
(1954) 10 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 54 of 1954

A. Kunju Moideen Kunju

APPELLANT

Vs

State of Travancore Cochin

RESPONDENT

Date of Decision : 27-10-1954

Acts Referred:

Constitution of India, 1950 — Article 286(1)

Citation : AIR 1954 Ker 111

Hon'ble Judges : V.S. Subramanya Iyer, J;M.S. Menon, J

Bench : Division Bench

Advocate : K.K. Mathew, for the Appellant; Govt. Pleader, for the Respondent

Judgement

Menon, J.—Paragraphs 1 and 2 of the Petitioner's affidavit sum up the facts of the case as follows:

1. I am the Petitioner in the above Original Petition. I am a dealer in gunny bags, vegetables etc. My dealings are both within and outside the State. During the year 1951-52 the assessable turnover of my sales within the State was found by the 3rd counter-Petitioner as Rs. 97,880-2-0 and was assessed to pay by way of sales tax an amount of Rs. 1,536-12-3 by proceedings dated 14-11-1953. I have already paid the said amount.

2. By the same proceedings I was also directed to pay an amount of Rs. 3386 which I had collected from my customers on sales outside the State till 19-1-1952, during the period for which the assessment was made. I preferred an appeal before the 2nd counter-Petitioner against the order of the 3rd counter-Petitioner dated 14.11.1953. That appeal was dismissed by order dated 30-3-1954.

and the prayer, in the petition is for a writ of certiorari or other appropriate writ or direction quashing the two orders mentioned above. The relevant portion of the order of the 3rd counter-Petitioner dated 14-11-1953 (Ext A) is in the following terms:

He has realised sales-tax at 3 pies till 19-1-1952 for sales outside the State. His only authority for the same is his Registration Certificate of this State. He has no Registration Certificate in Madras State where his goods have been sold. Rules lay down that all taxes realised on the strength of the Registration Certificate issued from this State has to be remitted into the treasury.

Further it is not proper on his part to retain the sales tax of Rs. 3,386/- realised by him for outside sales. Notice of demand will therefore be issued for payment of sales-tax realised by him, viz., Rs. 3,386/-, on outside sales although the turnover viz., Rs. 351,148/- is not assessable.

And the appellate order of 30-3-1954 (Ext. B) reads as follows:

The Appellant is a dealer in empty gunnies, tins, vegetables etc. He was selling goods both within and outside the State. During the year 1951-52 the Appellant has collected sales-tax to the extent of Rs. 3,386 on inter-state sales. The Sales Tax Officer has demanded the tax so collected. This appeal is filed against the above demand.

Heard the Advocate for the Appellant. It is submitted that the Appellant is not liable to pay sales tax to this State on sales outside the State under Article 286(1) (a) of the Constitution of India.

According to the Supreme Court decision he is liable to pay the tax in question to the State of delivery only and that the tax was collected as a precautionary measure as the law was not certain then.

It is also contended that the Sales Tax Officer is not justified in demanding the tax u/s 11(2) of the Act, because Section 11 of the Act does not apply as this is not a collection under the Travancore-Cochin General Sales Tax Act.

It is also submitted that the collection was made as a precautionary measure, and if it is not found due the amount has to be refunded to his customers, or if demanded, to the Madras State where the goods have been delivered for consumption in pursuance of the sale.

The Advocate has also referred to the judgment of our High Court in Velayudhan v. Agrl. Income Tax and Sales Tax Officer, Perumbavoor, wherein it is decided that the tax collected under the Travancore-Cochin General Sales Tax Act from his purchasers is immune from further levy of sales tax, as the collection is made by him for and on behalf of the State and his obligation is to make it over to the State on whose behalf he makes the collection, No part of the money collected by way of sales tax belongs to him.

Considering the facts of this case under appeal, the above ruling is more in favour of the department than to the Appellant, because the collections under reference were made by him for and on behalf of the State and his obligation is to make it over to the State on whose behalf he makes the collection.

According to the judgment of the Supreme Court in Bombay case, it is true, the

State in which the goods are delivered for consumption is alone entitled to get the sales tax on the goods so delivered in pursuance of sales effected. But the sales tax officer has levied no tax on the turnover of inter-State or outside sales, but has called upon him to pay tax collected by him u/s 11(2) of the Act.

It is seen that the Appellant actually collected this tax under the Travancore Cochin General Sales Tax Act long before the judgment of the Supreme Court and the amount has been collected by him by way of sales tax from his customers for and on behalf of the State. So the tax so collected has to be paid over to this State. It is so held by our High Court in *K.J. Mathew v. The Sales Tax Officer, Alwaye*.

The contention that the tax collected by the Appellant from his customers is beyond the scope of the provisions of the Travancore-Cochin General Sales Tax Act is also not tenable, because the Appellant is empowered to collect sales tax u/s 11 of the Act only.

In the result, the appeal is dismissed.

Section 11, Travancore Cochin General Sales Tax Act, 1125, provides:

(1) No person who is not a registered dealer shall collect any amount by way of tax under this Act; nor shall a registered dealer make any such collection except in accordance with such conditions and restrictions, if any, as may be prescribed:

(2) Every person who has collected or collects any amount by way of tax under this Act on or after the date prescribed under the proviso to Sub-clause (1) shall pay over to Government all amounts so collected by him if they are in excess of the tax, if any, paid by him for the period during which collections were made; and in default of such payment, the amounts may be recovered as if they were arrears of land revenue" and the sole question for determination in this case is whether the sum of Rs. 3,386/- collected by the Petitioner from the purchasers in respect of sales outside the State, which admittedly do not attract any sales tax under the enactment has to be paid over to the Government under the provisions of Sub-section (2) of Section 11.

2. All that could be urged in favour of the Petitioner's contention has been urged with success before the Madras High Court in (1954) 5 STC 382 (Mad)(A). After studying the judgment carefully and hearing Mr. K.K. Mathew on behalf of the Petitioner we regret to say, with great respect, that we cannot find our way to adopt the conclusion reached in that decision.

As we read the Act any amount collected by way of tax, that is, any amount that the Petitioner obtained from, his customers on the ground that it was the sales tax due on the transactions-whether such a tax was actually due on the sales or not-is a collection which has to be handed over to the State under the provisions of the Act. In other words, we see no reason to depart from the view that one of us has been taken in (1954) 5 STC 58 (TC)(B).

3. The question as to whether the Petitioner is bound to return the amount in case his customer demands it back on the ground that it was paid under a mistake of law or whether the Petitioner could claim a statutory immunity in respect of such demands is not a matter that arises for decision at present.

We may mention in passing, however, that the position taken up by the State before and by the learned Advocate General of Madras in the decision mentioned above was that if the person who paid the tax applies for a refund and establishes his claim therefore the same will be given by the State.

4. In the light of what is stated; above the Petitioner must fail, if the sum of Rs. 3,388/- was collected; by him by way of tax, even though the transactions as such did not attract any sales tax under the Travancore Cochin General Sales Tax Act, 1125. The question of fact, however, as to whether his collection was by way of tax or otherwise has not been determined, by the Appellate Assistant Commissioner in his order dated 30-3-1954 (Ext. B).

5. In para. 5 of his affidavit the Petitioner has stated:

The amount now taxed is collected on the definite understanding that it will be returned to the customers from whom it was collected, in case it is ultimately found that the sales effected are not liable to be taxed and demand for the same is being made by the customers.

The counter-affidavit on behalf of the department deals with this averment only as follows:

Averments in para 5 are denied. The alleged understanding referred to therein on the face of it is impossible and against all provisions of the Sales Tax Law.

6. Ext. B makes it quite clear that the Petitioner did contend before the Appellate Assistant Commissioner that the collection was made as a precautionary measure and that if no tax liability accrued in this State or the State of Madras where the goods were delivered for consumption in pursuance of the sale, the amounts collected had to be refunded. There is nothing in the Appellate Order to show that this contention was denied by the Department at that stage or that the Appellate Assistant Commissioner considered the question on its merits.

7. The questions arising on this aspect of the case can be formulated as follows:

(1) Can the Petitioner's averment that the collection was made solely as a precautionary measure and on the understanding that the amounts collected will be refunded if no liability to sales tax accrued in this State or the State of Madras be accepted as true? and

(2) If the answer to question No. 1 is in the affirmative will such a collection amount to a collection "by way of tax" within the meaning of Section 11, Travancore Cochin General Sales Tax Act, 1125?

8. These two questions have not been considered by the Appellate Assistant

Commissioner and in view of this his order in appeal must be quashed and the papers sent back to him for fresh determination on the basis of his conclusions on the questions mentioned above.

9. The Original Petition will stand allowed in the manner and to the extent indicated above, but in the circumstances of the case without an order as to costs.