IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2015

Coram

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. Nos.34105 of 2012 and 30480 of 2014

W.P.No.34105 of 2012

Royal Chickens
Rep., by its Sole Proprietor,
O.Sajivan,
Pandakkal,
Mahe - 673 310 ... Petitioner

Vs.

Union of India,
Union Territory of Puducherry,
Rep., by its Chief Secretary to Govt.,
Government of Puducherry,
Puducherry. ... Respondent

Respondent's cause title is amended as per order dated 08.04.2015 in M.P.No.1 of 2015 in W.P.No.34105 of 2012.

W.P.No.30480 of 2014

1.Keiniku Chickens
Rep., by its Sole Proprietor,
Surjith Kumar
MMC 1/118 & 119, Parakkal Main Road,
Mahe - 673 310.

2.Al-Safa Chickens
Rep., by its Sole Proprietor,
Ali.P.K.,
MMC VI/160, Pondhyatt, Chalakkara Post,
New Mahe,
Mahe - 673 311

3.V.K.Mahesh Kumar,
Proprietor of Gunasunder Enterprises,
Rep., by it Power of Attorney
V.K.Rajesh Kumar
Door.No.M.M.C., No.X/249,
Near Register Office, Chokli,
Mahe - 670 672.

4.Babu P.P.,Proprietor of
Cherukallayi Chicken -
Rep., by it Power of Attorney
V.K.Rajesh Kumar
Door No.M.M.C., IV/496
Mahe. ... Petitioner

Vs.

Union of Inida,
Union Territory of Puducherry,
Rep., by its Chief Secretary to Government,
Government of Puducherry,
Puducherry. ... Respondent

Respondent's cause title is amended as per order dated 18.08.2015 in M.P.No.1 of 2015 in W.P.No.30480 of 2014.

Common Prayer :-Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration to declare the Puducherry Value Added Tax (Amendment) Act 2012 (Act No.5 of 2012) as unconstitutional, illegal and void.

For petitioner .. Mr.C.Vigneswaran
in both WPs for Mr.R.Parthiban

For Respondents .. Mrs.N.Mala AGP(Puducherry)
in both WPs

C O M M O N O R D E R

(Order of the Court was made by T.S.SIVAGNANAM,J.)

The petitioners, who are registered dealers under the provisions of the Central Sales Tax Act and the Puducherry Value Added Tax Act, 2007, (hereinafter referred to as the said Act), have filed these Writ Petitions praying for issuance of a Writ of Declaration to declare the Puducherry Value Added Tax (Amendment) Act, 2012, (Act No.5 of 2012) (hereinafter referred to as the 'Act') as unconstitutional, illegal and void.

2. The petitioners are sole proprietorship concerns engaged in wholesale and retail distribution of live chicken and other live

stock. It is submitted that Section 20 of the said Act deals with 'Exemption from Tax' and states that subject to certain restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the First Schedule to the Act shall not be liable to pay any tax under the said Act in respect of such goods. It is submitted that Entry 39 of the First Schedule includes Meat, Fish, Prawn and other aquatic products when not cured or frozen; eggs and live stock.

3. The petitioners' case is that live chicken comes within the meaning of live stock and exempt from payment of Value Added Tax. It is further submitted that in terms of sub-section (1) of Section 14 of the Act, every registered dealer or a person liable to be registered under the Act, whose total turnover for a year exceeds rupees ten lakhs and every casual trader or agent of a non-resident dealer, whatever be his turnover for the year, shall pay a tax on the taxable turnover in each tax period at the rate and at the point as specified in the Schedules. It is submitted that in the list of goods specified in third Schedule live stock or chicken was not included. It is further submitted that the Government of Puducherry by the notification dated 31.12.2011 in G.O.Ms.No.68/F2/2011, brought an amendment to Entry No.39 of the First Schedule by splitting up the same into two entries namely, 39A and 39B. The products which fall under those entries are as hereunder:-

> 39-A, Meat, Fish Prawn and other aquatic products when not cured or frozen and eggs;
>
> 39-B, Live Stock other than chicken sold in Mahe Region

4. It is further submitted that under Entry 81, a new entry namely, Entry 81A was inserted to include live stock sold in Mahe region. The said notification dated 31.12.2011, came into effect from 01.01.2012, and the petitioners became liable to pay Value Added Tax on live chicken sold in Mahe Region. The petitioner filed Writ Petitions in W.P.Nos.3568 and 3569 of 2012, challenging the notification and the consequential amendments to the First and Third Schedule of the Act and while Writ Petitions were pending, the impugned enactment was passed by the Legislative Assembly of the Puducherry. Therefore, the Writ Petitions were dismissed as withdrawn by order dated 23.08.2012, with liberty to challenge the amendment provisions. In the background of these facts, the present Writ Petitions have been filed.

5. Mr.C.Vigneswaran, learned counsel appearing for the petitioner submitted that Puducherry comprises of four regions namely, Puducherry, Yanam, Karaikal and Mahe and to levy tax on a particular product in one region alone is discriminatory and violative of Article 14 of the Constitution of India. Further, it is submitted that the relevant entry included several non-vegetarian foods such as meat, fish, prawn and to single out one product alone

and subject the same to tax is highly discriminatory and the impugned enactment has sought to create a class, within a class, which is impermissible and there is absolutely no nexus with the object sought to be achieved. It is further submitted that even a taxation statute has to satisfy the test of Article 14 of the Constitution of India and when it leads to inequality the statute is liable to be struck down. In support of such contention, reliance has been placed on the decisions of the Hon'ble Supreme Court in the case of Karimbil Kunhikoman & Ors., vs. State of Kerala reported in AIR 1962 SC 723, Ayurveda Pharmacy & Anr., vs., State of Tamil Nadu, reported in AIR 1989 SC 1230, and Aashirwad Films vs. Union of India & Ors., reported in (2007) 5 MLJ 170 (SC) .

6. Mrs.N.Mala, learned Special Government Pleader appearing for the respondent submitted that the Writ Petitioners have challenged the levy of tax on live chicken in Mahe region on the ground of discrimination and such contention is not tenable, as there is reasonable classification in imposition of tax in Mahe alone. It is submitted that the Union Territory of Puducherry comprises of four regions wherein Karaikal and Puducherry regions are surrounded by State of Tamil Nadu, Yanam is surrounded by State of Andhra Pradesh and Mahe is surrounded by State of Kerala. In the States of Tamil Nadu and Andhra Pradesh, there is a total tax exemption in respect of sale of live chicken, whereas the State of Kerala levies tax at 14.5%. It is submitted that the dealers like petitioners have charged the same price for the live chicken as prevalent in Kerala, where there is imposition of tax at 14.5%. It is submitted that the petitioners are enjoying the benefit of exemption and have not passed on the same to the consumer and are selling the live chicken at the same rate as sold in Kerala State and the Mahe consumers are in no way benefited by the exemption granted. It is submitted that the Government of Puducherry in exercise of sovereign power and in order to augment revenue levied tax at a reasonable rate of 5% on the sale of live chicken in Mahe region. Consequent on such imposition of tax, there is an additional revenue of Rs.6.7 crores per annum to the Government which is being used to undertake welfare measure. It is submitted that earlier Empower Committee conducted a study and recommended exemption from levy of tax on live chicken and on coming to know that in Mahe region, the benefit of exemption was not passed on to the consumers and public, the Government decided to levy tax at the rate of 5% on sale of live chicken in Mahe region by notification dated 31.12.2011, which was given effect to from 01.01.2012, after which, the Act was amended replacing the notification. It is submitted that though the notification came into effect from January 2012, the petitioners did not remit any tax and it is stated that a total amount of Rs.13,62,73,652/- is due and payable by all the petitioners towards tax and penalty.

7. Further, it is submitted that similarly placed persons like that of the petitioners have been paying tax and except the petitioners herein, none have questioned the amended Act. It is

submitted that one other dealer of Mahe region filed Writ Petitions in W.P.Nos.3568 & 3569 of 2012, which were dismissed as withdrawn. Further, it is submitted that the present Writ Petitions are only to avoid the tax liability which has already accrued on the petitioners and they have not cleared the arrears of tax due and payable by them. On the above submissions, the learned Special Government Pleader prays for dismissal of the Writ Petition. In support of her contention, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in the case of Sri Srinivasa Theatre & Ors., vs. Government of Tamil Nadu & Ors., reported in 1993 STC 201 (SC) and Associated Cement Companies Ltd., vs. Govt., of A.P., & Anr., reported in (2006) 1 SCC 597.

8. Heard the learned counsels appearing for the parties and perused the materials placed on record.

9. The challenge to the impugned amendment to the Puducherry Value Added Tax Act is primarily on the ground that the impugned enactment is discriminatory and violative of Article 14 of the Constitution of India. The petitioners are dealers in live chicken registered under the provisions of the Act and carrying on business in Mahe region of the Union Territory of Puducherry. In terms of Section 20 of the Act, goods specified in the First Schedule of the Act are not liable to tax. Entry 39 of the First Schedule includes live stock. It is not in dispute that the product dealt by the petitioners namely live chicken falls within the meaning of live stock. By virtue of the exemption, no tax is liable to be paid on the sale of live chicken by the petitioners. While so, a notification was issued by the Government of Puducherry, on 31.12.2011, bringing about an amendment to Entry 39 of the First Schedule. The Entry 39A included Meat, Fish, Prawn and other aquatic products when not cured or frozen and eggs. Entry 39-B included live stock other than chicken sold in Mahe region. An amendment was also brought about in Schedule 3 of the Act, by adding the new Entry, under Entry No.81 as Entry 81-A including live chicken sold in Mahe region. Thus, by virtue of the amendment, live chicken sold in Mahe region was liable to be payment of tax. The rate of tax was fixed at 5%, which the Government of Puducherry, states is reasonable in the facts and circumstances. It is common knowledge that Union Territory of Puducherry consists of four regions and its unique geographical location is in close proximity with three neighbouring States. Puducherry and Karaikal are adjoining the State of Tamil Nadu, Yanam adjoining the State of Andhra Pradesh and Mahe adjoining the State of Kerala. The amendment brought out by notification dated 31.12.2011, which was subsequently substituted by the impugned amendment to the Puducherry Value Added Tax Act, was brought into effect from 01.01.2012 thereby levying tax at the rate of 5% on the sale of live chicken only in Mahe region. The petitioners content that this is discriminatory and violative of Article 14 of the Constitution of India. It is the further submission that even a taxing statute has to satisfy the test of Article 14 of the Constitution of India. In

this regard, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Karimbil Kunhikoman & Ors., vs. State of Kerala reported in AIR 1962 SC 723, and Aashirwad Films vs. Union of India & Ors., reported in (2007) 5 MLJ 170 (SC).

10. The legal principle deducible from the decisions of the Hon'ble Supreme Court relied on is that a taxing statute though enjoins greater latitude, is not beyond the pale of challenge under Article 14 of the Constitution and if the legislation leads to any in quality, it may violate the equality clause. After referring to several decisions, the Hon'ble Supreme Court referred to Weaver's Constitution Law and observed that class legislation is that which makes an improper discrimination by conferring particular privileges upon a class of persons, arbitrarily selected from a large number of persons, all of whom stand in the same relation to the privilege granted and between whom and the persons not so favoured no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege. It was further pointed out that a classification must not be arbitrary, artificial or evasive and there must be a reasonable, natural and substantial distinction in the nature of the class or classes upon which the law operates.

11. In the case of Aashirwad Films vs. Union of India & Ors., reported in (2007) 5 MLJ 170 (SC), the classification was faulted as being only on the basis of language without anything more and therefore, having a different rate of tax was held to be exfacie arbitrary. In the case of Ayurveda Pharmacy & Anr., (supra) the Hon'ble Supreme Court held that the levy of higher rate of sales tax on Arishtams and Asavas is discriminatory, as they are also medicinal preparation and cannot be treated differently for the purpose of sales tax on the ground of their high alcoholic content. We may pointed out that the decision in the case of Aashirwad Films (supra), would not render any assistance to the case of the petitioners as the issue which arose therein was regarding the rate of tax in respect of a medicinal preparation and it was held that there was no rational basis for discrimination between one commodity and another for the purpose of imposing tax.

12. It is well settled legal principle that the State does not have to tax everything in order to tax something; it enjoys a wide discretion in the matters of taxation and enjoys more freedom for classifying the objects to be taxed and the rates of taxation and the burden for proving discrimination is heavier still when a taxing statute is under attack. Further, the State can validly pick and choose one commodity for taxation and the same is not open to attack under Article 14 (See Twyford Tea Co. Ltd., vs. State of Kerala reported in (1970) 1 SCC 189 and East India Tobacco Co., vs. State of A.P., reported in AIR 1962 SC 1733).

13. Thus, the burden is on the petitioners to show that the impugned amendment is discriminatory and offends Article 14 of the Constitution. In taxation, the legislature possess greater freedom in classification and the petitioners to succeed in striking down the impugned amendment should be able to demonstrate that the impugned amendment makes an improper discrimination, it is arbitrary and amounts to class legislation.

14. The argument of the petitioners is that the live chicken sold in Mahe region alone cannot be subjected to payment of tax and it amounts to a class legislation as the same product is exempted from tax in other regions in the Union Territory of Puducherry. For the petitioners to succeed, it is not sufficient for the petitioners to state that it is a class legislation. What is required to be established is that such legislation makes an improper discrimination. Therefore, it has to be seen as to whether the Government of Puducherry was justified in making such a distinction and whether the same was reasonable and had a valid basis.

15. It is not in dispute that no tax is leviable in respect of sale of live chicken in the State of Tamil Nadu and State of Andhra Pradesh. The Puducherry Value Added Tax Act grants similar exemption to its dealers, who trade in the areas in the Union Territory of Puducherry adjoining the States of Tamil Nadu and Andhra Pradesh (i.e.,) Puducherry, Karaikal and Yanam. The only distinction sought to be made is for Mahe region for which tax has been imposed at the rate of 5%. The justification being, Mahe is adjoining the State of Kerala in which the sale of live chicken is taxable at 14.5% under the Kerala VAT Act. It came to the notice of the Government that the dealers like the petitioners, who deal in live Chicken in Mahe region were selling their products at the same rates as sold in Kerala State (border state), which is subjected to tax at 14.5% in that State. Thus, it was established that the dealers like the petitioners had availed the exemption and the benefit of the exemption was not passed on to the consumers. Therefore, the Government accepted the decision of the Empowered Committee and issued a notification with effect from 01.01.2012, which subsequently was made as an amendment to the Act (impugned Act).

16. From the counter affidavit it is seen that on account of making the transaction taxable at 5%, the Government of Puducherry has been able to generate an yearly revenue Rs.6.7 crores, which are to be utilised for other developmental activities. Therefore, the distinction sought to be made for making the transaction taxable for Mahe region alone cannot be termed to be an improper exercise nor arbitrary or an artificial classification, but a reasonable one with a substantial distinction between two classes.

17. As pointed out by the Hon'ble Supreme Court, the State enjoys a vide discretion in the matters of taxation and classifying the objects to be taxed and the rates of taxation. As pointed out

by the Hon'ble Supreme Court in the case of Khandige Sham Bhat vs. Agricultural ITO reported in AIR 1963 SC 591, the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification, so long as it adheres to the fundamental principles underlying the said doctrine and the power of the legislature to classify is of 'wide range and flexibility' so that it can adjust its system of taxation in all proper and reasonable ways.

18. Hence, we find that the basis for bringing about the impugned amendment, which in fact came into effect from 01.01.2012, initially as a notification, is based on valid and reasonable classification and does not offend Article 14 of the Constitution of India. We may note that the petitioners are dealers who have defaulted in payment of tax even though the amendment came into effect from January 2012 and it is stated that the total amount of Rs.13,62,73,652/- is due and payable as tax and penalty by four dealers which includes the petitioner in W.P.No.30480 of 2014 and it appears that the present Writ Petitions have been filed to stall the recovery proceedings, which is all the more reason to reject the relief sought for.

19. In the result, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

pbn

To
The Chief Secretary to Govt.,
Union of India,
Union Territory of Puducherry,
Government of Puducherry,
Puducherry.

1 cc to Mr. R.Parthiban, Advocate Sr.No.43771

W.P. Nos.34105 of 2012 and 30480 of 2014

gr(co)pmk.25.9.2015