State Of Tamil Nadu & Anr vs Tvl. South Indian Sugar Mills ... on 12 August, 2015

Equivalent citations: 2015 AIR SCW 5011, 2015 (13) SCC 748, AIR 2015 SC (SUPP) 2417, (2015) 4 JCR 154 (SC), (2015) 4 JLJR 13, (2015) 8 SCALE 699, (2015) 4 PAT LJR 174

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Bench: Shiva Kirti Singh, Vikramajit Sen

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 1028-1037 OF 2005

STATE OF TAMIL NADU & ANR. …..APPELLANTS

Versus

TVL. SOUTH INDIAN SUGAR MILLS ASSN.
& ORS. …..RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN, J.

1 The Appellants before us have laid siege to the concurrent conclusions of the learned Single Judge, as well as the Division Bench of the High Court of Judicature at Madras in a matter where the writ petitioners, i.e. the Respondents before us, have assailed the legality of a demand of [pic].1/- per bulk litre of industrial alcohol manufactured by them. Earlier, the Respondents had unsuccessfully assailed the impost of 50 paise per bulk litre of industrial alcohol but that challenge was primarily predicated on the legislative competence of the State of Tamil Nadu to make that demand. In the said writ petitions, the ten petitioners therein had prayed for a declaration that Rule 5-A of the Tamil Nadu Distillery Rules introduced by G.O.M. No.662 issued by Home, Prohibition and Excise(III) Department, dated 4.6.1990, and the amendment to the said Rule brought into effect by

G.O.M. No.64, Home Prohibition and Excise (XIII) Department, dated 12.04.2000, are unconstitutional, illegal and void. The learned Single Judge noted that the decision of a Seven-Judge Bench of this Court in the case of Synthetics and Chemicals Ltd. v. State of U.P. (1990) 1 SCC 109; AIR 1990 SC 1927 concluded the conundrum. In that case it was held that the sundry States of the Union of India are not competent to impose taxes/levies on industrial alcohol or rectified spirit. This Court, however, clarified that the States are empowered under Entry 8 of List II of the Seventh Schedule to the Constitution of India to regulate this business and ensure that industrial alcohol is not diverted as potable alcohol, and in carrying out this exercise, States would be fully competent to collect administrative/regulating service fee. The writ petitioners' first foray in the Writ Court did not meet with success. Accordingly, the State of Tamil Nadu appears to have collected 50 paise per bulk litre towards its administrative fees for almost a decade.

2 By G.O.M. No.64, dated 12.04.2000, Home Prohibition and Excise (XIII) Department, the Appellant State Government has amended Rule 5-A and thereby increased administrative service fees to [pic].1/- per bulk litre for industrial alcohol produced by the sundry distilleries located in that State. The stance of the State Government was that administrative fees related strictly to the establishment charges occurred in the distilleries themselves together with other expenses incurred by the State to enforce the Regulation. In their second salvo, the Petitioners have not challenged the power of the State to recover administrative fees, but have contended that this exercise had to be meticulously calculated on the premise of quid pro quo. Relying on Synthetics and Chemicals Ltd. the learned Single Judge came to the conclusion that the subject impost was, in pith and substance, an endeavour to raise revenues for the State. The Writ Court also applied the ratios of Shri Bileshwar Khand Udyog Khedut Sahakari Mandali Ltd. v. State of Gujarat (1992) 2 SCC 42, Gujchem Distillers India Ltd. v. State of Gujarat, (1992) 2 SCC 399 and Bihar Distillery v. Union of India AIR 1997 SC 1208. It opined that the State had the power to comprehensively regulate and monitor the production of industrial alcohol in order to ensure that there was no misuse or diversion of this product for its conversion to potable alcohol. The Writ Court then went on to consider the second question, viz. whether the levy or fees impost must per force be confined and founded on the rule of quid pro quo. Relying on the decision of this Court in Sreenivasa General Traders v. State of Andhra Pradesh (1983) 4 SCC 353, it was reiterated that by and large the principle of quid pro quo governs the quantification of the service rendered, but not necessarily with mathematical exactitude; it is necessary that a reasonable relationship between the collection and the services rendered must be evident. It was also reiterated that the test of correlation is to be reckoned at the aggregate level and not at the individual level as was clarified in P. M. Ashwathanarayana v. State of Karnataka (1989) Supp.1 SCC 696. In this conspectus of the law, the learned Single Judge reached the conclusion that the State was competent and justified in recovering expenses for ensuring the prevention of illegal diversion of industrial alcohol within the premises of the distilleries themselves, as also expenses incurred for supervising the transit of industrial alcohol from the distilleries to the trader. The Writ Court then adverted to the decision in Vam Organic Chemicals Ltd. v. State of UP (1997) 2 SCC 715, as well as Secunderabad Hyderabad Hotel Owners' Association v. Hyderabad Municipal Corporation (1992) 2 SCC 274. It is important to note that the learned Single Judge, after carrying out the said analysis of the law, pithly observed that the Appellant State had not furnished the relevant and requisite particulars and material to establish that the impost indeed had the character of quid pro quo. Referring to the quantum of

recoveries made on the basis of 50 paise per bulk litre for almost one decade, it was noted that this collection roughly corresponded to one-third of the total expenses incurred by the Excise Department, which per se was not excessive; and that there can be no cavil that in regulating the trade of potable liquor the State is gathering considerable income. So far as the increased demand of [pic]1/- per bulk litre of industrial alcohol is concerned, the learned Single Judge concluded that it would amount to effecting an increase in recovery from 1/3rd to 2/3rd of total expenses incurred by the Excise Department which, therefore, ceased to be based on the principle of quid pro quo. By this directive, the writ petitions were dismissed, making it legal for the State to impose and collect only 50 paise per bulk litre. G.O.M. No.64 Home Prohibition and Excise (XIII) Department dated 12.4.2000 was quashed. It appears that despite this ruling the State has coerced the writ petitioners into paying the so called administrative regulatory charges at [pic]1/- per bulk litre.

3 The Appellant State thereupon assailed the decision of the learned Single Judge in W.A. Nos.1566 to 1571 of 2001, but in the event, with continued failure. The Division Bench again analysed the numerous judgments of this Court, the foremost being of the Seven-Judge Bench in Synthetics and Chemicals Ltd., and noted that the State Governments are empowered to levy excise duty or tax on alcoholic liquor fit for human consumption, but so far as industrial alcohol is concerned, that power is reposed in the Union Government alone. However, this does not mean that the State Government was powerless to regulate the production of industrial alcohol so long as that activity was calculated to circumvent the diversion of industrial alcohol into potable alcohol. The Division Bench, however, noted that Rule 5-A came to be introduced as this Court in Seven-Judge ruling in Synthetics and Chemicals Ltd. had approved the collection of administrative service fee, as indubitably and avowedly the State Government through its Excise Department was incurring expenses for the purpose of blocking any attempt to divert industrial alcohol as potable alcohol. Quite correctly, the Division Bench also posited on the strength of the decision of this Court in Vam Organic Chemicals Ltd. that the Excise Department was effectively conducting recovery measures and was not providing corresponding services to these distilleries. Significantly, the Division Bench concluded that the collections made by the State by way of administrative service fee recovered even at the rate of 50 paise per bulk litre corresponded to approximately 60 per cent of the total expenditure of the Excise Department. The Division Bench was of the opinion that there was only an expenditure of [pic]93.2 lakhs against which there was an estimated collection of administrative fee aggregating [pic]11.73 crores which collection, therefore, was excessive. Whilst it seems to us that there is no scope for our interference in the impugned Judgment, we must hasten to clarify that the charges should not be restricted only to those establishment expenses incurred by the State in the distilleries alone, or that any collection over and above those expenses would ipso facto tantamount to unjust enrichment. However, the fact remains that the figures noted by the Division Bench were [pic]93.20 lakhs whereas the collections even at the rate of 50 paise per bulk litre aggregated [pic]11.73 crore, which since it was not interfered with, would undoubtedly cover expenses over and above those incurred by the State only on its establishments/office in the respective distilleries. The Division Bench also underscored the fact that details of expenses incurred by the State in connection with the supervision or regulation of production of industrial alcohol, with a view to ensure that there is no diversion thereof for the purpose of or reconversion to potable alcohol, had not been provided in this regard. We are in no manner of doubt that the State has woefully failed to furnish credible details of expenditure which, according to it, related to administrative or regulatory or service

expenses.

4 We do not propose to make this Judgment prolix by once again minutely analyzing the several decisions of this Court, which have clarified that administrative or service charges can be recovered, but nothing over and above them; that while it would be unfair to insist on mathematical exactitude in the calculation of administrative service charges, there must be a perceptible correlation between the expenses and the collections; that it will not be permissible for the State to collect fees in respect of expenses incurred in its Excise Department, except those bearing a reasonable nexus with the administrative steps taken to ensure that there is no misutilisation or diversion of industrial alcohol for the purposes of producing potable alcohol. The extracted paragraph from Synthetics and Chemicals Ltd which distills the precedents on the State's legislative's powers with regard to industrial alcohol, deserves careful consideration:

> 86. The position with regard to the control of alcohol industry has undergone material and significant change after the amendment of 1956 to the IDR Act. After the amendment, the State is left with only the following powers to legislate in respect of alcohol:
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> (a) It may pass any legislation in the nature of prohibition of potable liquor referable to Entry 6 of List II and regulating powers.
>
> (b) It may lay down regulations to ensure that non-potable alcohol is not diverted and misused as a substitute for potable alcohol.
>
> (c) The State may charge excise duty on potable alcohol and sales tax under Entry 52 of List II. However, sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders, sales tax cannot be charged by the State on industrial alcohol.
>
> (d) However, in case State is rendering any service, as distinct from its claim of so-called grant of privilege, it may charge fees based on quid pro quo.

5 Over the years, the inflexibility with which the principle of quid pro quo was to be applied, which may have been sired from a pedantic perusal of Synthetics and Chemicals Ltd, has been clarified and crystallized by this Court. We shall reproduce these paragraphs from B.S.E. Brokers' Forum, Bombay and Others v. Securities and Exchange Board of India and others, (2001) 3 SCC 482 to enable their fruitful consideration:

> 30. This Court in the case of Sreenivasa General Traders v. State of A.P. (1983) 4 SCC 353 has taken the view that the distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest. This Court said that in determining whether a levy is a fee or not emphasis must be on whether its primary and essential

> purpose is to render specific services to a specified area or class. In that process if it is found that the State ultimately stood to benefit indirectly from such levy, the same is of no consequence. It also held that there is no generic difference between a tax and a fee and both are compulsory exactions of money by public authorities. This was on the basis of the fact that the compulsion lies in the fact that the payment is enforceable by law against a person in spite of his unwillingness or want of consent. It also held that a levy does not cease to be a fee merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have a direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It also held that the element of quid pro quo in the strict sense is not always a sine qua non for a fee, and all that is necessary is that there should be a reasonable relationship between the levy of fee and the services rendered. That judgment also held that the earlier judgment of this Court in Kewal Krishan Puri v. State of Punjab(1980) 1 SCC 416 is only an obiter.....

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38. As noticed in the City Corpn. of Calicut (1983) 2 SCC 112 the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in Sirsilk Ltd. 1989 Supp. (1) SCC 168 if the levy is for the benefit of the entire industry, there is sufficient quid pro quo between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(k) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone.

6 Subsequently, in State of U.P. v. Vam Organic Chemicals Ltd. (2004) 1 SC 225 (commonly referred to as “Vam Organic II’) this important aspect of the law has been further crystallised thus –

34. The word “service” in the context of a fee could, therefore, include, a levy for a compulsory measure undertaken vis-à-vis the payer in the interest of the public. This “coercive” measure has been subsequently judicially clarified to mean a “regulatory measure”. But in the case of both kinds of services, whether compulsorily imposed or voluntarily accepted, there would have to be a correlation between the levy imposed and the “counterpayment or quid pro quo”. However, correlationship between the levy and the services rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be a reasonable “relationship”

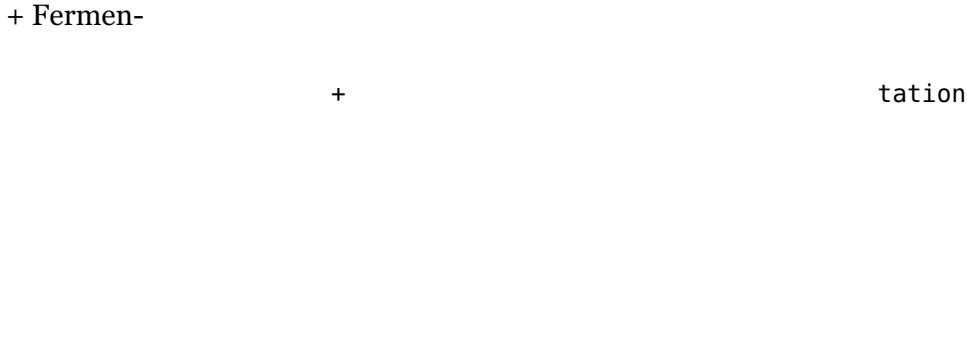
between levy of the fee and the service rendered. Contrariwise when there is no such correlation, the levy, despite its nomenclature is in fact a tax. In Corpn. of Calcutta v. Liberty Cinema the licence fee charged under Section 548 of the Calcutta Municipal Act, 1951 had been challenged on the ground that no service was rendered commensurate with the tax.

7 Considerable reliance was placed by the learned Senior Counsel for the Appellant State on the decision of this Court in B.S.E. Brokers' Forum, but in our view, without justification. Indubitably, this Court held that it was not incumbent for collections or contributions to be recovered from only those who were directly involved in the subject transactions, since the newly established administrative machinery was necessary for the smooth and legal conduct of the entire business pertaining to the securities market. We find this to be self-evident from a perusal of the Preamble to the SEBI Act: "An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market……." This Court had held that the SEBI Act postulated and permitted the charging of two types of fees – (i) under Section 11(2)(k) of the SEBI Act for carrying out the several and sundry purposes contained in Section 11, and (ii) for the registration of applicants under Section 12(2). It was also clarified by the Court that the said service or regulatory or administrative fee can be levied on all contributors, regardless of whether or not services were being directly rendered to them. This decision cannot be extrapolated to permit the State to make recoveries in the guise of administrative expenses of all the outgoings of its Excise Department even though they have no bearing or connection with the possible misuse and diversion of industrial alcohol to potable alcohol. This Court was concerned with the imposition and collection of fees by Securities and Exchange Board of India (SEBI) in order to perform the mandates cast upon it by virtue of Section 11(2)(k) in addition to registration charges under Section 12(2) of the Act. The proceeds of collection under Section 11(2)(k) could legitimately meet both capital expenditure and costs of services. This Court also found on the strength of evidence before it that the bulwark (50%) of its total expenditure would be towards broker-related services, apart from protecting the interests of the investors, regulating the acquisition of shares, taking over of companies and undertaking inspections and audits of stock exchanges, mutual funds, insider trading, etc. Most importantly, this Court accepted the contention of SEBI that it had no other source of income other than that derived under Sections 11(2)(k) and 12. Transactions had a direct bearing on the regulatory expenses of the Board. Hence, this classification had a direct nexus with the object to be achieved. The Preamble to the SEBI Act emblazons that its purpose is to provide for the establishment of a Board to protect the interests of the investors in securities and to promote the development of, and to regulate, the securities market. It further noted that stock-brokers formed a distinct class.

8 We may also, with short shrift, reject an argument put forward on behalf of one of the Respondents, namely, Tvl. Chemplast Sanmar Limited, that its production of industrial alcohol was entirely captive for its own activity of manufacture of PVC. Even assuming this to be so, there is always a brooding and omnipresent possibility of diversion of industrial alcohol to potable alcohol.

9 It seems to us, facially, that if administrative or service charges are sought to be recovered from the Respondent Distilleries to cover nefarious activities carried out by third parties such as smuggling and countryside brewing etc. which have no causal connection with the production of

industrial alcohol, or for collection of excise duties from other industries carrying out distinctly different production or manufacture, the fee would metamorphose into a tax. We must hasten to explicate that the illegal or illicit diversion of industrial or ethyl alcohol is possible at the stage where it is rectified spirit or industrial alcohol, contrary to the argument of the Respondents. Therefore, so long as expenses are incurred by the State Government in ensuring that industrial alcohol is not used as potable alcohol, recovery thereof shall be permissible. The Process Chart submitted by the Appellant is reproduced for the facility of clarification:



10 A fervent prayer had been made by the Respondents before us that in the event of our preferring the view that the Appeals are sans merit, the collection of administrative/service charges at the rate of [pic]1/- per bulk litre should be refunded along with interest. On the first date of hearing, this Court had directed maintenance of status quo and this being the position, no party can be made to suffer. It is apposite to observe that the Respondent Distilleries did not express any discomfiture on collection of fee at the rate of [pic]1/- per bulk litre either before this Court or any of the subordinate courts. In fact, there was a hiatus in the litigation even in the High Court where collections were made at the increased rate even though that was quashed by the High Court. We clarify that there was no justification for the Appellant State or its Excise Department to collect charges at the rate of [pic]1/- after it had been quashed by the learned Single Judge. Keeping in perceptive the absence of diligence by the Respondent Distilleries from seeking timely variations or modification of Orders passed by the Court, we desist from directing that the collection of charges over and above 50 paise per bulk litre should be refunded.

11 However, in view of the concurrent failure of the Appellant State in this litigation, it shall be liable to pay the costs incurred by the Respondents in the litigation, not

only before the High Court but in present Appeals as well. The Appeals are accordingly dismissed.

.....J. [VIKRAMAJIT SEN] .....J. [SHIVA KIRTI SINGH] New Delhi;

August 12, 2015

MOLASSES (may contain about 35 to 55% Sugar) Fermented Wash (8% of Alcohol) YEAST CULTURE MOLASSES (10% Sugar Solution) WATER Rectified Spirit/ Industrial Alcohol (95% Ethyl Alcohol or Ethanol) Country Spirit/Liquor WATER Denatured Spirit for Industrial purposes (90-95% of Ethyl Alcohol) (commonly denatured with Methanol and/or Pyridine Neural Spirit for Potable purposes – IMFS (94-96% of Ethyl Alcohol)
