(1955) 12 KL CK 0001

In the High Court Of Kerala

Case No : A.S. No. 404 of 1954

A. Subramania Iyer APPELLANT

Vs

The Travancore-Cochin State and Another RESPONDENT

Date of Decision : 16-12-1955

Acts Referred:

Constitution of India, 1950 — Article 265
General Clauses Act, 1897 — Section 20

Citation : (1956) 7 STC 826

Hon'ble Judges : Nandana Menon, J;K. Sankaran, J

Bench : Division Bench

Advocate : K.P. Abraham and K.T. Ninan, for the Appellant; Government Pleader and M.U. Isaac, for the Respondent

Final Decision : Dismissed

Judgement

Sankaran, J.—This is an appeal directed against the order passed by a learned Judge of this Court in O. P. No. 15 of 1954. In that O.P. the appellant-petitioner had prayed for an order quashing the notification No. SRI-4739/5I/A/R.D., dated 18th July, 1951, published by Government in exercise of the powers conferred by Section 6(1) of the Travancore-Cochin General Sales Tax Act (Act XI of 1125). The effect of this notification was to cancel the earlier notification No. SR1-1643/A/51/R.D., dated 5th February, 1951. This was also a notification published under the authority of Section 6(1) of the Sales Tax Act. Sub-section (1) of Section 6 empowered Government to make an exemption or reduction in rate in respect of any tax payable under the Act, by publication of a notification to that effect in the Gazette. The sub-section runs as follows :

Government may, by notification in the Gazette, make an exemption, or reduction in rate, in respect of any tax payable under this Act-

(i) on the sale of any specified class of goods at all points or at any specified point or points in the series of sales by successive dealers ; or

(ii) by any specified class of persons in regard to the whole or any part of their turnover.

2. The appellant is a dealer in tobacco and he was liable to pay tax on his turnover, such tax being calculated at the rate fixed by Section 3 of the Sales Tax Act which is the taxing section. Sub-section (1) of Section 3 provides that "(a) every dealer shall pay for each year, a tax on his total turnover for such year ; (b) the tax shall be calculated at the rate of 3 pies for every Indian rupee in such turnover". Exemption from the liability to pay tax under this section was granted by the first notification issued by Government on 5th February, 1951, which ran as follows :

In exercise of the powers conferred by Section 6(1) of the Travancore-Cochin General Sales Tax Act, 1125 (XI of 1125), the Government of Travancore-Cochin hereby exempts sales of tobacco from the tax payable under Sub-section (1) of Section 3 of the said Act.

The notification granting such an exemption was cancelled by the subsequent notification published on 18th July, 1951. This latter notification is in the following terms :

In exercise of the powers conferred by Section 6(1) of the Travancore-Cochin General Sales Tax Act, 1125 (XI of 1125), the Government of Travancore-Cochin are. pleased to cancel the notification No. SR1-1643/A/51-R.D., dated 5th February, 1951, published in the ''Gazette dated 6th February, 1951, exempting the sale of tobacco from the tax payable under Sub-section (1) of Section 3 of the said Act.

This notification was impugned by the petitioner as being ultra vires the powers of Government u/s 6(1) of the Act and was sought to be quashed for that reason. The learned Judge overruled this contention by holding that the power conferred on Government u/s 6(1) of the Act to grant exemption from the tax payable u/s 3 included also the power to rescind or cancel the exemption once granted. Accordingly the O. P. was dismissed with costs.

3. That the power conferred on Government by Section 6(1) of the Sales Tax Act to make an exemption, or reduction in rate in respect of any tax payable under the Act, by publishing a notification to that effect in the Gazette includes the power to revoke or cancel such an exemption or reduction by the issue of a further notification in the Gazette, can admit of no doubt in view of Section 20 of the Travancore-Cochin Interpretation and General Clauses Act, 1125. The general provision contained in that section runs as follows :

Where by any Act, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules, or bye-laws so issued.

The appellant-petitioner has no case that in publishing the second notification the procedure contemplated by Section 20 of the General Clauses Act was in any way violated. On the other hand, the point urged on his behalf is that the effect of the second notification is to impose a tax on him and that the imposition of such a tax by the issue of a notification is beyond the powers of Government. Article 265 of the Constitution is also relied on in support of the position that no tax can be imposed or levied except under an express authority conferred by statute. This contention could have prevailed it the notification issued on 18th July, 1951, resulted in the imposition of any new tax on the petitioner, it is obvious that the tax that he has to pay was not imposed by this notification. Such tax had already been imposed by Sub-section (1)''of Section 3 of the Sales Tax Act and the liability to pay such tax arose from the date on which the Act came into force. The effect of the first notification dated 5th February, 1951, granting exemption from the payment of such tax, was only to suspend the levy of such tax so long as the notification granting the exemption remained in force. The suspension of the levy of the tax came to an end as soon as the notification granting the exemption was cancelled by another proper and valid notification. This latter notification cannot be said to have the effect of the imposition of any new tax. On the other hand, the notification merely removed the ban that had been placed on the levy of the tax which the statute had already imposed under Sub-section (1) of Section 3. The power of removing such a ban is co-extensive with the power granted by Section 6(1) to impose the ban by publishing a notification granting the exemption contemplated by that section, This position is made clear by Section 20 of the General Clauses Act. There is, therefore, no force or substance in the contention urged on behalf of the appellant-petitioner that the second notification issued by Government on 18th July, 1951, is ultra vires the powers of Government u/s 6(1) of the Sales Tax Act. The order passed by the learned Judge repelling such a contention and dismissing the O. P., has only to be affirmed.

4. In the result this appeal is dismissed with costs.