

A

KALYAN CHEMICALS

v.

GOVERNMENT OF A.P. & ORS

(Civil Appeal Nos. 5307-5308 of 2005)

B

AUGUST 12, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

C *Andhra Pradesh Denatured Spirit and Denatured*
Spirituos Preparations Rules, 1971: r. 3 – Pursuant to G.O.M.
No. 147 dated 6.3.1998, the Government amended rule 3
whereby it introduced the collection of administrative fee of
50 paise per bulk litre – This Rule was given retrospective
effect from 25.10.1989 – Appellant filed writ petition on the
D *ground that the amendment cannot be given retrospective*
effect and that fees should be levied @ 7 paise per litre since
this amount was found to be reasonable in Vam Organics
case – Held: s.72 (3) of A.P. Excise Act, 1968 permits making
the rules under the Act with retrospective effect – Moreover,
E *7 paise was deemed to be reasonable on the facts of that*
case which would not in any way indicate that a larger amount
would be excessive especially with the passage of time –
The subject Regulatory fees intended to prevent the
conversion of alcoholic liquor for industrial use to that for
F *human consumption is legal and need not be strictly quid*
pro quo as long as it is not excessive.

Dismissing the appeals, the Court

G

HELD: No ground is made out for the contention that amendment cannot be give retrospective effect and Section 72(3) of the Andhra Pradesh Excise Act, 1968 specifically allows that – “Any rules under this Act may be made with retrospective effect and when such a rule

H

is made the reason for making the rule shall be specified

in a statement to be laid before both Houses of the State Legislature.” As regards the contention that fees should be levied @ 7 paise per litre since this amount was found to be reasonable in Vam Organics case, 7 paise was deemed to be reasonable on the facts of that case which would not in any way indicate that a larger amount would be excessive especially with the passage of time. In light of Synthetics and Chemicals Limited and Vam Organics Chemicals Ltd., the subject Regulatory Fees intended to prevent the conversion of alcoholic liquor for industrial use to that for human consumption is legal, and need not be strictly quid pro quo as long as it is not excessive. [Para 5] [191-A-E]

Vam Organics Chemicals Ltd. vs. State of U.P. (1997) 2 SC 715:1997 (1) SCR 403; Synthetics & Chemicals Limited vs. State of U.P. (1990) 1 SCC 109: 1989 (1) Suppl. SCR 623 – relied on.

Case Law Reference

1989 (1) Suppl. SCR 623 relied on. Para 2

1997 (1) SCR 403 relied on. Para 3

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5307-5308 of 2005

From the Judgment and Order dated 21.10.2003 and 02.07.2004 of the High Court of Judicature of Andhra Pradesh in W.P. No. 5284 of 2001 and Rev. W. P. Misc. Petition No. 14353 of 2004 respectively

A. T. M. Ranga Ramanujam, Hitesh Kumar Sharma, Prachar Sharma, Sridhar Reddy, Abhijit Sengupta for the Appellant.

A Prerna Singh, Guntur Prabhakar for the Respondents.

The Judgment of the Court was delivered by

B **VIKRAMAJIT SEN, J.** 1 The Appellant before us assails the concurrent findings of the learned Single Judge and the Division Bench of the High Court of Andhra Pradesh at Hyderabad, upholding the legality of the levy of an Administrative Fee at the rate of 50 paise per bulk litre or any other rate as may be fixed by the Government from time to time on industrial alcohol obtained from a distillery.

C 2 The Appellant is a manufacturer of Ethyl Acetate, the basic raw material for which is industrial alcohol. The Appellant has been receiving allotments of denatured spirit from the Respondents since 1972. By way of an amendment to Rule 3 of the Andhra Pradesh Denatured Spirit and Denatured Spirituous Preparations Rules, 1971 (1971 Rules for brevity), the collection of a gallonage fee, under the head of privilege fees, at the rate of 1 per bulk litre was introduced. The Appellant filed a writ petition in 1995 contending that the levy and collection of such an amount without rendering any service is illegal, arbitrary and without justification. The High Court vide its order dated 13.10.1997 disposed of the writ petition, directing the Appellant to approach the concerned authorities seeking a refund and with a direction to the authorities to consider the same in accordance with the law. In pursuance of G.O.M. No. 147 dated 6.3.1998, the Government introduced the collection of Administrative Fee of 50 paise per bulk litre in lieu of withdrawal of collection of the abovementioned privilege fees as per the orders of the Seven Judge Bench of this Court in **Synthetics & Chemicals Limited vs. State of U.P.** (1990) 1 SCC 109. This Rule was given retrospective effect from 25.10.1989. The Government therefore responded to the Appellant by issuing G.O.Rt. No. 313 dated 13.3.2000, whereby in accordance with G.O.M. No.147, the Commissioner

of Prohibition and Excise was permitted to adjust the excess amount of privilege fees paid with effect from 25.10.1989 towards future allotments of alcohol for industrial purposes against Administrative Fee. Since the Appellants had paid an amount of 2,09,500, it was to get a refund of 1,04,750 after the adjustment of an equal amount towards administrative fees. Aggrieved by this order, the Appellant approached the High Court once again, seeking the issuance of a writ of Mandamus declaring that the amendment of Rule 3 of the 1971 Rules as amended by G.O.M. No. 147 is arbitrary, illegal, ultra vires and unenforceable, and a further declaration that the Appellant is entitled to the refund of the entire amount collected as gallonage fees with interest at 18% per annum. The Appellant's case was that the State cannot make any law in purported exercise of its legislative competence with reference to Entry 8 of List II to levy privilege fees or any other fees in respect of alcoholic liquors which are not meant or fit for human consumption.

3 The High Court placed reliance on **Synthetics and Chemicals Limited**, wherein this Court observed as follows:

"The State, in exercise of powers under Entry 8 of List II and by appropriate law may, however, regulate and that regulation could be to prevent the conversion of alcoholic liquors for industrial use to one for human consumption and for the purpose of regulation, the regulatory fees only could be justified. In fact, the regulation should be the main purpose, the fee or earning out of it has to be incidental."

The High Court also considered this aspect of the law in **Vam Organics Chemicals Ltd. vs. State of U.P.** (1997) 2 SC 715, the Appellants wherein were manufacturers of 'vinyl acetate monomer', for which industrial alcohol is the main stock. The Appellants therein were liable to pay a denaturation

A fee at the rate of 7 paise per litre. They challenged this, contending that the State of U.P. had no power to legislate or levy taxes in respect of industrial alcohol, and that the levy was bad as it was not based on a quid pro quo basis. The Supreme Court held that “so long as any alcoholic preparation can be diverted to human consumption, the States shall have the power to legislate as also to impose taxes, etc.” Ergo, the State has the competence and the obligation to supervise the denaturation of spirit. Furthermore, this Court held that “in the case of regulatory fees, like the license fees, existence of quid pro quo is not necessary although the fee imposed must not be, in the circumstances of the case, excessive.” Keeping in view the quantum and nature of work involved in supervising the process of denaturation and the consequent expenses incurred by the State, the fee of 7 paise per litre was held to be reasonable and proper. The High Court found that the decision of the Supreme Court in **Vam Organics Chemicals Ltd.** was a complete answer to the submissions of the Appellant. There was found to be no reason to hold that the administrative fee at the rate of 50 paise per bulk litre was excessive.

4 Furthermore, the Appellant’s plea that the Rule could not have been made efficacious with retrospective effect was dismissed in light of the fact that the competency of the rule making authority to impart retrospective effect was not in dispute and no other ground was made out to support this contention. The Single Judge accordingly dismissed the writ petition on 21.10.2003. The Appellant’s Review Petition was also dismissed on 2.7.2004.

5 The Appellant has now filed these Appeals before us, contending that the abovementioned amendment cannot be given retrospective effect, and that the fees should be levied at the rate of 7 paise per litre, since this amount was found to be “reasonable and proper” in **Vam Organics Chemicals Ltd.**

We find no force behind either of these contentions. No ground has been made out for the former contention, and Section 72(3) of the Andhra Pradesh Excise Act, 1968 specifically allows that – “Any rules under this Act may be made with retrospective effect and when such a rule is made the reason for making the rule shall be specified in a statement to be laid before both Houses of the State Legislature.” Regarding the latter contention, 7 paise was deemed to be reasonable on the facts of that case which does not in any way indicate that a larger amount would be excessive especially with the passage of time. We have discussed when administrative and service charges can be recovered along with the relevant case law in some detail in our judgment of even date in the Appeal titled as State of Tamil Nadu vs. Tvl. South Indian Sugar Mills, which should be adverted to in the interests of avoiding prolixity. We uphold the High Court’s finding that in light of **Synthetics and Chemicals Limited** and **Vam Organics Chemicals Ltd.**, the subject Regulatory Fees intended to prevent the conversion of alcoholic liquor for industrial use to that for human consumption is legal, and need not be strictly quid pro quo as long as it is not excessive. We find no merit in these Appeals and they are accordingly dismissed.

Devika Gujral

Appeals dismissed.