

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.24765 of 2015
Date of decision: 7.12.2015**

M/s Laxmi Sadan, Sector 19, Rewari

.....Petitioner

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Joginder Pal Sharma, Advocate for the petitioner.

Ajay Kumar Mittal, J.

1. Challenge in this petition is to the levy of tax on open space termed as “banquet halls” providing only accommodation or space for marriages/receptions in terms of Section 2(c) in the manner stated under Section 2(k) of the Haryana Tax on Luxuries Act, 2007 (in short, “the Act”) as these are not covered under the head 'Luxury' vide entry No.62 of List II of Schedule VII of the Constitution of India. Prayer has also been made for setting aside Explanation to Section 2(k) of the Act which prescribes inclusion of charges for amenities, even if arranged by persons other than the proprietor of the banquet hall. The petitioner has also assailed levy and collection of tax on charges for banquet hall under Section 9 read with Section 11 of the Act to be bad being based on assumption and presumptions.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is engaged in letting out open space for marriage functions. The activity being carried out by the petitioner has been brought under the head “luxury” and subject to tax under the Act inspite of the fact that it does not provide luxury in terms of sections 2(j) and 2(k) of the Act. In terms of Section 2(k) of the Act, the cost of amenities/services provided by the persons other than the petitioner are to be added for the purpose of computing the luxury tax notwithstanding that these are provided by persons other than the proprietor of the banquet hall. The levy and collection of tax is governed by Section 9 of the Act. The petitioner is required to register itself under the Act by virtue of Section 11 of the Act. The petitioner is further required to deposit security on the basis of anticipated tax payment under Section 11(4) of the Act. Under Section 12 of the Act, every proprietor shall declare the normal rate for luxury provided by him in such manner and within such period as may be prescribed. According to the petitioner, the services provided by the proprietors do not fall under the definition of “luxury”. The premises of the petitioner are no doubt banquet hall in terms of the definition under Section 2(c) of the Act still the same does not provide luxury in terms of Section 2(j) of the Act. The activity of the petitioner does not come under the purview of the Act and the service of letting out the space in any manner does not constitute 'luxury' under the Act. As long as the petitioner is letting out its space for marriages without providing any facility like air conditioning, air cooling, chairs, tables, utensils etc. for a consideration below ₹ 20,000/- per function, its subject activity cannot be termed as luxury. As far as provision

for amenities is concerned, it is the option of the organizer to arrange of its own. The charges for amenities are bound to vary from function to function depending upon the type of arrangement and cannot be defined on uniform basis. According to the petitioner, in the present times, arranging marriage functions in a banquet hall is no more a luxury. Providing facility of performing a marriage in a marriage hall is a necessity. The services rendered by the petitioner are subject to service tax limited to the value of consideration received. One such Assessment was made for the year 2012-13 putting the liability as ₹ 4,17,96,000/- vide order dated 27.11.2014, Annexure P.2. The petitioner had to approach the appellate authority under Section 31 of the Act. Vide order dated 16.7.2015, the said order was set aside and the case was remanded back to the assessing authority for framing de novo assessment in accordance with law after providing opportunity of hearing to the petitioner. Hence the instant writ petition with the prayer as mentioned above.

3. The primary grievance of the petitioner that arises for consideration in this petition is whether the computation of taxable limit of ₹ 20,000/- for levy of luxury tax for “luxury provided in banquet hall” as depicted in Explanation to Section 2(k) of the Act is unconstitutional or not. In other words, whether the services provided by the petitioner in the shape of open space termed as “banquet halls” for marriages/receptions fall under the definition of 'luxury' so as to be liable to levy of tax in terms of Sections 2(j) and 2(k) of the Act.

4. It was urged that the State is not competent to legislate for imposing 'luxury tax' on banquet halls, which simply let out the space for

conducting marriages. According to the petitioner, the services provided by it are not liable to levy of tax. Reliance was placed on judgments in *M/s Sandley Industries vs. Union of India and others*, CWP No.10564 of 2014, decided on 20.8.2015 and *Bidhannagar (Salt Lake) Welfare Association vs. Central Valuation Board and others*, (2007) 6 SCC 668. Reference in the petition has also been made to judgments in *Godfrey Phillips India Limited and another vs. State of UP and others*, (2005) 2 SCC 515, *Govind Saran Ganga Saran vs. Commissioner of Sales Tax and others*, 1985(Supp.) SCC 205 and *Tamil Nadu Kalyana Mandapam Association vs. Union of India*, AIR 2004 SC 3757.

5. Elaborating his submissions further, learned counsel for the petitioner argued that the letting out of space for the marriage functions in a banquet hall would not constitute 'luxury' under the Act specially when the petitioner has been letting out the open space for marriages without providing any facility like air conditioning, air cooling, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast or other amenities for a consideration below ₹ 20,000/- per function.

6. It was also contended that so far as the provision for amenities is concerned, it is exclusively the option of function organizer to arrange of his own. The charges for amenities keep on varying depending upon the type of arrangement and there cannot be any uniform basis for assessing it. The petitioner only enters into contract with the function organizer and does not exercise any control over the charges incurred by the other party for the amenities. The actual expenses incurred by the third party cannot be

included in the threshold limit of ₹ 20,000/- for calculating luxury tax. As the third party is under no obligation to disclose the expenses incurred to the petitioner, therefore, no tax liability can be fastened on the petitioner for acts and omission of others which is unsustainable.

7. Continuing with his submissions, the Act was also assailed on the ground that the taxable event is when the services are offered and consideration is received. Under the Explanation to Section 2(k) of the Act, the charges incurred by the function organizer for the amenities gathered/arranged by him are to be added in the turnover of the petitioner who has no direct nexus with the same. The liability of luxurious amenities is being fastened on the petitioner for the levy and collection of luxury tax which is self-incriminating and, thus, liable to be set aside.

8. Lastly, it was submitted that the arranging of marriage function in a banquet hall would not constitute 'luxury' in the present day circumstances. It is a necessity and not a luxury, as due to increase in population, holding of such functions in marriage halls cannot be termed as 'luxury'. The activity of the petitioner cannot be said to be akin to entertainment, amusement, betting and gambling as used in Entry No.62 in List II of Seventh Schedule of the Constitution of India. The luxury in hotels would be on different pedestal from renting out land as banquet hall. The State Legislature is infact incompetent to do so as it lacks legislative competence. Further, no machinery for redressal of grievances has been provided under the Act for settlement of disputes. Tax levied on the basis of mere estimates, presumptions and assumptions cannot be held to be valid.

9. We have heard learned counsel for the petitioner and do not

find any merit in the contentions raised by him.

10. The State legislature derives its power under Entry 62 of List II of Schedule VII of the Constitution of India to enact law in respect of 'Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling'. With that constitutional sanction, Haryana Tax on Luxuries Act, 2007 was enacted to provide for the levy and collection of tax on luxuries and for matters incidental thereto and connected therewith. The relevant statutory provisions incorporated under the Act needs to be scrutinized. Section 2 of the Act provides definition of various expressions used in the Act which read thus:-

“2 (c) "banquet hall" means any premises or part of premises, garden or part of the garden or farm house or part of farm house where accommodation or space is provided, by way of business for a monetary consideration, for marriage, reception, or matters related therewith, seminar, convention, banquet, kitty-party, meeting, or exhibition cum sale or such other hall as may be specified by the Commissioner, whether functions or events are conducted in such halls regularly or not;

(d) "charges for banquet hall" include charges for air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, electricity, water, fuel, interior or exterior decoration, music systems, orchestra, live telecast, and the like and any amount received by way of donation or charity or by whatever name called in relation to letting out the banquet hall but do not include any charges for food and drinks;

Explanation.- If any question arises whether any charges are charges for banquet hall, such question shall be referred to the State Government and decision of the State Government shall be final;

(j) "luxuries" means services ministering to enjoyment,

comfort or pleasure extraordinary to necessities of life ;

(k) “luxury provided in a banquet hall” means accommodation or space provided in a banquet hall, the rate of charges for which (including charges for air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities but do not include any charges for food and drinks) is twenty thousands rupees or more per occasion;

Explanation.-While computing twenty thousand rupees or more, charges for providing air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities will be taken in account even if charged separately whether by the proprietor of a banquet hall or on his behalf by any other person providing such amenities in any capacity recognized by law if such amenities are provided within the precincts of such banquet hall;

11. Sections 9, 11 and 12 of the Act which have been referred to in the petition may be noticed. They read thus:-

Levy and collection of tax on charges for banquet hall.

9. (1) Subject to the provisions of this Act, there shall be levied and collected a tax, on the charges payable on the luxury provided in a banquet hall, at the rate of ten percent or such other rate not exceeding fifteen percent, as the State Government may, by notification in the Official Gazette, direct: Provided that tax levied under sub-section (1) shall be paid only by such proprietor wherein charges for the luxury provided in a banquet hall are twenty thousand rupees or more with in the meaning of clause (k) of section 2.

(2) The tax levied under sub- section (1) shall be paid by every proprietor in such manner as may be prescribed.

Registration of proprietors.

11. (1) Every proprietor liable to pay tax shall get himself registered under this Act in such manner and within such period as may be prescribed and shall pay such registration fee as may be prescribed.

(2) Every proprietor registered under sub-section (1) shall be granted a registration certificate and the same shall be valid until cancelled.

(3) The assessing authority may for good and sufficient reasons, demand from a proprietor liable to pay tax, security for securing payment of tax and on such demand, the proprietor shall furnish security within a period of ten days from the date of receipt of the order demanding security.

(4) The amount of security payable under sub-section (3) shall not exceed an amount equivalent to one-fourth of tax anticipated for the year from the proprietor. The assessing authority may demand an additional security, if it has reason to believe that the security furnished already is inadequate.

(5) The security furnished shall be maintained in full until the registration is cancelled.

(6) Where a proprietor has more than one place of business, the registration shall cover all such places of business. The assessing authority shall issue, free of cost, copies of the registration certificates to the proprietor for exhibition at each of his places of business.

(7) A proprietor registered under sub-section (1) shall be entitled to have his registration cancelled if he is able to prove to the satisfaction of the assessing authority that he has discontinued, transferred or otherwise disposed off his business. .

(8) The assessing authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

(9) A registration certificate shall be personal to the proprietor

to whom it is granted and shall not be transferable.

Declaration of charges.

12. Every proprietor liable to pay tax shall declare the normal rate fixed for luxury provided by him in such manner and within such period as may be prescribed.”

12. A perusal of the above provisions shows that luxury in a banquet hall means accommodation or space provided for marriage functions etc. therein. The charges for the amenities like tent, air cooling, air conditioning chairs and tables except food and drinks will be ₹ 20,000/- or more per occasion. While calculating the said amount, the charges for other amenities shall be taken into account even if charged separately whether by the proprietor of a banquet hall or on his behalf by any other person if the said amenities are provided within the precincts of such banquet hall. As per section 9 of the Act, the tax shall be collected on the charges payable on the luxury at the rate of ten percent or more but not exceeding fifteen percent where the charges are ₹ 20,000/- or more. Under Section 11(4) of the Act, the petitioner is required to deposit security on the basis of anticipated tax payment. Under Section 12 of the Act, every proprietor liable to pay tax shall declare the normal rate for luxury provided by him in such manner and within such period as may be prescribed.

13. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. The power to tax is an incident of sovereignty. The power conferred on the legislature to levy tax must be widely construed. The rule of interpretation requires that an entry in either of the lists in 7th Schedule should not be read in a narrow or pedantic sense but it should be allocated fullest meaning and the widest

amplitude so as to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them.

14. The Constitution Bench of the Supreme Court in the case of ***Express Hotels Private Limited vs. State of Gujarat***, (1989) 74 STC 157 while examining the scope of Entry 62 of List II of Schedule VII of the Constitution of India under similar circumstances held that the concept of tax on “luxury” cannot be limited merely to tax things, tangible and corporeal in their aspect as “luxuries”. The relevant observation reads thus:-

“The concept of a tax on 'luxuries' in Entry 62, List II cannot be limited merely to tax things tangible and corporeal in their aspect as 'luxuries'. It is true that while frugal or simple food and medicine may be classified as necessities; articles such as jewellery, perfume, intoxicating-liquor, tobacco, etc., could be called articles of luxury. But the legislative entry cannot be exhausted by these cases, illustrative of the 'concept'. The entry encompasses all the manifestations or emanations, the notion of 'luxuries' can fairly and reasonably be said to comprehend. The element of extravagance or indulgence that differentiates 'luxury' from 'necessity' can not be confined to goods and articles. There can be elements of extravagance or indulgence in the quality of services and activities.”

15. In the light of earlier judgment of the Supreme Court in ***Western India Theatres Limited vs. Cantonment Board, Poona Cantonment***, 1959(2) Supp. SCR 63 which was interpreting Entry 50 in Schedule VII of the Government of India Act, 1935 which was identical i.e. “taxes on luxuries including taxes on entertainments, amusements, betting and gambling”, it was observed in ***Express Hotels Private Limited's*** case (supra) as under:-

“In the Western India Theatres Ltd. v. The Cantonment Board, Poona Cantonment, [1959] 2 Supp. SCR 63, this court was dealing with the scope of the power of the Provincial Legislature under Sec. 100 of the Govt. of India Act, 1935, with respect to Entry 50 in Schedule VII of the said Act, to make laws with respect to "taxes on luxuries including taxes on entertainments, amusements, betting and gambling". The contention of the appellant in that case was that the entry authorised a law imposing taxes on persons who received or enjoyed the luxuries etc. and that no law made with respect to that Entry could impose a tax on persons who provide the luxuries, entertainment or amusements. It was contended that those who provide the luxury-etc., did not themselves receive or enjoy the luxury or entertainment or amusement, but were simply carrying on their profession or trade and were not amenable to be taxed under that Entry. Rejecting the argument it was said:

" In view of this well established rule of interpretation, there can be no reason to construe the words 'taxes on luxuries or entertainments or amusements' in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax "

(Emphasis supplied) The concept of 'luxuries' as a subject of tax was not confined to those who received or enjoyed the luxury. It could be on those who provided it.”

16. Further, referring to another Constitution Bench judgment in

A.B.Abdul Kadir and others vs. State of Kerala, AIR 1976 SC 182 = (1976)

2 SCR 690, it was noticed that an expenditure on something which is in excess of what is required for economic and personal well being would be expenditure on luxury although the expenditure may be of a nature which is inclined by a large number of people, including those not economically well off. It was recorded thus:-

" The word "luxury" in the above context has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word "luxury" is something which conduces enjoyment over and above the necessities of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse 'or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well-off "

It was also noticed that as to what constitutes article of 'luxury' cannot be static and keeps on changing based on citizens of one country or nationals of another country for precious living in a different climate. The relevant observations read thus:-

“There is nothing static about what constitutes an article of luxury. The luxuries of yesterday could well become the necessities of today. Likewise, what constitutes necessity for citizens of one country or for those living in a particular climate may well be looked upon as an items of luxury for the nationals of another country or for those living in a

different climate. A number of factors may have to be taken into account in adjudging the commodity as an article of luxury....”

17. The word “luxury” though not defined in the Constitution of India is defined in Section 2(j) of the Act to mean services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life. As noticed above, the bone of contention in the present case primarily relates to Explanation to Section 2(k) of the Act which provides for computation of value of facilities or amenities to be included as items of luxury in respect of “luxury provided in a banquet hall”. According to the explanation for assessing the quantum of ₹ 20,000/- as referred in Section 2(k) of the Act, the facilities or amenities enumerated therein provided by the proprietor of the banquet hall or by any other person in any capacity on his behalf when such facilities or amenities are provided within the precincts of the banquet hall shall be taken into consideration. In our opinion, the explanation being clarificatory in nature has simplified the calculation as to what amount would be included for quantifying ₹ 20,000/-. It cannot be held to be unreasonable or arbitrary in any manner as it encompasses those cases where the facilities or amenities are provided by the proprietor of the banquet hall or any person on his behalf when such amenities are provided within the precincts of such banquet hall. It can by no stretch of imagination on taking hypothetical illustration be declared to be ultra vires without showing lack of legislative competence of the State to enact such a provision or there being violation of any constitutional mandate.

18. Nothing has been shown by the learned counsel for the petitioner to substantiate that the State legislature was not empowered to

define the expression 'luxury in the banquet hall' under Section 2(k) in the statute. The definitions of various expressions under Section 2 of the Act and other substantive provisions of the Act are within the legislative competence and have not been shown to be contrary to any constitutional mandate. The services provided by the petitioner do fall under the said definition so as to be liable to levy of tax. Once there exists legislative competence in the State legislature to enact a provision, in the absence of the learned counsel for the petitioners to demonstrate that the same is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared to be unconstitutional.

19. It is well settled law that a statute enacted by Parliament or legislature can only be struck down by courts on two counts which are viz; (a) lack of legislative competence; and (b) violation of any of the fundamental rights granted in Part III of the Constitution of India or any other Constitutional provision. It is equally well recognized that no enactment can be struck down by merely saying that it is arbitrary, unreasonable or unjust. It was pronounced by the Apex Court in *State of Andhra Pradesh vs. McDowell & Co.* AIR 1996 SC 1627 as under:-

“No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that matter, the State Legislatures is restricted in two ways. A law

made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground....”

In other words, a provision, statute or law shall not be declared to be unconstitutional and void solely on the ground of unjust and harsh provisions or it violates some natural, social, political or economic rights of citizen, unless it is established that such injustice in fact is prohibited or violates the rights guaranteed or protected by the Constitution of India.

20. As far as the judgments cited by the learned counsel for the petitioner, there is no quarrel with the proposition of law enunciated therein.

In *Bidhannagar's* case (supra), it was held by the Apex Court that when a substantive unreasonableness is to be found in a statute, it may have to be declared unconstitutional. Although the court may not go into the question of a hardship which may be occasioned to the tax payers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. In *M/s Sandley Industries'* case (supra), sub rule 3A of Rule 8 of the Central Excise Rules, 2002 to the extent it contained the words 'without utilizing the CENVAT Credit' was struck down by this Court being arbitrary and unreasonable in view of the facts and circumstances enumerated therein. In the present case, nothing has been shown by the learned counsel for the petitioner that the provisions are arbitrary or unreasonable and, therefore, unconstitutional. We have also examined the judgments referred to in the petition in *Godfrey Phillips India Limited, Govind Saran Ganga Saran*

and *Tamil Nadu Kalyans Mandapam Association's* cases (supra). The

propositions of law enunciated in these pronouncements are unexceptionable but in view of the factual matrix herein and the discussion made above, no advantage can be derived by the petitioner therefrom.

21. In conclusion, in our opinion, the provisions of Explanation to Section 2(k) of the Act and also the other provisions of the Act to which an attempt has been made to assail as ultra vires, cannot be held to be beyond the legislative competence of the Haryana State Legislature or that they had exceeded its law making power or contravened any of the provisions of the Constitution of India on the basis of which it could be declared to be unconstitutional. The validity of the same is upheld and the petition is dismissed.

(Ajay Kumar Mittal)
Judge

December 07, 2015
'gs'

(Ramendra Jain)
Judge