

(1994) 04 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No's. 6481, 9247 and 9970 etc. of 1993 and 239, 240, 807 and 1250 etc. of 1994

Suresh Kumar and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1), 226, 304
Disposal in Auction Rules — Rule 2, 8
Kerala Abkari Act, 1977 — Section 18A
Kerala Finance Act, 1993 — Section 13, 5, 5(1), 5(2)
Kerala General Sales Tax Act, 1963 — Section 22, 7, 7(14), 7(15), 7(17)

Citation : (1994) 04 KL CK 0001

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : G. Ramaswamy and E.R. Venkiteswaran, M. Pathrose Mathai, Rajan Babu, T.G. Rajendran and T.R. Chandran, for the Appellant; T. Karunakaran Nambiar, Special Government Pleader for Taxes, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—The challenge in these writ petitions is to the amendment to Sub-sections (14) and (17) of Section 7 of the Kerala General Sales Tax Act, 1963 (the Act) by the Kerala Finance Act 13 of 1993, as also to Section 5(1)(v) read with item 1 of the Fifth Schedule to the said Act as arbitrary, oppressive, confiscatory and unreasonable. All the cases are similar, raising the same points, and have been filed by abkari contractors who have obtained the licence for the privilege of vending arrack in retail in the Abkari Year 1993-94, corresponding to the financial year 1993-94.

2. I shall state the facts in O.P. No. 15953 of 1993 which was argued as the main case by Sri G. Ramaswamy, Senior Advocate, with Sri E.R. Venkiteswaran, Sri M. Pathrose Mathai, Sri T.G. Rajendran and Sri Rajan Babu, appearing in some of the other writ petitions, contributing their own points, while adopting the arguments of Sri G. Ramaswamy.

3. O.P. No. 15953 of 1993: The three Petitioners are the successful bidders at the abkari auctions held between 15th and 17th March, 1993 of the right to vend arrack in retail in various excise ranges in the State during the year 1993-94. They have executed the agreements prescribed by the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 and are running the shops paying the rental (Kist) due therefore. The controversy in these cases relates to the sales tax payable by the Petitioners under the Act.

4. Arrack is taxable under the Act at two points, under Clause (v) of Section 5(1) read with item 1 of the Fifth Schedule, the two points being the point of first sale by a dealer who is liable to tax u/s 5, to a registered dealer, and the second point being the point of last sale in the State by a dealer who is liable to tax u/s 5. The rate payable at the first point of levy is 50 per cent, while the rate at the second point of levy is 12.5 per cent. But in cases where there are no two points of sale within the State, tax is payable at 62.5 per cent at the point of first sale by a dealer who is liable to tax u/s 5, to a person other than a registered dealer. This is the ordinary and normal mode of levy of tax on arrack. But Sub-section (14) of Section 7 was introduced in the Act with effect from April 1, 1992, enabling dealers in arrack to pay the tax due from them at a compounded rate. It provided that a dealer having licence for retail sales in arrack may, notwithstanding the general provisions, at his option, instead of paying tax in accordance with Clause (v) of Section 5(1) pay tax at 20 per cent of the rental amount payable by him under the Abkari Act 1 of 1977 (ME) for the licence, less the amount of tax paid by him for the purchase of arrack on the first sale point. As per the abkari policy prevalent in 1992-93, the contractors were not permitted to import any arrack, or rectified spirit from which arrack is made by adding water, and they had to obtain the entire stock of arrack for sale from the distilleries within the State, owned or controlled by the Government. There was a State monopoly in regard to the supply of arrack during this period. The retail dealers therefore paid tax at 50 per cent on their purchases from these distilleries, and Anr. 12.5 per cent on the sale price to the consumer. At the time the auctions were held between 15th and 17th March 1993, at which the Petitioners participated, the levy of tax was on this basis, namely the two point levy as under item 1 of the Fifth Schedule, with an option to the dealers to compound the tax payable at 20 per cent of the rental for the abkari shop.

5. In the speech which the Finance Minister made on the floor of the Legislative Assembly on March 12, 1993, at the time he introduced the budget for the year 1993-94, he stated:

204. It is proposed to continue the system of compounding the tax on arrack in the light of the new Abkari Policy, compounding pattern will be reflexed at 20 per cent. In the case of those who do not opt for the compounded system the rate of tax will continue to be 62.5 per cent.

Even though the rate of tax remains the same an additional revenue of 30 crores is expected from increase in trade in the light of the new Abkari policy.

The new abkari policy mentioned was one of liberalisation, by which the State monopoly on the supply of arrack was given up, and the contractors were permitted to import designated quantities of rectified spirit from other States for conversion into arrack, or procure the supply from the distilleries in the State, preference being given for local supply, if that was available. This policy had been announced on February 8, 1993 and Rule 8 of the Disposal in Auction Rules amended to carry out this policy on March 4, 1993 and again on March 31, 1993. A concomitant of this policy was that the contractors (dealers) became liable to pay tax at 62.5 per cent under the last column to item 1 of the Fifth Schedule, on their retail sales of arrack in cases where, the rectified spirit was imported from outside, as they became the first and last seller in respect thereof.

6. The Kerala Finance Bill, 1993, was introduced in the Assembly on March 27, 1993 and it came into force on April 1, 1993 as per the provisions of the Kerala Provisional Collection: of Revenues Act, (Act 10 of 1985). The Bill did not bring about any change in Section 5(1)(v) or in the Fifth Schedule but a change was made in the compounding provision for arrack, namely Sub-section (14) of Section 7. The amount payable on compounding was fixed as 20 per cent of double the amount of rental as against 20 per cent of the rental which prevailed in the previous year 1992-93. It is this increase in the amount payable on compounding that is under challenge in these writ petitions.

7. The Finance Bill had been published in the Gazette on March 27, 1993 and its provisions came into force on April 1, 1993. The various Petitioners applied for compounding thereafter, i.e., after the first of April, u/s 7(14) of the Act, exercising the option given to them. It is not in dispute that the option so exercised has been accepted by the assessing authorities, thereby enabling the Petitioners to pay sales tax, compounded at an amount equivalent to 40 per cent of the rental payable under the Abkari Act. The amount is payable in equal monthly installments as prescribed in Sub-section (15) of Section 7, after deducting the tax, if any, paid on the purchase of arrack for each month. It is stated that the Petitioners paid the amount due for a few months, but defaulted thereafter. When proceedings under the Revenue Recovery Act were initiated, they reached this Court with these writ petitions challenging the relevant provisions of Section 7 mentioned earlier, as also Clause (v) of Section 5(1) and item 1 of the Fifth Schedule.

8. The facts in the other writ petitions are similar; no reference has been made before me of any special points arising in those cases.

9. For easier-understanding of the contentions, I shall extract the relevant provisions.

5. Levy of tax on sale or purchase of goods-(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than one lakh rupees and every casual trader or agent of a non-resident dealer) whatever be his total turnover for the year, shall pay tax on his taxable

turnover for that year,-

(v) in the case of goods specified in the Fifth Schedule at the rates and at the two points specified against such goods in the said Schedule,

Provided that where there are no two points of sale in the State for any goods coming under the Fifth Schedule and the first sale is to a person other than a registered dealer, the rate specified in column (8) of that Schedule shall apply to such sales.

* * * * * 7. Payment of tax at compounded rate.-(14) Notwithstanding anything contained in Sub-section (1) of Section 5, any dealer who is having licence for retail sales in arrack, may at his option instead of paying tax in accordance with Clause (v) of that Sub-section, pay tax at twenty per cent of twice the rental amount payable by him under the Abkari Act 1 of 1077 for the licence, less tax paid by him for the purchase of arrack on the first sale point.

(15) Every dealer referred to in Sub-section (14) may opt to pay tax in accordance with that Sub-section by making an application in the prescribed form to the assessing authority and pay the tax in monthly installments in the prescribed manner after deduction of the tax paid on purchase of arrack for each month in accordance with the provisions of Sub-section (14).

* * * * * (17) After the close of the year and on receipt of statement of accounts if the tax paid on purchases is found to be in excess of twenty per cent of twice the rental amount payable for the year no refund of tax paid shall be made.

FIFTH SCHEDULE

Goods in respect of which tax is leviable on two points under Sub-section (1) or Sub-section (2) of Section 5

Serial Number	Description of goods	First point of levy	Rate of tax (Per cent)
		Second point of levy	Rate of tax (Per cent)
		Where there are no two points of sale in the State	Rate of tax (Per cent)

1 2 3 4 5 6 7 8

1	Arrack	At the point of first sale in the State by a dealer who is liable to tax u/s 5 to a registered dealer	50
5		At the point of last sale in the State by a dealer who is liable to tax u/s 5	12.5
10		At the point of first sale in the State by a dealer who is liable to tax u/s 5 to a person other than a registered dealer	62.5

10. The challenge to these provisions has taken various forms. While Sri G. Ramaswamy who argued the case in the main, contended that the 1993 amendment to Sub-section (14) of Section 7 was arbitrary and discriminatory, violating Article 14 of the Constitution of India, the other counsel raised certain other contentions. Sri E.R. Venkiteswaran's plea was that the compounded amount of tax being related to the amount of rental payable under the Abkari Act, the liability got crystallised and accrued, as soon as the auctions were concluded

and the bids accepted between 15th and 17th of March 1993, and therefore any subsequent amendment to the Act will not operate against the dealers in arrack. They were bound to pay tax only at the rates which prevailed on the date of the auctions. Sri Pathrose Mathai, on the other hand, raised a plea that if the compounding at 40 per cent of the rental is to be upheld, the petitioners should be given a corresponding rebate in the rental by 20 per cent to offset the loss caused to the dealers by the enhancement in the 11 for tax. According to him, there is a promissory estoppel operating against the revenue. Sri Rajan Babu who appears for the petitioners in O.P. No. 17039 of 1993 and Ors. , in his turn, questioned the competence of the State Legislature to impose such a levy. According to him, the levy is not related to any sale, and therefore the compounding is outside the purview of Entry 54 of List II to the Seventh Schedule to the Constitution. Sri T.G. Rajendran for the petitioners in O.P. No. 2197 of 1994 and Ors. , had his extreme contention that what is sold by the petitioners is not arrack at all, but some spirituous preparation, which may be liquor, but certainly not arrack. Only dealers in arrack are within the purview of Section 7(14), and therefore the petitioners are not bound to honour their commitment under the option under that provision. Incidentally, there was also a mention that since no excise duty could be levied on rectified spirit imported into the State under the liberalised abkari policy for the year 1993-94, for being converted into arrack, levy of sales tax on the arrack derived therefrom was hit by Article 304(a) of the Constitution of India. These broadly are the contentions with which I have to deal.

11. Before proceeding to discuss these points, I may mention that Sri G. Ramaswamy had also raised a contention that the levy in question was oppressive and destructive of the trade in arrack and thereby it violated the fundamental rights of the Petitioners under Article 19(1)(g) of the Constitution. Counsel mentioned this point for the purpose of record, as a point pressed and not given up. At the same time, he fairly submitted that this point was not available in presenti in view of the decision of the Supreme Court in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, , *P.N. Kaushal and Others Vs. Union of India (UOI) and Others*, , and *Sat Pal and Co. and Others Vs. Lt. Governor of Delhi and Others*, and Ors. that there was no fundamental right to trade or business in intoxicants. I record this point as having, been raised, but overrule it as one covered by the above mentioned decision in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, - Even otherwise, I must state that I am not impressed that there is any violation of Article 19(1)(g) in the collection of sales tax at the compounded rate at the option of the dealers when the liability is one which is, and can be passed on to the consumers. The materials available on record are insufficient to hold that there is any infringement of Article 19(1)(g). While the Petitioners give a dismal picture about the trade with the liability for sales tax an equally rosy picture is drawn about the trade by the Respondents (vide Ext. 4 relied on by the Petitioners and the counter affidavit of the Respondents, both in O.P. No. 15953

of 1993). I may however mention that mere excessiveness of a tax or that it erodes into or affects the earnings cannot per se be said to violate Article 19(1) (g) *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, at page 1958. But I am not entering into a detailed discussion of the question as it is unnecessary in view of the non-availability of Article 19(1)(g) to the Petitioners so far as this trade is concerned.

12. Sri G. Ramaswamy submitted that he was not canvassing for the position that any promissory estoppels operated against the enhancement of the compounded amount of tax payable from 20 per cent of the rental to 40 per cent of the same. But Sri Pathroee Mathai for the Petitioner in O.P. No. 13751 of 1993 contended that such an estoppels operated and therefore the levy above 20 per cent had to be struck down, or in the alternative a rebate granted in the rental for the additional amount of tax payable. This point raised by Sri Pathrose MathSai is too feeble one to merit any serious consideration and is only to be stated and rejected.

13. It is too late in the day to contend that there can be any estoppel, promissory or otherwise, against the exercise of legislative power, as to preclude the legislature from legislating on a subject within its field of legislation (See in this connection *State of Kerala and Another Vs. The Gwalior Rayon Silk Manufacturing (Wvg.) Co. Ltd. etc.*, , *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, para 28 and *Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.*, para 14. The legislature is not bound by the promises made by the executive, and its hands are not tied by any such promises, in relation to any of the fields of legislation allotted to it under the Constitution. The only limitations on the legislative power are those imposed by the Constitution itself. For that matter, even the legislature cannot fetter itself in any manner by any act of its own, from legislating on any particular subject within its sphere, or from legislating in a particular manner. The powers are plenary and the limitations have to be found within the Constitution and. not de hors it See *Herska Trust v. State* 1964 KLT 378. A promise, by the executive, assuming that there was any such promise in this case, is not one such limitation adumbrated by the Constitution and therefore there was nothing preventing the legislature from enhancing the compounded rate of tax for dealers in arrack. The rate of tax to be levied is primarily a question of legislative policy, not liable to be struck down so long as it is not otherwise obnoxious to the provisions of the Constitution.

14. The budget speech of the Minister of Finance extracted in paragraph 5 supra on which much reliance was placed by counsel is not imbued with such sanctity as the Petitioners would attribute to it as to bar any increase in the compounded rate of tax. It is not law. It is only a declaration based on governmental policy containing proposals for the legislature to consider. The Legislative Assembly may or may not accept the proposals. Therefore no rights flow from the speech made by the Minister-See *R.K. Industries v. Union of India* (1993) 91 S.T.C. 548.

Precisely for that reason, it must be observed that no principle of a promissory estoppel also arises from such a speech. The Petitioners must be presumed to have known this legal position when they bid! at the auctions, and that nothing—no statement of a Minister—could stand in the way of the legislature enacting any law within its sphere of legislative competence subject to any other Constitutional prohibitions or limitations.

15. For the same reasons, the alternate plea of Sri Pathrose Mathai that a rebate in the rental (Kist) should be granted for the shops is also unacceptable. I overrule the contentions raised by Sri Pathrose Mathai.

16. I shall now come to the main point urged by Sri G. Ramaswamy and chorussed by all counsel who supported him. The substance of his argument was that a new dimension had been given to Article 14 by the decision in E.P. Royappa Vs. State of Tamil Nadu and Another, , in the judgment of Bhagwati, J. by introducing the concept of arbitrariness in State action as a facet of discrimination. Counsel submits that arbitrariness as a ground of challenge of any State action, is not confined to executive action, but to legislative acts as well. He refers in particular to the observations in paragraph 16 of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, that where there is arbitrariness in State action, whether it be of the legislature or of the executive, or of an authority under Article 12, Article 14 immediately sprung into action. Counsel stresses on the inclusion of "legislature" in the above observation to contend that a legislation is also liable to be struck down as arbitrary. Reference was next made to Avinder Singh and Others Vs. State of Punjab and Others, to plead that taxation laws are also not immune if they are afflicted with the vice of arbitrariness. Counsel referred to Mithu Vs. State of Punjab, and Karnataka State Tourism Development Corpn. Ltd. and Others Vs. Karnataka State Transport Appellate Tribunal and Others, para 7, as instances where legislative enactments were struck down as arbitrary, oppressive or unreasonable. Needless to say, there was reference also to the observations in paragraph 36 of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, . It is based on these decisions that learned counsel contends that arbitrariness in legislation is equally a ground for striking it down. According to him, arbitrariness is writ large in the 1993 amendmept and the enhancement of the cqmpounded rate of tax to 40 per cent of the rental, though masquerading. the increase as 20 per cent of twice the rental amount. This runs counter to ?what the Minister of Finance had announced in his budget speech on March 12, 1993 that the 20 per cent pattern for compounding will be continued. But he gave the go by to all this on the strength of which the arrack dealers had participated i the auctions held subsequently, and introduced a higher com pounded rate of tax by the devise of enhancing the base of assessment to twice the rental account, while retaining the rate as 20 per cent. There is no rationale behind the fixing of the base at double the rental. It is irrational, irrelevant and arbitrary in its operation. Therefore, and even though there Is no promissory estoppel as such, the promise made by the Minister can, and should be, made use of to sustain the plea of arbitrariness

which the petitioner have alleged. So goes the argument.

17. Sri. T. Karunakaran Nambiar, Special Government Pleader (Taxes) however submits that the Petitioner's case is built on sandy foundations. He points out that none compelled the Petitioners to opt or apply for payment of tax at compounded rates. The law did not compel them to do so- The whole thing was at their option. To opt or not to opt was their choice. They could very well have complied with the normal procedure of assessment, kept accounts, submitted returns, submitted themselves to the processes of assessment and paid whatever taxes were due on their actual sales- They applied for compounding only after April 1, 1993 with full awareness and knowledge of the amendment introduced by the Finance Bill, 1993, on March 27, 1993 with effect from 1st April. The matter was entirely at their behest and option, and that option was accepted by the revenue resulting in a concluded binding contract by which the arrack dealers vailed of this benefit of paying tax at the compounded rate in instalments. They cannot go back on the agreement or seek relief against it in these petitions under Article 226. Above all, that, the dealers are entitled to pass on the liability to the consumers; there could therefore be no cause for any grievance on their part regarding the amendment to Section 7(14).

18. It is now well settled that a taxation law cannot claim immunity from the equality clause of the Constitution, but the courts permit a larger discretion to the legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the doctrine of equality. The power of the legislature to classify is of wide range and flexible so that it can adjust its system of taxation in all proper and reasonable ways [Khandige Sham Bhat v. Agricultural Income Tax Officer AIR 1963 S.C. 591, Kerala Hotel and Restaurant Association and others Vs. State of Kerala and others, C, among Ors. . The Petitioners allege arbitrariness in the impugned levy, based on the fact that the Minister of Finance had in his budget speech made in the floor of the Assembly on March 12, 1993, declared that the compounding pattern will be retained at 2(1) per cent. The subsequent enhancement of the base of the tax to 40 per cent of the kist, though not barred by any principle of promissory estoppel can nevertheless be an index of arbitrariness vitiating the amendment. In adjudging this point, it has to be remembered that the levy of tax under item 1 of the Fifth Schedule continued to be 50 per cent on the first sale and 12 per cent on the second sale if there were two sales and 62.5 per cent on the sale to the consumer if there was only one sale within the State. This position remained unaltered even by the 1993 amendment. There is therefore no alteration so far as the rate of tax or the point of levy of tax is concerned. It is only in relation to those who. Opted for compounding. of the tax that the compounding rate was altered from 20 per cent of the kist amount to 40 per cent of the said amount. This was known to the public which includes the dealers in arrack as early as on March 7, 1993. when the Finance Bill was published. There was no compulsion on any dealer in arrack to compound the tax. It was upto him to compound or not to compound. If he compounded, he got the benefit of paying tax at the

compounded rate in twelve equal monthly instalments without the botheration of having his accounts produced and scrutinised by the departmental authority for the purpose of assessment, or undergoing the assessment procedure with attendant risk of the accounts being not accepted, or being subjected to the other processes of search, seizure and inspection Under the provisions of the Act. Further the dealer is bound to pay only the compounded amount even if sold, his turnover was far higher, which in the ordinary course would have resulted in liability for larger amount of tax. On the other hand, a person who did not compound, had to subject himself to all the procedures and obligations under the Act besides paying to the last pie according to the sales effected by him. Evidently it was lured by these advantages, among others, that the petitioners opted for payment of the tax at the compounded rate. There is no dispute that all the petitioners exercised their option for payment at the compounded rate only after April 1, 1993 at a time when they had full knowledge of the increase in the compounded rate. When the petitioners were under no obligation to compound, and the option was at their will and pleasure, it is beyond comprehension as to how they could challenge the compounding provision as arbitrary and unreasonable after having opted for the same voluntarily with full awareness of their rights and obligations. They are well versed in trade and business perhaps veterans dabbling in huge amounts, and fully conversant with taxation matters. These facts are sufficient to dispel any charge of arbitrariness in the levy, assuming that that is a ground for striking down a taxation enactment.

19. It is also noteworthy that the petitioners are entitled to pass on the tax to the consumer and recover it from him at the rates specified against item 1 in the Fifth Schedule to the Act. They could recover the tax at 62.5 per cent from the consumer on the sale price of the arrack, if it was manufactured out of imported rectified spirit or at 12.5 per cent if the arrack had been procured from the local distilleries. Petitioners are not paying the compounded amount of tax out of their pocket. They can reimburse themselves of the amount by collecting it from their consumers. I cannot accept the contention of the petitioners that the amount of tax so collected will be less than 40 per cent of the kist amount. There is absolutely no restriction on the sale price of arrack, which the petitioners are allowed to vend at whatever price they desire. I also find it difficult to accept Sri Ramesh's plea that "people will be weaned away from arrack to foreign liquor if the price gets increased because of the burden of tax at 62.5 per cent and that they will lean in favor of foreign liquor. Apart from lack of adequate material on the point, which really spells in the realm of Article 19(1)(g), so far as I know, each variety of liquor has its own votaries. I therefore find it difficult to accept the petitioners' case that any prejudice has been caused to them by the increase in the compounded rate of tax by the 1993 Finance Bill amendment to section 7(14) by the said Bill, subsequently enacted into law is not therefore, arbitrary, or violative of Article 14 of the Constitution as contended by the Petitioners.

20. Incidentally it was argued by Sri E.R. Venkiteswaran, based on Section 22 of

the Act, that the Petitioners cannot collect any amount by way of tax from their consumers as that will have to be paid over to the State, without being credited to the compounded tax payable by them. The argument virtually proceeds on the basis that what is paid u/s 7(14) is not sales tax, but something else. The argument" is fallacious. The compounded amount is nothing but sales tax made payable in exercise of the powers vested in the State legislature under Entry 54 of the State List. Section 7(14) only provides a different rate or mode of levy in lieu of the rate and mode laid down by Sub-section (v) of Section 5(1). See in this connection, my judgment in [Parakkattil Aleyamma v. Sales Tax Officer 1993 K.L.J. 294. There is therefore no bar in Section 22 to the Petitioners collecting the tax from their consumers.

21. Sri G. Ramaswamy had Anr. contention to invalidate entry 1 of the Fifth Schedule to the Act. He pointed out that if there are two sales in the State, as was the case in 1993-93, or as may happen during this year as well, if any supply had been procured from the local distilleries, the retail dealer paid 50 per cent to the first seller on the purchase of the arrack and 12.5 per cent on the sale of the arrack effected by him. According to him while the purchase price, on which tax at 50 per cent is paid, is only around Rs. 8 per litre, the sale price of arrack is around Rs. 70 with the result the amount of tax paid in the case of two sales was much less than the amount of tax paid on a single sale, which is at 62.5 per cent on a larger base, namely the sale price to the consumer. This according to him is discriminatory. I do not find any substance in this contention. For one thing, this alleged discrimination does not affect the Petitioners at all who have opted for compounding the tax payable. Secondly, item 1 is uniformly applicable to all dealers. All of them are subjected, to the same treatment by item 1 in the Fifth Schedule without any differentiation whatsoever. There is no case that there are different classes of dealers, some getting their supplies exclusively from outside the State and some others procuring their supply exclusively locally. As such, and even assuming that this point is available to the Petitioners, I do not find any substance therein, liable to be accepted by this Court. I overrule this contention.

22. These were the submissions made by Sri G. Rameswamy. But as I mentioned earlier, he was supplemented by other counsel with their own contentions about the validity of the levy.

23. A very serious contention so raised by Sri E.R. Venkateswaran was that when the bid is knocked down, and the auction confirmed u/s 18A of the Abkari Act read with Rule 8 of the Disposal in Auction Rules, the instant liability is cast. for payment of the sales tax as well, including the rate of sales tax to be levied. He submits with reference to the decisions of the Supreme Court in Commissioner of Sales Tax v. Modi Sugar Mills Ltd. (1961) 12 S.T.C 182 which was applied by the Andhra Pradesh High Court in State of Andhra Pradesh v. Murali Cafe (1971) 28 S.T.C. 399 that once the levy is crystallised and fixed, any subsequent change in the sales tax law cannot operate to affect the rights which have thus accrued.

24. I find it difficult to accept this argument. What is fixed at the abkari auction is the kist amount payable by the contractor for the privilege of vending arrack in retail in the ensuing abkari year. Though the compounded amount of sales tax is related to the kist amount, the liability for payment of that amount is not fixed then and there. If the contractor does not opt. to pay tax at the compounded rate, the liability for payment of the sales tax becomes dependent on the sales effected by him. On the other hand, if he opts for compounding, which is after 1st April, the liability arises only when he exercises the option. By that time the law has changed with the compounded rate fixed at 20 per cent of twice the rental amount. The liability to pay tax "at the compounded "rate does not therefore crystallise the moment the auction is concluded and the1 hammer falls accepting the bid, but only subsequently when the option is exercised.

25. Further there is no rule of law prohibiting a change "in the rate of tax. I have already pointed out that there is no estoppel, nor is there any other bar, against a legislative action varying the rate of tax. The question essentially is one of legislative competence and constitutional inhibitions. The question whether a particular levy or change in the levy operates for any period is one of interpretation of the statute and not one of application of any abstract rule of the law of taxation. That is the position in relation to the two decisions cited by Sri E.R. Venkiteswaran.

26. These decisions turned on their own facts. I do not find anything in the making the rates of tax immutable for any ensuing year. In *Modi Sugar Mills Ltd's case* (1961) 12 S.T.C. 182 , the Uttar Pradesh sales tax law provided two distinct and clear-cut schemes to assess sales, tax (1) where the tax-payer elected to submit his return based on the turnover of the previous year; and (2) where he elected to, or was bound by law to submit his return on the turnover of the year of assessment. The question which arose for consideration was whether the Assesses who had elected for the first scheme of assessment were bound to pay tax at the enhanced rate introduced during the assessment year, for any part of their turnover. The Highs Court held in favor of the Assesses, that they were bound to pay tax. only at the rate before enhancement for the entire assessment year, on the turnover of the previous year. This was affirmed by the Supreme Court for the following reason:

But the adoption of the turnover of the previous year as the taxable turnover for the year of assessment is itself based on a fiction and in the absence of any express provision either in the Act or in the rules or even in the notification setting out machinery for such a division of the year, we are unable to hold that this scheme of a fictional division may be projected into the previous year to make an artificial division of the turnover for imprinting thereon the altered rate of assessment as from the date of the division.

The decision was thus related, to the provisions of the statute in question and the dual scheme of assessment therein, and not any general principle of law or of accrued right. In the other decision, Andhra Pradesh High Court, in fact, upheld

an assessment under the amended law which came into force in the course of the assessment year. That case again turned on an interpretation of the statute in question. These decisions do not therefore .come to the aid of the Petitioners on this point. I overrule this plea of Sri E.R. Venkiteswaran.

27. Sri Rajan Babu appeared for the Petitioner in o.P. No. 17039 of 1993 challenged the very competence of the State to collect tax at the compounded rate. The point was not- elaborated upon, but I believe, the contention raised to be that the taxable event has not occurred and therefore the compounded amount cannot be equated with sales tax. I do not agree. What is collected at the compounded rates is only sales tax, the liability for which arises because of the sales of arrack effected by the petitioners, but which for the purpose of commerce and facility of collection and for the benefit of the assesseees themselves is allowed to be compounded. Compounding is a well known recognised devise in taxation law. Provision for con exist in various taxation enactments, be it with reference to the nature of the assesseees, of the business or trade, the volume of tu or the like. To compound means to compromise, to settle Ly mutual agreement, by payment of something less than the total claim. T compounded payment tender Section 7(14) does not lose its characteristic of a sales tax as I have already indicated in paragraph 20 earlier. What is payable is still sales tax thoughfi a different mode of payment is adopted. In fact; the payment is made in monthly instalmenta at a time when the petitioners are making their sales Qf arrack. This contention of Sri Rajan Babu is on too slender foundations to find acceptance.

28. Sri T.G. Rajendran, counsel for some of the Petitioners, went to the extreme, with his contention that what is sold is not arrack at all. He refers to the definition of arrack in Rule 2(c) of the Disposal in Auction Rules, under which arrack means spirit manufactured from molasses or jaggery in any of the distilleries in India and reduced to 25? U.P. and states that the arrack dealt with by the Petitioners does not satisfy this definition. It may be a spirituous preparation and but not arrack, and therefore not within the purview of Section 7(14) or entry 1 of the Fifth Schedule.

29. I am unable to accept this contention for alone than one reason. "Petitioners are vending arrack under a licence issued under the very rules in which this definition is contained. There is no dispute on this point. What they are o licensed to vend, and deal in, is only arrack. They have no case that they are dealing in any item other "than arrack. In fact, it was on that basis that they exercised the option under " Section 7(14) for payment of the sales tax at the compounded rate. But I need not further exercise myself on this" point because admittedly what , the Petitioners are dealing in is what in common parlance is known as arrack. This is sufficient to attract the liability for tax under the sales tax enactment. The Kerala General Sales Tax Act does not contain any definition of arrack. The definition of arrack in Rule 2(c) of the Disposal in Auction Rules is only for purposes of those rules and cannot ipso facto be embodied in the Act

which should go by the common parlance test in the absence of any definition of arrack therein. Arrack is a word of every day use and it must be construed in its popular, sense, the sense in which people conversant with the subject matter would attribute to it. Petitioners have no case that what they are not dealing in arrack as known commonly, or that what is demanded of them and what is supplied is not arrack. This contention has only to fail.

30. The compounded rate of tax is payable pursuant to the, option exercised by the Petitioners/dealers. A concluded contract has arisen when the option was exercised and it was, accepted by the department. Thereby the Petitioners, got exonerated of various onerous liabilities and obligations under the Act, and all that they had to do was to make payment of the compounded-amount of tax regularly, A writ petition under Article 226 of the Constitution is not the appropriate remedy for impeaching "contractual obligations (even if they are related to a statute) more so when the Petitioners have exercised their option with wide open eyes, full well aware of their rights and obligations. See in this connection, the observations in paragraph 21 in Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, , and more recently in Assistant Excise Commissioner v. Isaac Peter 1994 K.L.J. 645 (S.C.).

I have dealt with all the points which counsel for the petitioners have argued before me, but I do not find any merit in any of these contentions. The writ petitioners have therefore to fail. They are accordingly dismissed.

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