

SUPREME COURT OF INDIA

Premier Enterprises, Secunderabad

Vs.

Commercial Tax Officer

C.A.No.11410 of 1995

(S. Rajendra Babu and S. N. Phukan, JJ.)

02.03.2000

ORDER

1. In these five appeals, the question raised pertains to the validity of Act 25 of 1988 passed by the Andhra Pradesh State Legislature which came into force on 6-9-1988 having retrospective effect from 8-7-1983.

2. Though several contentions had been raised before the High Court and in memorandum of appeal, ultimately three points were urged for our consideration. Firstly, that the retrospective effect given to the enactment in question from 8-7-1983 results in oppressive and unreasonable levy spreading over a long period of about five years. Secondly, that the levy in question is discriminatory so far as the local goods and imported goods are concerned. Thirdly and lastly, on the interpretation of the provision as to what is the rate of tax that is attracted in respect of a particular transaction. On all the three points the High Court decided against the appellants.

3. The High Court in our view rightly held that the Legislature has necessary competence to make retrospective levy of tax. Inability to realise the tax is not a ground to hold such levy to be

unreasonable. In finding out whether the levy with retrospective effect from 8-7-1983 was reasonable or not, the High Court noticed the legislative history and came to the conclusion that the action taken was remedial in nature and, therefore, is neither oppressive nor unreasonable and the period for which the tax was levied for similar reason was stated to be proper. We hardly find any good reason to interfere with the order made by the High Court.

4. The argument raised on behalf of the appellants regarding discrimination also has been rejected by giving cogent reasons. The High Court has noticed the scope of the various provisions and examined the same at length and has rightly come to the conclusion that the levy does not result in any discrimination.

5. The last argument raised is with reference to the interpretation of point of first sale or the last sale arising in the Act. Originally the relevant provision contained an explanation to the following effect :

"Explanation : The point of last sale mentioned in this Schedule shall be the sale by a dealer holding a licence other than a whole sale licence under R. 23 of the Andhra Pradesh (Foreign Liquor and Indian Liquor) Rules, 1970."

(Contd. on 2nd Col.)

6. After amendment by Act 25 of 1988, the relevant position is as follows :

SIXTH SCHEDULE

Description of goods	Point of levy	Rate of tax
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All liquors other than toddy and arrack in the State	(a)At every point of sale other than at the point of last sale	25 paise in the rupee
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	(b)At the point of last sale in the State.	5 paise in the rupee
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"16. Substitution of new Schedule for Sixth Schedule : For the Sixth Schedule to the principal Act, the following Schedule shall be substituted, namely :

Provided that at any point of sale other than the first point of sale and the last point of sale, the turnover of the goods liable to tax shall be arrived at by deducting the turnover of such goods on

which tax has been levied at the immediately preceding point of time.

"Explanation : For the purpose of this Schedule,-

(a) 'Point of first sale' shall mean sale of liquor effected by a dealer who manufactures liquor in the State or imports liquor from outside the State to any other dealer or person;

(b) 'Point of last sale' shall mean sale of liquor to a person by a dealer who purchased liquor from another dealer in the State."

7. The High Court proceeded on the basis that the appellants in the case held at the relevant time two licences in Form FL 15 and in Form FL 24. Form FL 15 enabled the appellants to deal with the goods as wholesalers and Form FL 24 enabled the appellants to deal with the goods as retailers. The High Court proceeded to notice that the holder of a licence in Form FL 15 is permitted to sell liquor in quantities of not less than 9 litres in sealed or capsuled bottles at any time and in any single transaction to licensees holding the licences in Form FL 24, i.e., the retail licence, FL 17, i.e., Bar licence, etc. and is not permitted to carry on retail sale or allow consumption of liquor in the licensed premises. Licence holder in Form FL 24 is permitted to sell liquor obtained only from the whole sale licensees. On the facts stated, the view taken by the High Court is unexceptionable.

8. The contention put forth before us now by Shri A. T. M. Sampath, learned counsel for the appellants is that it is on this basis the High Court took the view that the appellants are liable to pay tax at a higher rate and so far as the appellants are concerned, the only sale effected by them is that immediately on import they sell under the retail licence given to them to a consumer directly and, therefore, results in a last sale. The sale effected by them is the only sale made by them and that is the first and the last sale. Whether it is so or not cannot be examined by us in the absence of the relevant facts. Notwithstanding the observations made by the High Court in this regard, it would be appropriate for the appellants before us to raise such contentions in the course of assessment or other proceedings before authorities under the Act who shall be free to decide the cases on the facts arising in their cases.

9. The appeals stand dismissed subject to what is stated above.

10. There shall be no order as to costs.

Appeals dismissed.