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K.V. Sampath Vs. State of Mysore

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Court : Karnataka

Decided On : Oct-04-1961

Reported in : AIR1962Kant192; AIR1962Mys192

Judge : A.R. Somnath Iyer and ;A. Narayanapal, JJ.

Acts : Mysore Exercise Act, 1961 - Sections 3(S), 3(9), 13, 15 and 24; Medicinal and Toilet Preparation (Excise Duties) Act, 1955 - Sections 2, 3 and 21; Constitution of India - Article 372

Appeal No. : Writ Petn. No. 645 of 1958

Appellant : K.V. Sampath

Respondent : State of Mysore

Advocate for Def. : B. Venkataswamy, Govt. Pleader

Advocate for Pet/Ap. : S.K. Venkataranga Iyengar, Adv.

Judgement :

Somnath Iyer, J.

(1) The petitioner who is a chemist and druggist carrying on business in the sales or medicinal and toilet preparation among others questions the validity of a notification made by the State Government on April 8, 1958 under Ss. 17, 18 and

24 of the Mysore Excise Act (Mysore Act V of 1901) by which it prescribed among other matters the license fee payable by chemists and druggists and the license fee for the sale of spirituous preparations. Those two entries in the notification read:

Rate of levy from 1stated JulyNo.	Item	Strength
1958		
* * * Rs. Np.15	License to Chemist & Druggists.* * *	Per year fee 20.00
*23	License fee for sale of spirituous Preparations.* * * *'	Per annum 20.00

The preamble to this notification reads:

'In exercise of the powers conferred by Ss. 17, 18 and 24 of the Mysore Excise Act ,1901(Mysore Act V of 1901) and all other powers establishing it in this behalf and in suppression all previous notifications on the subject the Government of Mysore hereby directs that the duty license fee, gallon age fee. Tree Tax and Tree rent he levied at the following rates with effect from 1stated July 1958.'

(2) The peer does not dispute that he is a chemist and druggist dealing in medicinal and toilet preparations containing alcohol. He does not also dispute that he also deals in spirituous preparations.

(3) The Mysore Excise Act under the provisions of which the impugned notification was made was enacted. In the year 1901. Under the provisions of section 13 of that Act, every person who is a vendor of liquor or intoxicating drugs was required to obtain a license enabling him to be in possession of any quantity of liquor or intoxicating drug in excess of such quantities as the Government may from time to time proscribe by notification, Section 15 prohibited the sale of liquor or intoxicating drugs without a license from the Deputy Commissioner .

(4) Section 24 reads:

'Every license or permit granted under this Act shall be granted:

(a) on payment of such fees, if any:

(b) for such period:

(c) subject to such restrictions and on such conditions: and

(d) shall be in such form and contain such particulars.

As the government may direct either generally, or in any particular instance in this behalf.

(5) Section 24 extracted above is one of the section under which the impugned notification was made by the State Government, Section 17 and 18, the other two sections relating to imposition of duty do not appear to be of much relevance to the case before us. Section 17 empowered the levy of duty on liquor or intoxicating drugs and section 18 enumerated the manner in which such levy may be made.

(6) It is clear from the provisions of Ss. 13, 15 and 24 of the Mysore Excise Act that the petitioner in this case. If he was dealing in liquor or intoxicating drugs could not be in possession of any quantity of liquor or intoxicating drugs ion excess of that prescribed by notification of sell such liquor or intoxicating drug without in the first instance obtaining the license referred to in Ss. 13, and 15, not only to be in possession of liquor or intoxicating drugs but also to sell them. It is clear that the fee for those licenses is one which the government had the power to prescribe under Section 24 of the Act.

(7) Since it is not disputed on behalf of the petitioner that for the purposes of his business he has to be in possession of goods containing alcohol and that he also sells goods containing alcohol, the question which and arises would be whether those goods of which he is on possession, and which he sells are goods for the possession and sale of which he is bound to obtain a license. If the goods which are in the possession of the petitioner and which he sells can be regarded as liquor. It is clear that he is bound to obtain licenses for those purposes under Section 13 and 15 of the Act.

(9) The petitioner contends that what he sells are only medicinal and toilet preparations and that they are neither liquor not spirituous preparations within the meaning of those expressions occurring either in sections 13 and 15 of the Act or in the 23 referred entry in the impugned notification although they contain alcohol. It is this contention which requires to be examined.

(10) section 3(9) of the Act defines 'liquor' as hereunder:

'Liquor' includes spirits of wine, methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol'.

(11) The word 'spirits' occurring in this definition, is again defined by Sec.3(8) :

'Spirits' means any liquor containing alcohol and obtained by distillation whether it is denatured or not,'

(12) Since every liquid consisting of or containing alcohol is as defined by Section 3(9) liquor. It is clear that, if the petitioner is a dealer in liquids containing or consisting of alcohol, as admittedly he is, a dealer in liquor for possessing or selling which he is bound to obtain a license under section 13 and 15 provided he possesses more than the prescribed quantity for that purpose.

(13) Mr. Venkataranga Iyengar appearing on behalf of the petitioner contended that the word 'liquor' occurring in Ss. 13 and 15 has to be understand as referring to liquor which is ordinarily used as a beverage for consumption and not medicinal or toilet preparations or for that matter any other preparation which merely consists of or contains alcohol. This contention in our opinion, should be dismissed for the reason that liquor according to the definition contained in Section 3 (9) includes also methylated spirits and no one can reasonably contend that methylated spirits are beverage's originally used for consumption, 'that the word' liquor' occurring in secs. 13 and 15 includes all substances containing alcohol or consisting of it, and that they do not refer merely to alcoholic beverages ordinarily consumed, is thus clear from the language of Section 3 (9). Likewise the definition of 'spirits' contained in section 3 (8) makes it clear that every liquor containing alcohol is also spirit. And if the medicinal and toilet preparation in which the petitioner contained

alcohol, those preparations sold by the petitioner fall within the definition of section 3 (9) and have to be regard as liquor not only because they are liquids containing alcohol or consisting of it but also for the additional reason that they are spirits as defined by Section 3 (8) and again fall within the definition of liquor contained in section 3 (9). The medicinal and toilet preparations of the petitioner thus fall more than once within the definition contained in Section 3 (9). We should therefore reach the conclusion that the medicinal and toilet preparations in which the petitioner deals and of which he may be in possession are liquor for the purposes of Ss. 13 and 15 of the Mysore Excise Act, for the possession and sale of which the petitioner must obtain licenses under those two sections.

(14) The medicinal and toilet preparations consisting of and containing alcohol in which the petitioner deals are not only liquor within the definition of that word contained in section 3 (9) but are also clearly spirituous preparations referred to in the 23rd entry of the impugned notification of or contains spirits, and since spirits as defined by section 3 (8) mean liquor containing alcohol and since liquor as defined by S. 3(9) includes spirits, the medicinal and toilet preparations in which the petitioner deals which contain alcohol are both spirits and liquor and are therefore plainly spirituous preparations. And that being, so, and since spirituous preparations are again liquor within the meaning of that expression occurring in Ss. 123 15 of the Measure Exercise Act, a license has to be obtained for their possession and sale. The 23 rd entry in the impugned notification is thus what prescribes the fee for a license for the possession and sale of liquor, although the expression ' spirituous preparations' occurs in that entry.

(15) It should be noticed that the 15th entry refers to chemists and druggists simpliciter. But it is obvious that refers only to chemists and druggists who deal in liquor and who wise to obtain license for its possession and sale. This is clear from the preamble to the notification in which there s an express reference to Section 24 of the Mysore Excise Act as the source of the power in the exercise of which the notification is issued. The impositions referred to in the 13th and 23rd entries of the impugned notification were thus entirely within the competence of the state Government.

(16) But on behalf of the petitioner Mr. Venkataranga Iyengar contended that even so Ss. 13, 15 and 24 of the Mysore Excise Act stood repealed on and from April 1, 1957 when the medical and Toilet preparations (Excise Duties) Act 1955, enacted by Parliament came into force. That Act was enacted to provide for the levy and collection of duties of excise on medicinal and toilet preparations containing alcohol, opium. Indian hemp or other narcotic drugs narcotio. That Act was extended to the whole of India, Section 2 (c) defined 'dutiable goods'. That definition reads

'Dutiable Goods' means the medicinal and toilet preparations specified in the schedule as being subject to the duties of excise levied under this Act',

Section 3 which is he charging section reads:

(1) There shall be levied duties of excise of the rates specified in the Schedule, on all dutiable goods manufactured in India.'

* * * * * * * * * * * *

Section 21 of this Central Act on which Mr. Venkataranga Iyengar depends reads:

'If, immediately before the commencement of this Act, there is in force in any state any law corresponding to this Act, That law is hereto repealed:

Provided that all rules made, notifications issued, licenses or Permits granted, powers conferred under any law hereby repealed shall so far as they are not on consisting with this Act, have the same force and effect s if they had been respectively made, issued, granted or conferred under this Act and by the authority empowered hereby in that behalf.'

(17) The argument advanced was that the Mysore Excise Act and Sections 13, 15 and 24 of that Act corresponded to the Central Act and therefore stood repealed when the Central Act came into force. This argument was founded on the 84th entry of the Union List in the seventh schedule to the Constitution read with the 51st entry in the State List. The 84th entry in the Union list reads:

'Duties of excise on tobacco and other goods manufactured or produced in India except -

(a) alcoholic liquors for human consumption's:

(b) opium, Indian hemp and other narcotic drugs and narcotics.

but including medical and toilet preparations containing alcohol or any substance introduced in sub-paragraph (b) of this entry.'

The 51st entry in the State List reads:

'Duties of excise on the following goods manufactured or produced in the State countervailing duties of the same or lower rates on similar goods manufactured or produced elsewhere in India:

(a) alcoholic liquors for human comsumptions:

(b) Opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparation containing alcohol or any substance included in sub-paragraph (b) of this entry.'

(18) The argument constructed on the basis of these two entries was that once the Parliament made the law under the 84th entry of the Union List imposing duties or excise on medicinal and toilet preparations containing alcohol, the State Legislature became incompetent to impose a duty no excise on any such medicinal and toilet preparations, and that even if any such law had been Stand repealed. So far the argument is not open to criticism.

(19) But the further argument advanced was that the imposition of the duty of excise by the

Central Act, which came into force on the 1st of April 1957 made it impossible for the State Government to ,make any notifications under Ss. 13, 15 and 24 of the Mysore Excise Act imposing a license fee for the possession or sale of medicinal and toilet preparations containing alcohol. this arguments in our opinion, overlooks

the distinction between the excise duty imposed by the Central Act and the license fee for possession and sale imposed by the Mysore Act. The two imports are economically distinct and separate. As pointed out by their Lordships of the Federal Court in the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1958; AIR 1939 PC J.

'The power to make laws with respect to duties of excise given by the Constitutions Act to the Federal Legislature is to be constructed as a power to impose duties of the exciseable articles, or atleast at the stage of; or in connection with, manufacture or production, and it extends no further.'

(20) The license fees prescribed by the impugned notification is in no sense a duty of excise. It is a fee imposed for the restriction and regulation of trade in so far as it relates to trade in liquor and intoxicating drugs. That license fee was imposed buy a law made by Her Highness the Maharani regent in the year 1901 who was exercising sovereign powers of legislation and which continued under the provisions of Article 372 of the constitution to operate in the State of Mysore untill altered or repealed or amended by a competent legislature or other competent authority. That law not having been either repealed or altered or amended by any competent Legislature or competent authority till now, continues to be in force in the new State of Mysore. unless it could be said that it stood repealed by the 21st section of the Central Act.

(21) Section 21 of the Central Act repeals only those laws in force in the State which correspond to the central Act. It seems to us impossible to hold that sections 13, 15 and 24 with which alone we are concerned in this petition correspond to one part of the Central act. it is true that the Mysore Excise Act also imposes what may be regarded as excise duty. It may be possible to argue although it is not necessary for us to expects any opinion in that matter, that by sections 17 and 18 of the Mysore excise Act, duties of excise are also imposed on the manufacture of certain varieties of liquor and intoxicating drugs. But (I should be remembered that the Mysore Excise Act is not a law made exclusively for the purpose of imposing duties of excise. As the preamble to that Act shows, it was enacted for the purpose of regulating the import, export, transport manufacture, sale and possession of

intoxicating liquor and of intoxicating drugs in Mysore. If there is any provides in the Mysore Act by which any duties of excise were imposed, on medicinal and toilet preparation containing alcohol that provision alone will stand repealed by reason of the 21st section of the central Act. But if there are other provisions in the Mysore excise Act by which the import, export, transport, sale and possession of the intoxicating liquors or intoxicating drugs are also regulated. it would be going altogether too fat any one to suggest that even those provisions stood repealed when the Central Act imposing duties of excise on medicinal and toilet preparations containing alcohol came into force.

(22) The only effect of section 21 of the Central Act is to repeal a State law by which duties of excise are imposed on medicinal and toilet preparations containing alcohol. the distinction between a duty of excise and a license fee such as the one prescribed in this case is obvious and plain. It is therefore magnified that sections 13, 15 and 24 of the Mysore excise Act under which the impugned license fees were prescribed by the notification which is challenged by the petitioner in this case, being statutory provisions under which no duties of excise were imposed on any medicinal and toilet preparations containing alcohol, did not stand repealed when the Central Act came into force but continued to be in force.

(23) In our opinion, the argument resting on section 21 of the Central Act must therefore fail.

(24) It was, however, next urged that under the 84th entry of the union List, the Parliament, had exclusive competence to make laws even for the imposition of a license fee for the possession and sale of medicinal and toilet preparations containing alcohol. The stress of the argument was that the topic of the 84th entry in the Union List must be understood as medicinal and toilet preparations containing alcohol and that entry has to be constructed as conferring power in Parliament to make laws in regard to every matter relating to medicinal and toilet preparations containing alcohol.

(25) It is true that the words contained to the legislative lists must be so constructed as to confer powers of the widest possible aptitude on the authority having the competence to make legislation within the field of that entry. But the

topic of the 84th entry in the Union List is not medicinal and toilet preparations containing alcohol, but duties of excise on this articles. So construed , it would not be proper to hold the Parliament has the power to make legislation in regard to licenses to be taken for the possession and sale of medicinal and toilet preparations containing alcohol. Nor can any assistance be derived for the argument, addressed on behalf of the petitioner from the pronouncement of their Lordships of the Supreme Court in Chatutbhai v. Union of India, : 1978(2)ELT297(SC) .

(26) At one stage March. Venkataranga Iyengar, relied upon a decision of their Lordships of the High Court of Andhra Pradesh in Hyderabad Chemical and Pharmaceutical Works Ltd., v. State of Andhra Pradesh 1961-1 Andh WR 430 in support of his contention that sections 13, 15 and 24 of the Mysore Act, stood repealed on or from April, 1957. we are unable to find anything in that decision which supports that argument.

(27) In the result, this application fails and is dismissed with costs, advocate's fee Rs. One hundred (Rs.100/-).

(28) Petition dismissed.

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