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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.752/1992

Date of decision: 30.4.93

Between

1. DLRL Civilian Employees' Union,
(Regd.No.65-A) recognised by
AIDEF No.152), rep. by its
President B.Chandriah

2. K.BabuRao

... APPLICANTS

A N D

1. Govt. of Andhra Pradesh,
rep. by its Secretary,
Commercial Tax Dept., Sectt.Bldg.,
Hyderabad.

2. Director,
Defence Electronics Research
Laboratory (DLRL),
Chandrayanagutta, Hyderabad.

3. Commissioner of Profession Tax/
Commissioner of Commercial Taxes,
A.P., Hyderabad.

4. Dy. Commercial Tax Officer,
Saidabad, Malakpet Circle, Hyderabad.

5. Government of India rep. by its
Secretary, Ministry of Personnel
Administration, New Delhi.

6. Govt. of India, rep. by its
Secretary, Ministry of Defence,
New Delhi.

... RESPONDENTS

Appearance:

For the applicants : Sri S.Laxma Reddy, Advocate

For the Respondents 1,3&4: Sri D.Panduranga Reddy, Spl.Counsel
for State of A.P.

For the Respondents : Sri N.V. Raghava Reddy and case

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice Chairman

The Hon'ble Sri P.T.Thiruvengadam, Member (Administration).

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J U D G E M E N T

(of the Bench delivered by Hon'ble Sri Justice V. Neeladri Rao, Vice-Chairman).

The first applicant is D.L.R.L. Civilian Employees' Union while the second applicant is one of the employees of Defence Electronics Research Laboratory (DLRL), Hyderabad.

2. Profession tax is levied under A.P. Tax on Professions, Trades, Callings and Employments Act, 1987 hereinafter referred to as Act No. 22 of 1987. The said Act had come into effect from 15-6-1987 as per ~~Notification No. 1~~ para I issued by G.O. Ms. No. 557, Rev.(s) dated 8-6-1987. By ~~Notification~~ issued by para III of the said G.O., the Deputy Commercial Tax Officers (DCTO) are appointed as assessing authorities for levy and collection of ^{profession} tax in their respective jurisdiction. Section 5 of the Act 22 of 1987 enjoins upon the employers to deduct the profession tax from the salaries of the employees engaged by them and pay the same to the concerned authority on behalf of the employees. The employer is liable to pay the profession tax on behalf of the employees even when such deduction is not made from the salary of the employee. When the Director of D.L.R.L. (Respondent No. 2) had not paid their the profession tax on behalf of ~~the~~ employees, notice in reference No. A/80/92 dated 18-6-1992 was issued to the Respondent-2 by Respondent No. 4 informing him about his statutory obligation of deduction of profession tax from the salaries of its employees every month, filing

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of monthly returns in Form-V, and payment of profession tax with effect from 15-6-1987. Thereupon, the Administrative Officer of DLRL, Hyderabad issued proceedings dated 1-7-92 informing the employees of their liability to pay the profession tax at the rates referred to. Then this O.A. was filed praying for declaration that Act 22 of 1987 in so far as levy and charge of tax on employees on the basis of their salaries and wages is ultra vires of the powers of the State Legislature and hence unconstitutional and for consequential declaration that the demand notice dated 18-6-92 is illegal and without jurisdiction.

3. It was pleaded for the applicants that Entry 60 of List 2 of VII Schedule to the Constitution empowers the State Legislature to levy the tax in regard to employment and it has no power to levy tax on salaries and wages of the employees. The salaries and wages paid to the employees are the value or price of the service and the tax on the same amounts to tax on income coming within the purview of Entry 82 of List 1 of VII Schedule to the Constitution, and the Parliament alone has the power to impose tax on income. The State Legislature can impose the profession tax by classifying the employments on the basis of some common characteristics or standards but not on the basis of the salaries and wages received by them. The power conferred under Entry 60 of List 2 can be exercised only in case of self-employment and the same cannot be exercised to impose a tax on the

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employees for it will not be a case of tax on employment. It was further pleaded for the applicants that even the wages/salaries paid to the employees cannot be held as income for it is a price paid to the services rendered by them. The amount received as wage/salary is for recouping the energy spent in rendering the service. In any case, the applicants are not liable to pay the profession tax as they are paid from out of the Defence Estimates and not from out out of the Consolidated Fund of the Central or State.

4. The learned counsel for the applicants urged the two following points.

(i) When the salary/wage of the employee is taken as criterion, the tax levied as profession tax is a tax on income and the State Legislature is not empowered to impose it. The State Legislature has power to impose tax on employment and the imposition of profession tax by taking the salary or wage as the basis, cannot be held as tax on employment; and

(ii) As the applicants are paid from out of the Defence Estimates and not from the Consolidated Fund of India, the State Legislature is not empowered to levy the profession tax on them.

5. We will take up the second contention first. It was pleaded for R-3, the Commissioner of Profession Tax, A.P., Hyderabad that even the amounts as per Defence Estimates are spent from out of the Consolidated Fund of India. The same is not refuted for applicants. Further, the

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defined
employee is ~~held~~ under Section 2(e) of Act 22 of 1987
and it is as follows:

Sec.2: Definitions:

- (e) "employee" means a person employed on salary or wages and includes,--
- (i) an employee of the Central Government or any State Government to whom the salary is paid either from the Consolidated Fund of India or of a State;
 - (ii) a person in the service of a body, whether incorporated or not, which is owned or controlled by the Central Government or any State Government where the body operates in any part of the State, even though its headquarters may be situated outside the State; and
 - (iii) a person engaged in any employment of an employer not covered by items (i) and (ii) above.

It is manifest from Section 2(e), sub-clause (iii) of Act 22 of 1987 that even an employee who is not paid from the Consolidated Fund of India or State is also an employee who is liable to pay the profession tax under Act 22 of 1987. When it was contended in Writ Petition No.13382 of 1987 and batch on the file of the A.P.High Court that officers and servants of the High Court are not liable to pay profession tax under Act 22 of 1987, it was observed in the judgment dated 17-7-92 delivered by the Division Bench in the above Writ Petitions that Section 2(e)(iii) of Act 22 of 1987 is wide enough to cover the employees of the High Court also. Hence even assuming that the applicants are not paid from out of the Consolidated Fund of India, still they come within the ambit of employees as defined under Section 2(e) of Act 22 of 1987.

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6. We will now advert to the first contention for the applicant. As per Act 22 of 1987, every employee who earns more than Rs.1,000/- per month towards wages or salary, is liable to pay profession tax at the following rates:

<u>Gross emoluments p.m.</u>	<u>Monthly tax leviable</u>
a) Rs.1001/- to Rs.1250/-	Rs.6/-
b) Rs.1251/- to Rs.1500/-	Rs.9/-
c) Rs.1501/- to Rs.1750/-	Rs.12/-
d) Rs.1751/- to Rs.2000/-	Rs.15/-
e) Rs.2001/- to Rs.2250/-	Rs.18/-
f) Rs.2251/- & above	Rs.20/-

It was contended for the applicant that the above particulars indicate that the income is not taken as a measure for imposition of tax and it is a tax on the income itself. It was urged that the subject of the levy, the nature of which defines the quality of levy must not be confused with the measure of liability that is to say the quantum of the tax. In support of the said contention, AIR 1991 SC 1676 (Orissa Cement Ltd. Vs. State of Orissa) is referred. Before advertng to the said contention it is convenient to refer to the relevant provisions of the Constitution. Article 276 of the Constitution says that no law of the Legislature of a State relating to tax for the benefit of the State or a municipality, district board, local board or other local authority wherein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income and it is further stated in Article 276 that

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such laws of the State Legislature are not invalid notwithstanding anything stated in Article 246. Article 246(1) empowers the Parliament alone to make laws with respect of any of the matters enumerated in List I in the VII Schedule. Entry 82 in List I of VII Schedule refers to tax on income other than agricultural income. But in view of the non-~~obstantee~~ ^{obstantee} clause in Article 276, the law of the Legislature of a State relating to tax in respect of professions, trades, callings or employments is valid even though it ~~is~~ ^{is} a tax in relation to income. It may be noted that even Article 276(2) of the Constitution imposes the maximum limit that can be levied as profession tax per annum. Article 276(3) is to the effect that the power of the State Legislature to make laws with respect to tax on professions, trades, callings and employments, does not affect or limit the power of Parliament to make laws with respect to tax on income accruing from or arising out of professions, trades, callings and employments.

7. By reading Article 276 alongwith Article 246 and Entry 82 of List I of the VII Schedule to the Constitution, it can be stated as under:

*It is for the Parliament to impose tax on income other than agricultural income, but including the income accruing from or arising out of professions, trades, callings and employments. Even the State Legislature can impose tax for its benefit or of a municipality, district board, local board, or other local authority in respect of professions, trades, callings, or employments and the same is not invalid merely on

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the ground that it relates to a tax on income. Thus, it is manifest from Article 276(1) that even the income can be taken as basis for imposing tax in respect of professions, trades, callings or employments which is referred to as profession tax. But the only condition is that tax imposed by way of profession tax should be within the limit prescribed under Article 276(2).

Hence the question of State Legislature imposing tax on income ^{at any rate} under the guise of profession tax, does not arise for the tax that can be imposed by way of profession tax should be within the limit prescribed under Article 276(2).

8. Article 276 makes it clear that the levy of profession tax can be with reference to income from professions, trades, callings or employments and in view of the non-obstante clause, the legislation by the State for imposing such a levy is valid even though under Article 246 read with Entry 82 of List I of VII Schedule of the Constitution, Parliament alone is given power to impose tax on income other than agricultural income. It is further made clear in Article 276(3) that the Parliament's power to impose tax on income accruing on professions, trades, callings and employments ^{not} is impaired even when the State Legislature takes it as basis for levy of profession tax. Hence there is no need to refer to the various cases wherein the question which has fallen for consideration is whether income is subject of levy or it is only a measure of liability for imposing quantum of tax.

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Sd/-

To

1. The Secretary, Govt. of A.P.
Commercial Tax Dept., Secretariat Building,
Hyderabad.
2. The Director, Defence Electronics Research
Laboratory (DLRL) Chandrayanagutta, Hyderabad.
3. The Commissioner of Profession Tax/
Commissioner of Commercial Taxes, A.P. Hyd.
4. The Deputy Commercial Tax Officer,
Saidabad Malakpet Circle, Hyd.
5. The Secretary, Govt. of India,
Ministry of Personnel Administration,
New Delhi.
6. The Secretary, Govt. of India,
Ministry of Defence, New Delhi.
7. One copy to Mr. S. Lakshma Reddy, Advocate, CAT. Hyd.
8. One copy to Mr. N. V. Raghava Reddy, Addl. CGSC. CAT. Hyd.
9. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt. CAT. Hyd.
10. One copy to Deputy Registrar (J) CAT. Hyd.
11. One copy to Hon'ble Mr. Justice V. Neeladri Rao, V.C. CAT. Hyd.
12. Copy to All Reporters as per standard list of CAT. Hyd.
13. One spare copy.

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As such it has to be stated that it is open to the State Legislature to take the income from professions, trades, callings or employments into consideration for quantifying the rate of profession tax. It is stated for the applicants that the classification in regard to employees can be made as class I, II or III officers and non-gazetted for fixing the rate of tax. But it has to be seen that the profession tax is levied not only on the government employees but also on the employees of private sector. Such categorisation may not exist in the private sector. Further, even in the case of companies, an officer in middle management in a big company get more than an officer in the higher management in a small company. Further, when the classification on the basis of income cannot be held as arbitrary and if that classification is having nexus to the object that is intended to be achieved, the same cannot be held as violative of Article 14 of the Constitution. When classification on the basis of income for imposing of profession tax at various rates can be held as valid, the possibility of having classification on some other basis is not a ground to hold that the classification on the basis of income is illegal. Hence it is not necessary to consider further as to whether there can be any better classification on the basis of some other criteria for imposing the profession tax at various rates.

9. Hence this O.A. does not merit consideration and it is accordingly dismissed. No costs.

P.T. Thiruvengadam
(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice Chairman

Dated: the 30th day of April, 1993.

mhb/vsn

8/5/93.
Deputy Registrar (5)

Roneo
11/5/92

TYPED BY _____ COMPARED BY _____
CHECKED BY (10) APPROVED BY _____

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. *P. T. T. Vengadler* ~~R. BALASUBRAMANIAN~~;
MEMBER (ALMN)

AND

THE HON'BLE MR. T. CHANDRASEKHAR
REDDY : MEMBER (JUDL)

DATED: 30-4-1993

ORDER/JUDGMENT *7084 P. 2*

R.P./ C.P/M.A.No.

in

O.A.No.

752/92

T.A.No.

(W.P.No)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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Central Administrative Tribunal
DESPATCH
20 MAY 1993
HYDERABAD BENCH

21-10-93
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