The Excise Commissioner, Karnataka vs Mysore Sales International Ltd And Ors. ... on 8 July, 2024

Author: B. V. Nagarathna

Bench: B. V. Nagarathna

2024 INSC 484

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2168 OF 2007

THE EXCISE COMMISSIONER
KARNATAKA & ANR. APPELLANT(S)

VERSUS

MYSORE SALES INTERNATIONAL
LTD. & ORS. RESPONDENT(S)

JUDGMENT

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. This appeal has been preferred against the judgment and order dated 13.03.2006 passed by the Division Bench of the High Court of Karnataka at Bengaluru (briefly "the High Court" hereinafter) in Writ Appeal No. 7926/2003. By the aforesaid 18:40:03 IST Reason:

> judgment and order, the Division Bench had dismissed the writ appeal filed by the appellant as well as other writ appeals filed by Mysore Sales International, State of Karnataka and Mysore Sugar Company Limited assailing the common judgment and order dated 27.10.2003 passed by the learned Single Judge of the High Court,

> dismissing Writ Petition Nos. 6869-6874 of 2001 filed by the appellant and other writ petitions filed by the above parties against the orders dated 17.01.2001 passed by the Deputy Commissioner of Income Tax (TDS)–1, Bengaluru (referred to hereinafter as "the assessing officer" or "the revenue") under Section 206C(6) of the Income tax Act, 1961 (referred to hereinafter as "the Income Tax Act") for the assessment years 2000-2001, 1999-2000, 1998-1999, 1997-1998, 1996-1997 and 1995-1996 as well as the consequential demand notices of even date issued under Section 156 of the Income Tax Act. By the orders dated 17.01.2001, the assessing officer held that the appellant is a "seller" and the liquor vendors are "buyers" in terms of Section 206C of the Income Tax Act and hence the appellant was under a legal obligation to collect income tax at source from the liquor vendors (contractors) for the financial years relevant to the aforesaid assessment years.

Accordingly, the assessing officer declared certain sums as income tax collectible at source by the appellant which it failed to do. Therefore, the appellant was directed to deposit the amounts so quantified as income tax deductible at source. Further, interest was also levied on the aforesaid amounts. This was followed by the demand notices. As noticed above, the challenge to the said orders dated 17.01.2001 by the appellant was negatived first by the learned Single Judge and then by the Division Bench of the High Court.

3. The short point for consideration in this appeal is whether provisions of Section 206C of the Income Tax Act is applicable in respect of the appellant and whether the liquor vendors (contractors) who bought the vending rights from the appellant on auction, can be termed as "buyer" within the meaning of Explanation(a) to Section 206C of the Income Tax Act or excluded from the said definition of "buyer" as per clause (iii) of Explanation (a) to Section 206C of the said Act. Relatable to the above core issue is the question as to, whether, the High Court was justified in rejecting the challenge to the said orders made by the appellant.

4. Before attempting to answer the question(s) so framed above, it would be apposite to briefly narrate the relevant facts of the case. Mysore Sales International Limited (also referred to "Mysore Sales" hereinafter) is a Karnataka Government undertaking, inter alia, engaged in the business of manufacturing arrack. Mysore Sales is an assessee under the Income Tax Act. Appellant had entered the arrack trade in July, 1993 in terms of the excise laws of the State of Karnataka. Prior to 1993, there were several private bottling units in the State of Karnataka and they were manufacturing and selling arrack. Auctions were conducted periodically for the purpose of conferring lease right for retail vending of arrack. It was conducted with reference to designated areas. Successful bidders were entitled to procure arrack from the bottling units and then to sell it in retail trade within their respective allotted areas. The arrack trade is controlled by the state government.

4.1. The Karnataka Excise Act, 1965 (briefly "the Excise Act" hereinafter) has been enacted to provide for a uniform excise law in the State of Karnataka. Preamble to the Excise Act says that it is expedient to provide for a uniform law relating to production, manufacture, possession, import, export, transport, purchase and sale of liquor and intoxicating drugs and the levy of duties of excise thereon in the State of Karnataka and for certain matter related thereto. Under the Excise Act,

several rules have been framed for appropriate enforcement of the excise law. These rules, inter alia, are:

(i) The Karnataka Excise (Arrack Vend Special Conditions of Licenses) Rules, 1967 ("the 1967 Rules" hereinafter);

(ii) The Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 (briefly "the 1969 Rules" hereinafter);

(iii) The Karnataka Excise (Manufacture and Bottling of Arrack) Rules, 1987 ("the 1987 Rules" hereinafter).

4.2. In the year 1993, the state government discontinued private bottling units from engaging in the manufacture or bottling of arrack and instead decided as a policy to restrict those operations in the hands of state government companies or undertakings, such as, Mysore Sales and Mysore Sugar Company Limited (appellant in Civil Appeal No. 2169/2007 which was dismissed for non-prosecution by this Court on 12.10.2023). Thus, Mysore Sales and Mysore Sugar were entrusted with the task of bottling arrack and marketing it on behalf of the state government. Mysore Sales was entrusted with the above task for the northern districts of the State of Karnataka while for the rest of the state, Mysore Sugar was entrusted with the responsibility. It is the case of the appellant that the job entrusted i.e. bottling of arrack and marketing it on behalf of the state was in the nature of works contract.

4.3. Once arrack is manufactured and bottled, it becomes the property of the State of Karnataka in as much as the property vests with the state. The Excise Commissioner determines the amount realizable by the appellant from the excise (liquor) vendors or contractors taking into consideration the cost incurred by the appellant. The excise contractors are required to remit the requisite amount of excise duty into the state government treasury and then secure permit on production of which, appellant delivers arrack to them. The State of Karnataka controls the entire operation including the amount realizable by the assessee in terms of the Excise Act.

4.4. Successful excise contractors secure arrack from Mysore Sales and Mysore Sugar depending upon the areas allotted to them. The lease for the right to retail vend of liquor provides auctioning of such right with reference to a designated area. The retail sale price is fixed by the state government in terms of the 1967 Rules. The margin would depend upon various factors. 4.5. Section 206C was inserted in the Income Tax Act by the Finance Act, 1988 with effect from 01.06.1988. It casts an obligation on the "seller" of alcoholic liquor etc. of deducting tax at source (TDS) at the time of payment by the "buyer". As per Explanation(a), certain persons were not included within, rather excluded from, the definition of "buyer".

4.6. A circular came to be issued by the Excise Commissioner of Karnataka on 16.06.1998 to which an addendum was also issued. The circular clarified that since arrack was not obtained through auction and since the selling price of arrack was fixed by the Excise Commissioner, there was no question of recovery of TDS from the excise (liquor) vendors or contractors. 4.7. In view of the

above, appellant did not deduct any TDS from the liquor vendors.

4.8. Assessing officer issued notices dated 26.10.2000 calling upon the assessee to show cause as to why it should not pay the requisite TDS amount which it had failed to collect from the "buyers" i.e. the excise contractors for the financial years relevant to the assessment years under consideration. It appears that the assessee had submitted its reply to such notice. Thereafter, the assessing officer passed orders dated 17.01.2001 under Section 206C(6) of the Income Tax Act for the assessment years under consideration. As pointed out earlier, by the aforesaid orders, the assessee was directed to pay certain sums of money as TDS which it had failed to collect from the liquor vendors or contractors. Following such orders, consequential demand notices for the respective assessment years under Section 156 of the Income Tax Act were also issued to the assessee by the assessing officer.

4.9. Mysore Sales filed writ petitions before the High Court. While the main contention was that Section 206C(6) of the Income Tax Act was not applicable to it, a corollary issue raised was that before passing the order under Section 206C(6) of the Income Tax Act, no opportunity of hearing was given to it. Therefore, there was violation of the principles of natural justice. Learned Single Judge vide the judgment and order dated 27.10.2023 dismissed the writ petitions confirming the orders passed under Section 206C(6) of the Income Tax Act.

4.10. Thereafter, Mysore Sales and others preferred writ appeals before the Division Bench. However, by the judgment and order dated 13.03.2006, the writ appeals were dismissed by affirming the orders passed by the assessing officer and also that of the learned Single Judge.

5. Aggrieved by the aforesaid, SLP(C) No. 12524 of 2006 was preferred. After leave was granted on 23.04.2007, the same came to be registered as Civil Appeal No. 2168 of 2007.

6. Sh. Avishkar Singhvi, learned AAG appearing for the appellant submits that Section 206C of the Income Tax Act is not applicable in respect of Mysore Sales which is a public sector undertaking controlled by the Government of Karnataka. In fact, it is a government company. It is engaged in the manufacture of arrack. Arrack is bottled under the supervision of the Excise Commissioner. Whatever arrack is manufactured, the same belongs to the state government alone. Excise buyers i.e. liquor contractors do not obtain any arrack in auction. They only obtain the right/licence to carry out retail vending of arrack. Therefore, such contractors are not "buyers" as defined in the Explanation under Section 206C of the Income Tax Act.

6.1. Learned AAG argued that what is disposed of in the auction is the retail or vending right of arrack and not auctioning of the arrack itself. The final sale of arrack is carried out by the contractors at the retail price fixed by the government. He, therefore, submits that Section 206C is not applicable to a public sector undertaking like Mysore Sales. Both Explanations (a)(ii) and

(iii) clearly exclude retail vendors from the ambit and purview of "buyers" as defined under the Explanation.

6.2. Elaborating further, he submits that “buyers” falling in the above exception were exempted from paying income tax at source at the time of obtaining licence for retail vending of arrack in their respective assigned areas as per the price fixed by the state government. The auction is only regarding transferring the right or privilege which is vested in the state to the liquor contractors who would thereafter operate the retail business of vending in arrack. Therefore, there is no sale involved in the auction transaction. 6.3. Assessing officer had wrongly relied upon the decision of the Supreme Court in Union of India Vs. A. Sanyasi Rao1. In the said decision, the constitutional validity of Section 206C of the Income Tax Act was challenged and the same was negatived by this Court. However, the judgment clarifies that there are just exceptions carved out in Section 206C in which cases, income tax is not required to be collected at source.

6.4. Learned counsel further submits that the objective behind introduction of Section 206C in the Income Tax Act was to ensure proper tax collection in matters relating to profits and gains from the business of trading in alcoholic liquor etc. However, a taxing statute has to be interpreted strictly. It cannot be interpreted in an overly expansive and wide manner so as to bring persons within the tax net who are otherwise exempted from paying tax. Both the Single Bench and the Division Bench had erred in adopting such an interpretation and wrongly holding that Section 206C was applicable in respect of Mysore Sales and since it had not deducted TDS, the same was required to be recovered. Both the Benches had erred in taking the view that purchase of (1996) 3 SCC 465 arrack was by way of public auction only and not in any other manner and that the “seller” (Mysore Sales) had an obligation to collect income tax at source from such “buyers” who would be further vending the same in retail.

6.5. Even if the view taken by the revenue and affirmed by the High Court is accepted, it cannot be said that there was sale of arrack by Mysore Sales to the licence holders. Such sale, if at all it can be said so, was at the price fixed by the state government under the Excise Act and the Rules framed thereunder. The sale was wholly for the purpose of retail vending and not a sale within the meaning of Section 206C of the Income Tax Act; moreover, under the aforesaid provision, a sale must be made to a “buyer” defined under the Explanation to Section 206C of the Income Tax Act. As a matter of fact, it is the contention of the appellant that there is no sale between Mysore Sales and the excise contractors.

6.6. The revenue has wrongly taken the view that the act of auction and purchase of arrack by the successful liquor contractors is inextricably intertwined and is part of one collective action. In the auction, the excise contractors are granted permits/licences for retail sale of arrack by the successful excise contractors in their allotted areas. It is thereafter that sale of arrack is affected by the excise contractors at a price fixed by the government between a minimum floor value and maximum ceiling value. Therefore, such a transaction cannot be said to be a sale or purchase through auction.

6.7. Learned counsel also submitted that the assessing officer was not conferred the jurisdiction to pass the orders under Section 206C(6) of the Income Tax Act. Jurisdiction was conferred upon the Assistant Commissioner of Income Tax (TDS)-1, Bengaluru. This contention of the appellant regarding jurisdiction was rejected by the learned Single Judge as being merely a technical one.

6.8. Learned counsel also submits that orders dated 17.01.2001 passed by the assessing officer under Section 206C(6) of the Income Tax Act were in breach of the principles of natural justice. No opportunity of hearing was given to the assessee. Without such hearing, the aforesaid orders were passed. Such orders being in violation of the principles of natural justice are void ab initio. This aspect was overlooked by the Single Bench as well as by the Division Bench of the High Court.

6.9. He therefore submits that both the orders of the learned Single Judge and the Division Bench are liable to be set aside. Orders dated 17.01.2001 passed by the assessing officer under Section 206C(6) of the Income Tax Act for the assessment years under consideration are also liable to be set aside and quashed. The civil appeal may be allowed accordingly.

6.10. In support of his submissions, learned counsel for the appellant has placed reliance on the following decisions:

(i) Gian Chand Ashok Kumar and Company Vs. Union of India2;

(ii) K.K. Mittal Vs. Union of India3;
(iii) State of Bihar Vs. Commissioner of Income Tax4;
(iv) M/s Naresh Kumar and Company Vs. Union of India5;
(v) Saini and Company Vs. Union of India6;
(vi) Chandigarh Distillers and Bottlers Ltd. Vs. Union of India7;

2 (1991) 187 ITR 188 (HP)
3 (1991) 187 ITR 208 (P&H)
4 (1993) 202 ITR 535 (PAT)
5 ILR (2000) 2 P&H
6 (2000) 246 ITR 762 (HP)
7 (2002) 253 ITR 205 (P&H)

(vii) Union of India Vs. Om Parkash S.S. and Company8.

7. Learned senior counsel for the revenue at the outset submits that the impugned order of the Division Bench of the High Court does not suffer from any error or infirmity to warrant interference. The civil appeal is misconceived and is, therefore, liable to be dismissed.

7.1. Learned senior counsel submits that the assessing officer had issued notices to the assessee and had also verified relevant materials. Thereafter, the assessing officer held that the sale price of liquor was not fixed. What was fixed was only the range of minimum and maximum selling price. As per the gazette notification furnished by the Excise Department of the State of Karnataka for the year 2000, the minimum and maximum selling price was fixed at Rs. 55/- and Rs. 85/- per bulk litre respectively. Nowhere did it mention that liquor had to be sold at a specific fixed price. The contractors were at liberty to sell the liquor at any rate between the minimum and maximum price.

There being a wide range within which the sale of liquor could be affected, the 8 (2001) 3 SCC 593 assessing officer has rightly held that the sale price of liquor was not fixed.

7.2. Learned senior counsel further submits that the assessing officer was right in taking the view that the excise vendors had obtained goods by way of auction because the goods(arrack) were obtained only on production of permits which were available on successful bidding in the auction. 7.3. Thus, the liquor contractors clearly came within the ambit of the meaning of "buyer" under Explanation(a) to Section 206C of the Income Tax Act. Therefore, Mysore Sales was under

> an obligation to deduct income tax at source(TDS) from the liquor contractors. Since it failed to do so, the assessing officer was fully justified in passing the orders dated 17.01.2001 under Section 206C(6) of the Income Tax Act.
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> 7.4. Learned Single Judge had elaborately examined the entire gamut of the issues and rightly affirmed the orders dated 17.01.2001. Similarly, the Division Bench also made a threadbare examination of the entire issues and, thereafter, came to the conclusion that the assessing officer was fully justified in passing the orders dated 17.01.2001. That being the position, there is no reason why, at this stage, the concurrent findings of the assessing officer as affirmed by the Single and Division Benches of the High Court should be disturbed. As such, the civil appeal should be dismissed.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. Before we proceed to Section 206C of the Income Tax Act, we may have a broad overview of the excise law framework in the State of Karnataka relevant for the purpose of the present lis. As already noted above, the parent enactment is the Excise Act which is an Act to provide for an uniform excise law in the State of Karnataka. It covers the entire spectrum from production to sale of liquor and intoxicating drugs and the levy of excise duty thereon. Section 2 defines various words and expressions used in the Excise Act. Section 2 (2) defines the expression "to bottle" to mean transferring liquor from a cask or other vessel to a bottle, jar, flask, polythene sachet or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not and includes re-bottling. "Manufacture" is defined in Section 2 (19) to include every process whether natural or artificial, by which any fermented, spirituous or intoxicating liquor or intoxicating drug is produced or prepared and also redistillation and every process for the rectification of liquor. As per Section 3(1), the state government may appoint, by notification, an officer not below the rank of Deputy Commissioner as the Excise Commissioner in the State of Karnataka. He shall be the chief controlling authority in all matters connected with the administration of the Excise Act. Powers of the Excise Commissioner are dealt with in sub-section (2) of Section 3. He shall have the overall control of the administration of the Excise Department.

9.1. Section 17 deals with the power to grant lease of right to manufacture etc. Sub-section (1) thereof says that the state government may grant lease to any person on such conditions and for

such period, as it may think fit, the exclusive or other right-

(a) of manufacturing or sale by wholesale or of both; or

(b) of selling by wholesale or by retail; or

(c) of manufacturing or supplying by wholesale, or of both and of selling by retail, any Indian liquor or intoxicating drug within any specified area. 9.2. Though sub-section (1A) provides that no lease granted under sub-section (1) shall be transferred, the proviso thereto empowers the state government to grant permission to the lessee to transfer the lease or a part thereof in favour of any other person. As per sub-section (2), the licencing authority may grant to a lessee under sub-section (1) or to a transferee under sub-section (1A), a licence in terms of his lease. Sub-section (3) deals with determination of a lease for violation of the conditions mentioned therein. Under sub-section (4), when a lease is determined in terms of sub-section (3), the state government may direct the Deputy Commissioner to take over the right under his management and to lease it again by resale or otherwise.

9.3. Section 71 confers power on the state government to make rules to carry out the purposes of the Excise Act.

10. The Karnataka Excise (Arrack Vend Special Conditions of Licenses) Rules, 1967 (already referred to “the 1967 Rules” hereinabove) have been framed by the Government of Karnataka in exercise of the powers conferred by Section 71 of the Excise Act. Rule 2 of the 1967 Rules deals with selling of arrack of prescribed strength etc. by the licensee. Rule 2(1) says that every licensee licensed to vend arrack by retail sale shall sell only arrack of prescribed strength. As per sub-rule (2), no arrack except in sealed bottles or in sealed polythene sachets obtained from a warehouse or depot shall be kept for sale or sold in the licensed premises. Rule 3 provides for construction of counter. As per Rule 3, the licensee to vend arrack shall construct a counter in the shop which is not more than one metre high. Rule 4 deals with retail price. It says that subject to such minimum and maximum price fixed by the Deputy Commissioner or by the Excise Commissioner, the licensee may vend arrack on such rates as he may deem fit. Heading of Rule 5 is, licensee to buy arrack only from warehouse, etc. As per sub-rule (1), the licensee to vend arrack by retail shall purchase the required quantity of arrack for sale only from the warehouse or depot authorized by the Excise Commissioner, on payment of issue price fixed by the Excise Commissioner from time to time. This provision, being relevant, is extracted hereunder:

> 5. Licensee to buy arrack only from Warehouse, etc.: -
>
> (1) The licensee to vend arrack by retail shall purchase the required quantity of arrack for sale only from the warehouse or depot authorized by the Excise Commissioner, on payment of issue price fixed by the Excise Commissioner from time to time.

10.1. Rule 5(2) clarifies that no arrack except in sealed bottles of the approved sizes with the excise labels or in sealed polythene sachets obtained from the authorized warehouse or depot shall be sold

in the licenced premises.

10.2. Rule 6 says that the consignment of arrack should be under seal. All the consignments of arrack issued from the warehouse or depot shall be sealed by the officer-in-charge of the warehouse or depot in such a manner that the letters of the seal are distinct. The licensees shall be responsible for any breakage of seal in transit. The arrack so transported may be packed by the licensee at his own cost for the purpose of sale in such containers as may be approved by the Excise Commissioner and under supervision of the officer-in-charge of the warehouse.

11. Government of Karnataka has also framed the Karnataka Excise (Lease of the Right of Retail Vend of Liquors) Rules, 1969 (already referred to as "the 1969 Rules" hereinabove) exercising powers under Section 71 of the Excise Act. As per Rule 2(c), the expression "right of retail vend of liquors" means the lease of the right of retail vend of liquors. Rule 3 deals with lease of retail vend. As per Rule 3(1), the right of retail vend of liquors may be disposed of either by tender or by auction or by tender-cum- auction or in any other manner as the state government may by order specify. Rule 3(3) provides that the right of retail vend of arrack shall be the exclusive right but in such districts as may be specified by the government and only bottled arrack or arrack in polythene sachet shall be sold to consumers. Rule 3A deals with grant of lease to government companies etc. As per sub-rule (1), notwithstanding anything contained in the 1969 Rules, the state government may, if it is considered expedient in the interest of government revenue or for any other reasons to be recorded in writing, grant the lease of right of retail vend of liquor in favour of any company or agency owned or controlled by the state government or a state government department on such terms and conditions as it deems fit.

11.1 Registration of excise contractors is provided for in Rule 4A. As per sub-rule (1), every application for registration as excise contractor shall be made to the Excise Commissioner in the prescribed format. After following the procedure prescribed in sub- rules (2) to (4), the Excise Commissioner under sub-rule (5) may register such an applicant as an excise contractor and grant a certificate of registration in the prescribed format which is not transferable. Sub-rule (8) clarifies that the registration certificate so issued shall be valid for participation in tender/auction for the disposal of the right of retail vend of liquor for the excise year specified in such certificate.

11.2. As per Rule 10(1), where the right of retail vend of liquor within a district is to be disposed of by auction, the Deputy Commissioner of that district and where the disposal of the right is in more than a district in a Division, the Divisional Commissioner of that Division shall hold the auction on the date, time and place as may be notified. The procedure to be followed in the auction is laid down in Rule 11.

12. Under Section 71 of the Excise Act, Government of Karnataka has framed another set of rules called the Karnataka Excise (Manufacturing and Bottling of Arrack) Rules, 1987 (already referred to as "the 1987 Rules" hereinabove). Rule 2(b) defines "arrack" to mean the spirit manufactured by blending or reducing the spirit and includes spiced arrack, but does not include Indian or foreign liquor. "Blending" is defined in Rule 2(c) to mean the mixing of spirits with other spirits of the same or different strengths. As per Rule 2(e), "commissioner" means the Excise Commissioner. Rule 2(n)

defines “warehouse” to mean any distillery or other place where spirit is stored, blended, matured, fortified, diluted or flavoured to produce arrack and also a place for bottling such arrack, but does not include a manufactory where wine or Indian liquor, beer or toddy is manufactured. 12.1. As per Rule 3(1), a licence may be granted by the Excise Commissioner for the manufacture and bottling of arrack for any specified area or areas. Sub-rule (2) of Rule 3 was inserted subsequently w.e.f. 01.07.1993. Sub-rule (2) of Rule 3 clarifies that a licence under Rule 3 shall be issued only to a company or agency owned or controlled by the state government or to a state government department. This provision, being important, is extracted as under:

> 3. Licence to be granted only to a company etc : -
>
> (1) A licence shall be granted by the Commissioner, whenever necessary for any specified area or areas for the manufacture and bottling of arrack.
>
> (2) The licence under this rule shall be issued only to a company or agency owned or controlled by the state government or to a state government department.

12.2. Rule 8 provides that in case where a warehouse serves more than one district, the warehouse shall be deemed to be a depot for storing bottled arrack and for supply of arrack to the person holding a licence to sell arrack in retail. Under Rule 9, the Commissioner may fix the number of warehouses, the area to be served by each of the warehouse and their location. Removal of arrack from the warehouse is provided for in Rule 16. As per sub- rule (1), no arrack shall be removed from the warehouse without payment of excise duty. Sub-rule (2) says that arrack shall not be issued from the warehouse or depot except in bottles or in polythene sachets of approved capacity and design. As per sub- rule (3), the same shall be issued from the warehouse or depot only to the persons holding a licence to sell arrack in retail. Rule 17 says that the price to be paid by the government to the distillery for the rectified spirit supplied by the distillery to the warehouse, the price to be paid by the government to the warehouse for manufacture and bottling of arrack and the price to be paid by the lessees for the right of retail vend of arrack to the government for the supply of bottled arrack shall be fixed by the Excise Commissioner from time to time with prior approval of the government. Rule 17, being relevant, is extracted hereunder:

> 17. Fixation of price: -
>
> The price to be paid by government to the distillery for the rectified spirit supplied by the distillery to the warehouse, the price to be paid by the government to the warehouse for manufacture and bottling of arrack and the price to be paid by the lessees for the right of retail vend of arrack to the government for the supply of bottled arrack shall be fixed by the Commissioner from time to time with prior approval of the government and the same shall be communicated to the persons concerned.

13. From the above conspectus, we find that under Section 17 of the Excise Act, the state government grants lease of right to any person for manufacture etc. of liquor, arrack in this case. The licencing

authority i.e. Excise Commissioner may grant to the lessee a licence in terms of his lease. In supplement to the above provision, Rule 3(1) of the 1987 Rules provides that the Excise Commissioner shall grant a licence for any specified area or areas for the manufacture or bottling of arrack. From 01.07.1993, sub- rule (2) of Rule 3 has come into force as per which provision the licence under Rule 3 of the 1987 Rules shall be issued only to a company or agency owned or controlled by the state government or to a state government department. This is how Mysore Sales was granted licence for manufacture and bottling of arrack. Through a process of auction, excise contractors are shortlisted who are thereafter granted licence or permits to vend arrack by retail in their respective area(s). They are required to procure the arrack from the warehouse or depot on payment of the issue price fixed by the Excise Commissioner as per Rule 5(1) of the 1967 Rules. Rule 2 makes it very clear that no arrack in retail vend shall be sold except in sealed bottles or in sealed polythene sachets obtained from either a warehouse or a depot. For such retail vending, Rule 3 of the 1967 Rules requires the excise contractor to construct a counter in the shop. The right to retail vend of liquor is granted either by tender or by auction or by a combined process of tender-cum-auction etc. As per Rule 17 of the 1987 Rules, the price to be paid by the lessee for the right of retail vend of arrack to the government for the supply of bottled arrack shall be fixed by the Commissioner with prior approval of the government. In so far the retail price is concerned, Rule 4 of the 1967 Rules says that the excise contractor can sell the arrack at a price within the range of minimum floor price and maximum ceiling price that may be fixed by the Excise Commissioner.

14. Having broadly surveyed the statutory framework of the business of arrack in the State of Karnataka, let us now deal with Section 206C of the Income Tax Act. For ready reference, the said provision is extracted hereunder:

> 206-C. Profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.—(1) Every person, being a seller shall, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the buyer of any goods of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income tax:
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> TABLE SI. Nature of Goods Percentage No.
>
> (i) Alcoholic liquor for human Ten per consumption (other than India- cent made foreign liquor) and tendu leaves
>
> (ii) Timber obtained under a forest Fifteen per lease cent
>
> (iii) Timber obtained by any mode Five per other than under a forest lease cent
>
> (iv) Any other forest produce not being Fifteen per timber or tendu leaves cent Provided that where the Assessing Officer, on an application made by the buyer, gives

a certificate in the prescribed form that to the best of his belief any of the goods referred to in the aforesaid Table are to be utilized for the purposes of manufacturing, processing or producing articles or things and not for trading purposes, the provisions of this sub-section shall not apply so long as the certificate is in force.

(2) The power to recover tax by collection under sub-

section (1) shall be without prejudice to any other mode of recovery.

(3) Any person collecting any amount under sub- section (1) shall pay within seven days the amount so collected to the credit of the Central Government or as the Board directs.

(4) Any amount collected in accordance with the provisions of this section and paid under sub-section (3) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected on the production of the certificate furnished under sub-section (5) in the assessment made under this Act for the assessment year for which such income is assessable.

(5) Every person collecting tax in accordance with the provisions of this section shall within ten days from the date of debit or receipt of the amount furnish to the buyer to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected, and specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

(5A) Every person collecting tax in accordance with the provisions of this section shall prepare half yearly returns for the period ending on 30th September and 31st March in each financial year, and deliver or cause to be delivered to the prescribed income-tax authority such returns in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.

(5B) Notwithstanding anything contained in any other law for the time being in force, a return filed on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media as may be specified by the Board (hereinafter referred to as the computer media) shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof of production of the original, as evidence of any contents of the original or of any fact stated therein.

(5C) A return filed under sub-section (5B) shall fulfill the following conditions, namely:-

(a) while receiving returns on computer media, necessary checks by scanning the documents filed on computer media will be carried out and the media will be duly authenticated by the Assessing Officer; and

(b) the Assessing Officer shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.

(6) Any person responsible for collecting the tax who fails to collect the tax in accordance with the provisions of this section, shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

(7) Without prejudice to the provisions of sub-section (6), if the seller does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of one and one-fourth percent per month or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid.

(8) Where the tax has not been paid as aforesaid, after it is collected, the amount of the tax together with the amount of simple interest thereon referred to in sub-

section (7) shall be a charge upon all the assets of the seller.

(9) Where the Assessing Officer is satisfied that the total income of the buyer justifies the collection of the tax at any lower rate than the relevant rate specified in sub-section (1), the Assessing Officer shall, on an application made by the buyer in this behalf, give to him a certificate for collection of tax at such lower rate than the relevant rate specified in sub-section (1). (10) Where a certificate under sub-section (9) is given, the person responsible for collecting the tax shall, until such certificate is cancelled by the Assessing Officer, collect the tax at the rates specified in such certificate.

(11) The Board may, having regard to the convenience of assessees and the interests of revenue, by notification in the Official Gazette, make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of a certificate under sub-section (9) and the conditions subject to which such certificate may be granted and providing for all other matters connected therewith.

Explanation. – For the purposes of this section,-

(a) “buyer” means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the table in sub-section (1) or the right to receive any such goods but does not include, -

(i) a public sector company,

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale, or

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act;

(b) "seller" means the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society.

14.1. Sub-section (1) of Section 206C says that every person who is a seller shall collect from the buyer of the goods specified in the table, a sumequal to the percentage specified in the corresponding entry of the table. The collection is to be made at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of the receipt of such amount from the said buyer, be it in cash or by way of cheque or by way of draft etc. In so far alcoholic liquor for human consumption (other than India made foreign liquor i.e., IMFL), the amount to be collected is 10 percent. Sub- section (3) provides that any person collecting such amount under sub-section (1) shall pay the said amount within 7 days of the collection to the credit of the central government or as the Central Board of Direct Taxes (CBDT) directs. Sub-section (4) clarifies that any amount so collected under Section 206C(1) and paid under sub-section (3) shall be deemed as payment of income tax on behalf of the person from whom the amount has been collected and credit shall be given to such person for the amount so collected and paid at the time of assessment proceeding for the relevant assessment year. Sub-section (5) says that every person collecting such tax shall issue a certificate to the buyer within 10 days of debit or receipt of the amount. Sub-section (5A) requires the person collecting tax to prepare half yearly returns for the periods ending on 30th September and 31st March for each financial year and submit the same in the prescribed form before the competent income tax authority.

14.2. Sub-section (6) is relevant. Sub-section (6) says that any person responsible for collecting the tax but fails to collect the same shall notwithstanding such failure be liable to pay the tax which he ought to have collected to the credit of the central government in accordance with the provisions of sub-section (3). Sub-section (7) deals with a situation where such tax is not collected in which event the seller is liable to pay interest at the prescribed rate. Sub-section (8) on the other hand deals with a situation where the seller does not deposit the amount even after collecting the tax. In such an event also, he would be liable to pay interest.

14.3. That brings us to the Explanation to Section 206C of the Income Tax Act. The Explanation defines "buyer" and "seller" for the purposes of Section 206C. While Explanation(a) defines "buyer", (b) defines "seller". As per Explanation(a), "buyer" means a person who obtains in any sale by way of auction, tender or by any other mode, goods of the nature specified in the table in sub- section (1) or the right to receive any such goods but "buyer" would not include:

(i) a public sector company;

(ii) a buyer in the further sale of such goods obtained in pursuance of such sale;

(iii) a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act.

14.4. On the other hand, "seller" has been defined to mean the central government, a state government or any local authority or corporation or authority established by or under a central, state or provincial act or any company or firm or cooperative society. 14.5. Adverting to the definition of "buyer", Explanation (a) says that a person who obtains in any sale by way of auction, tender or by any other mode, goods of the nature specified in the table in sub-section (1) or the right to receive any such goods is a buyer. But as we have seen above, there is an exclusion clause to the definition of "buyer". If the buyer is a public sector company or it has obtained the goods in further sale or if the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any state enactment, then such a person would not come within the ambit of "buyer" as per the definition in Explanation(a). Since much emphasis has been placed on Explanation(a)(iii), we may extract the same again to understand the significance thereof: a buyer where the goods are not obtained by him by way of auction and where the sale price of such goods to be sold by the buyer is fixed by or under any State Act. Thus, Explanation(a)(iii) visualizes two conditions for a person to be excluded from the meaning of "buyer" as per the definition in Explanation(a). The first condition is that the goods are not obtained by him by way of auction. The second condition is that the sale price of such goods to be sold by the buyer is fixed under a state enactment. These two conditions are joined by the word 'and'. The word 'and' is conjunctive to mean that both the conditions must be fulfilled; it is not either of the two. Therefore, to be excluded from the ambit of the definition of "buyer" as per Explanation(a)(iii), both the conditions must be satisfied.

15. In view of the above, let us examine the position of an excise contractor. In the scheme under consideration which we have discussed above, would such an excise contractor be construed as a "buyer" within the meaning of Explanation(a) to the Section 206C of the Income Tax Act? Going back to the Excise Act and the rules framed thereunder, it is seen that Mysore Sales is the licensee for the manufacture and bottling of arrack for specified area(s). By a process of auction or tender or auction-cum-tender etc., excise contractors are shortlisted who are thereafter granted permits to vend arrack by retail in their respective area(s). These retail vendors i.e. excise contractors have to procure the arrack from the warehouse or depot maintained by Mysore Sales on payment of the issue price fixed by the Excise Commissioner. The arrack is procured in sealed bottles or in sealed polythene sachets. Pausing here for a moment, what is discernible is that by a process of auction etc., excise contractors are shortlisted. Thereafter, they are provided permits. On the strength of the permits, they obtain arrack in bottled condition (or in sealed polythene sachets) from the warehouse or depot on payment of issue price fixed by the Excise Commissioner. Such arrack either in sealed bottled condition or in sealed polythene sachets are then sold in retail by the excise contractors in the area or areas allotted to them. Therefore, by the process of auction etc., the excise contractors are only shortlisted and conferred the right to retail vend of arrack in their respective areas. It cannot be said that by virtue of the auction, certain quantities of arrack are purchased by the excise contractors. Thus, at this stage there are two transactions, each distinct. The first transaction is shortlisting of excise contractors by a process of auction etc. for the right to retail vend. The second transaction, which is contingent upon the first transaction, is obtaining of arrack for retail vending by the excise contractors on the strength of the permits issued to them post successful shortlisting following auction. Therefore, it is evidently clear that arrack is not obtained by the excise contractors by way of auction. What is obtained by way of auction is the right to vend the arrack on retail on the

strength of permits granted, following successful shortlisting on the basis of auction. Thus, the first condition under clause (iii) is satisfied.

15.1 In Om Parkash (supra), this Court considered the issue of tax collection at source in respect of the liquor trade under Section 206C of the Income Tax Act and as to whether a licensee who is issued a licence by the government permitting him to carry on the liquor trade would be a "buyer" as defined in Explanation

(a) to Section 206C (11) of the Income Tax Act. This Court held that "buyer" would mean a person who by virtue of the payment gets a right to receive specific goods and not where he is merely allowed/permitted to carry on business in that trade. On licences issued by the government permitting the licensee to carry on liquor trade, provisions of Section 206C are not attracted as the licensee does not fall within the concept of "buyer" referred to in that section. This Court emphasized that a buyer has to be a buyer of goods and not merely a person who acquires a licence to carry on the business.

15.2. After the arrack is obtained in the above manner by the excise contractor, the requirement of the second condition under Explanation(a)(iii) is that he has to sell the same in the area(s) allotted to him at the sale price fixed as per Rule 4 of the 1967 Rules. The language of the second condition is that the sale price of such goods to be sold by the buyer is fixed by or under any state statute. As already noted above, Rule 4 of the 1967 Rules enables the excise contractor to sell the arrack in retail at a price within the range of minimum floor price and maximum ceiling price which is fixed by the Excise Commissioner. A minimum price and a maximum price are fixed within which range the arrack has to be sold by the excise contractor. Thus, the price of arrack to be sold in retail is not dependent on the market forces but pre-determined within a range. Therefore, though price range is provided for by the statute, it cannot be said that because there is a price range providing for a minimum and a maximum, the sale price is not fixed. The sale price is fixed by the statute but within a particular range beyond which price, either on the higher side or on the lower side, the arrack cannot be sold by the excise contractor in retail. Therefore, the arrack is sold at a price which is fixed statutorily under Rule 4 of the 1967 Rules and thus the second condition stands satisfied.

16. Since both the conditions as mandated under Explanation(a)(iii) are satisfied, the excise contractors or the liquor vendors selling arrack would not come within the ambit of "buyer" as defined under Explanation(a) to Section 206C of the Income Tax Act.

17. We have perused the orders dated 17.01.2001 passed by the assessing officer under Section 206C(6) of the Income Tax Act. From a perusal of the said orders, more particularly the order in respect of the assessment year 2000-2001 which is the main order passed by the assessing officer followed in other assessment proceedings, it is seen that the same was passed under Section 206C(6) of the Income Tax Act. By the said order dated 17.01.2001 for the assessment year 2000-01, the assessing officer declared that Mysore Sales had failed to collect and deposit an amount of Rs. 3,90,57,516.00 as TDS from the excise contractors and, therefore, directed the appellant to deposit the said amount to the credit of the central government. That apart, interest was also charged and levied under Section 206C(6) following which demand notice of even date under Section 156 of the

Income Tax Act was issued. Before passing the said order, it is seen that the assessing officer had considered Section 206C of the Income Tax Act and the reply submitted by Mysore Sales to the show cause notice issued.

18. We have already analysed the various sub-sections of Section 206C of the Income Tax Act. As per sub-section (3), any person collecting TDS under sub-section (1) shall have to pay the same to the credit of the central government within seven days. Requirement under sub-section (5A) is that every person collecting TDS in terms of Section 206C (1) shall prepare half yearly returns for the periods ending on 30th September and 31st March respectively for each financial year and thereafter to submit the same before the competent assessing officer. Sub-rule (6) mandates that if any person responsible for collecting TDS fails to collect the same, he shall have to deposit the said amount to the credit of the central government notwithstanding failure to deduct TDS.

19. Though there is no express provision in sub-section (6) or any other provision of Section 206C of the Income Tax Act regarding issuance of notice and affording hearing to such a person before passing an order thereunder, nonetheless, it is evident that an order passed under Section 206C(6) of the Income Tax Act, as in the present case, is prejudicial to the person concerned as such an order entails adverse civil consequences. It is trite law that when an order entails adverse civil consequences or is prejudicial to the person concerned, it is essential that principles of natural justice are followed. In the instant case, though show cause notice was issued to the assessee to which reply was also filed, the same would not be adequate having regard to the consequences that such an order passed under Section 206C(6) of the Income Tax Act would entail. Even though the statute may be silent regarding notice and hearing, the court would read into such provision the inherent requirement of notice and hearing before a prejudicial order is passed. We, therefore, hold that before an order is passed under Section 206C of the Income Tax Act, it is incumbent upon the assessing officer to put the person concerned to notice and afford him an adequate and reasonable opportunity of hearing, including a personal hearing.

20. In view of the discussions made above and the conclusions reached, it is not necessary for us to delve into other contours of the lis. Thus, the question framed in paragraph 3 above, is answered in the negative by holding that Section 206C of the Income Tax Act is not applicable in respect of Mysore Sales and that the liquor vendors(contractors) who bought the vending rights from the appellant on auction cannot be termed as “buyers” within the meaning of Explanation(a) to Section 206C of the Income Tax Act. We also hold that the High Court was not justified in dismissing the writ petitions and consequently, the writ appeal challenging the orders dated 17.01.2001.

21. Having regard to the discussions made above, we are of the view that the appeal should be allowed. Accordingly, we pass the following order:

(i) judgment and order dated 13.03.2006 passed by the Division Bench of the High Court of Karnataka at Bengaluru in Writ Appeal No. 7926/2003 and connected writ appeals, is hereby set aside;

(ii) judgment and order dated 27.10.2003 passed by the learned Single Judge of the High Court of Karnataka at Bengaluru in Writ Petition Nos. 6869-6874 of 2001 and other connected writ petitions, is hereby set aside; and

(iii) orders dated 17.01.2001 passed by the Deputy Commissioner of Income Tax (TDS)–1, Bengaluru under Section 206C(6) of the Income Tax Act for the assessment years 2000-2001, 1999-2000, 1998-1999, 1997-1998, 1996-1997 and 1995-1996 as well as the consequential demand notices of even date issued under Section 156 of the Income Tax Act, are hereby set aside and quashed.

22. Civil Appeal accordingly stands allowed. However, there shall be no order as to cost.

.....J. [B. V. NAGARATHNA] .....J. [UJJAL BHUYAN] NEW DELHI;

JULY 08, 2024.