(1999) 03 KAR CK 0012

In the Karnataka High Court

Case No : Writ Petition No. 4769 of 1997

Sunder Lodge — APPELLANT

Vs

State of Karnataka and Another — RESPONDENT

Date of Decision : 11-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 265
Karnataka Sales Tax Act, 1957 — Section 5 (5) (a), 5 (5) (b) (ii)

Citation : (1999) ILR (Kar) 3580

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : B.P. Gandhi, for the Appellant; Shivayogiswamy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—Assessment order dated December 31, 1996 for the year 1993-94 has been assailed in this petition as it is violative of articles 14 and 265 of the Constitution of India. It is stated that the provisions of Section 5(5)(a) of the Karnataka Sales Tax Act, 1957 have not been properly interpreted.

Section 5(5)(a) of the Karnataka Sales Tax Act, 1957 reads as under :

"(a) a dealer whose total turnover in any year is less than two lakhs rupees shall not be liable to pay tax for that year.

(b) Notwithstanding anything contained in clause (a),--

(i) every casual trader in any of the goods other than those specified in the Fifth Schedule shall be liable to pay tax at the rate specified in this Act on his taxable turnover of sales or purchases in each year whatever his total turnover during the year may be ;

(ii) every hotelier or restaurateur, manufacturer, dealer in liquor and beer and dealer who brings any goods into the State or to whom any goods are despatched from any place outside the State shall be liable to pay tax at the rate specified in this Act on his taxable turnover of sales or purchases in each year if his total turnover during the year is not less than one lakh rupees."

2. From the perusal of the above provision it will appear that a dealer whose turnover is less than Rs. 2 lakhs is not liable to pay tax, under clause (a). Clause (b) provides that notwithstanding anything contained in clause (a), as such what is provided in clause (a) is not applicable to what is provided in clause (b). Clause (b) had two sub-clauses, one is applicable to casual trader and the other is applicable to the hotelier or restaurateur, manufacturer, dealer in liquor and beer and dealer who bring any goods into the State or to whom any goods are despatched from any place outside the State.

On the basis of this latter part of Section 5(5)(b)(ii), it is contended that the hotelier or restaurateur is liable only if he brings in goods into the State or despatches any goods from the State to outside the State. In other words if the hotelier is not an importer or exporter then this clause is not applicable. If this contention of the learned counsel for the petitioner is accepted then it would mean that importer or exporter would apply to all other hotelier, restaurateur, manufacturer or dealer in liquor and beer. That is not the intention of the Legislature. The importer and exporter by themselves constitute a class and therefore it is not necessary that a hotelier must be an importer or exporter, only then he will fall under this clause.

3. The other contention which is raised is that all the dealers have not been treated similarly and thus there is violation of Article 14 of the Constitution. If the Legislature has fixed the limit for liability of tax differently, then it is not for this Court to go to the wisdom of the Legislature. Different classes of dealers are being treated differently and they constitute a class by themselves. All the dealers do not constitute one class. The classification which has been made cannot be considered violative of Article 14 of the Constitution.

Petition have no force is dismissed.

