the same and they paid. There was no occasion for the revenue authorities to take any action in the matter. Further, the claim had not fallen into arrears so as to attract Art. 16 of the Limitation Act. The decision in the State of Madras v Abdul Kader (A. I. R. 1953 Mad. 905) is an authority for this position. The appellant is not therefore entitled to say that the suit is barred by limitation. We therefore confirm the decision of the court below. In the result, the appeal fails and is dismissed with costs.