(1956) 12 KL CK 0017

In the High Court Of Kerala

Case No : O.P. No. 271 of 1955 (E)

Brilliant Traders Ltd. APPELLANT

Vs

Sales Tax Officer, Quilon RESPONDENT

Date of Decision : 12-12-1956

Acts Referred:

Citation : AIR 1958 Ker 375 : (1957) 1 KLJ 39 : (1957) 8 STC 42

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : P. Govinda Nair, K.V.R. Shenoi and P.M. Alexander, for the Appellant; M.U. Issac, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Varadaraja Iyengar, J.—This is a petition under Article 226 of the Constitution filed by Messrs. Brilliant Traders Ltd., Quilon, questioning the validity of an order u/s 11 (2) of the Travancore-Cochin Sales-tax Act, XI of 1125.

2. The petitioners were assessed to sales-tax by the 1st respondent Sales-tax Officer, Quilon, on 15-12-1953 for the periods 1951-52 and 1952-53 in respect of their sale transactions in timber inside the State. That same order exempted their other transactions by way of inter-State sales, but they were directed to pay over to the State a sum of Rs. 6,966-11-6 pies and another sum of Rs. 2,613-11-0 which had been already collected by them as sales-tax on such transactions during those periods u/s 11(2) of the Act. The petitioners disputed their liability to pay these collections but they were overruled by the Sales-tax Officer in the first instance and thereafter in appeal and revision before the respondents 2 and 3 respectively.

Hence this petition for the issue of appropriate writ or order or direction quashing the order for payment u/s 11(2). The main grounds relied on in the affidavit in support were three-told, firstly that Section 11(2), on proper construction applied only to sales-tax properly collectable and collected. It did not apply to illegal collections as here made, secondly, that Section 11(2) could apply only to tax collected specifically under Travancore-Cochin Sales-tax Act and not the Madras Act as the petitioners had purported to do. This ground was modified to certain extent at the time of argument, and thirdly that the order for return should have excepted cases of refund already made by the petitioners to particular vendees. This last ground was given up at the time of argument.

3. The petition was resisted by the respondents on the footing that the first ground as to construction of Section 11(2) of the Act was unsustainable, and as regards the other grounds the basic acts were themselves being questioned.

4. Taking up the first ground of objection raised by the petitioner, the question depends upon the scope of the provision contained in Section 11(21) of the Act:

"Every person who has collected or collects any amount by way of tax under this Act..... ....shall pay over to Government all amounts so collected by him..-.........."

In K. J. Mathew v. Sales-tax Officer, Always, (1954) 5 STC 58 (TC) (A), where this question first arose, in the erstwhile Travancore-Cochin High Court, Subramonia Iyer, J., held that the liability of the dealer to pay the State the tax collected by him by virtue of Section 11(2) was obvious and the learned Judge went on to say that it was gratifying to note that the liability was not disputed at the Bar.

In the next case in that Court Kunju Moideen Kunju v. State of T. C. 1955 KLT 898: (1954) 5 STC 462; ((S) AIR 1956 Trav Co 111) (B), the contention was seriously raised that the obligation to pay tax to the State was confined to tax which was justly and properly leviable and had been so collected, so that when a registered dealer collected tax from purchasers under a mistaken conception of the liability of the sales to sales-tax e.g., on inter-State sales as here or on sales effected outside the State, the amounts so collected being illegal levies, need not be paid over and reliance was placed on the Bench decision of the Madras High Court in Tata Iron and Steel Co., Ltd. v. State of Madras (1954) 5 STC 382 (C). M. S. Menon, J., who delivered the judgment on behalf of the Bench observed:

"All that could be urged in favour of the petitioner''s contention has been urged with success before the Madras High Court in Tata Iron and Steel Co,, Ltd. v. State of Madras (C). 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 that 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 transaction -- 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 had taken in (1954) 5 STC 58 (TC) (A)."

5. Learned counsel for the petitioner drew my attention however to a recent Bench decision in the Hyderabad High Court viz., Cement Marketing Co. v. Krishnamoorthy AIR 1956 Hyd 124 (D), where the Madras High Court decision in Tata Iron and Steel Company''s case (C) was followed in preference to the two Travancore-Cochin cases above referred to. He also referred me to another decision in Minerva Mills Ltd. v. State of Mysore 1956-7 STC 148 (Mys) (E). where the Tata Iron and Steel Company''s case (C) was followed by the Mysore High Court in the interpretation of the corresponding section of the Mysore Sales-tax Act and has requested me to reconsider the position if possible, so far as this Court is concerned and I proceed to do so.

6. Now it may be conceded that the basic features of the Sales-tax enactment are (i) The levy of tax is on the dealer and the authority empowered by the Act to collect that tax is the State Government (Section 3). (ii) The dealer by virtue of registry is empowered to collect the tax from the customer or purchaser (Section 11(1)) but this does not absolve him from his own liability u/s 3(iii), What the State can levy u/s 3 and similarly what the registered dealer could collect u/s 11(1) is the lawfully leviable tax.

But the question is whether Section 11(2) compels the dealer to pay to the State any illegal collection he had made from the consumer or purchaser by "way of tax". The Madras case equated the extent of obligation imposed upon the registered dealer u/s 11(2) (corresponding to Section 8B(2) of the Madras Act) to the extent of the power conferred on him u/s 11(1) . That is to say, it is what he has lawfully collected u/s 11(1) that he has to pay over to the State Government u/s 11(2). And the reasoning is mentioned at the end of page 390 :

"Apart from the language of the section itself the need for such a restriction on the* obligation of a registered dealer should be obvious."

But can this reasoning necessarily hold ? For one thing it appears to me, with the greatest respect that the language of Section 11(2) is not incapable of the construction that the registered dealer shall pay over to Government all amounts he had collected "by way of tax under the Act" i.e., as tax, and under colour of authority and irrespective of the legality of the levy. The section requires no doubt that he should pay over all amounts collected by him "if they are in I excess of the tax, if any, paid by him, for the period during which the collections were made". But this provision for deduction, it seems to me, has no bearing on the question of the outer limit of the liability of the dealer to pay over.

7. It should be remembered that the power to collect stems from the registration of the dealer u/s 10. Rule 8 imposes the condition that the registered dealer should not exceed the rate fixed and he should besides pay in full the amount or amounts collected by him by way of tax or taxes. And the certificate issued under the relevant Form III refers again to the condition that he should pay the entire amount of tax collected by him. Here is a case of a conferment of power by the State on a dealer subject to an obligation on the part of the dealer to pay over to

the State all and every collection made by him during the course of the exercise of the power.

In such case what is wrong in holding that the donee of the power is bound to account to Government even for illegal collections. See Reading v. Attorney-General (1951) AC 507 (F), whereby adopting an extended view of fiduciary obligation and also applying tho doctrine of money had and received, a Sergeant of the British army was held incompetent to retain the gains he had made by an illegal use of his uniform. This decision was held incapable of application by the learned Judges of the Madras High Court, if I may say respectfully, on perhaps a narrow ground of distinction.

8. The Hyderabad decision referred to by learned Counsel, besides following the reasoning of the Madras case, relies further on the definition of tax in Section 2(1) and on its collectability only under law to say that the imposition of the liability in the dealer to pay over even illegal collections would imply that the State is authorising tho levy of an illegal impost. With great respect this does not follow. The Mysore decision simply follows the Madras case.

9. On the whole, the principle adopted in the Travancore-Cochin cases already referred to do not call for any'' reconsideration. I, therefore, hold that tho petitioner is not absolved of the liability to pay over the instant collections to the Stale by the mere fact that they were not properly levied in respect of the transactions concerned.

10. Coming next to the second ground, that the tax collections were not made under the Travancore-Cochin Act, XI of 1125, learned Counsel for the petitioner said that the statement in the affidavit that the collections here were made specifically under the Madras Act was incorrect and therefore not pressed. But he said that the tax collected was in the nature of a deposit as the position was not clear as to which State the dealer has to remit the tax and it cannot therefore be claimed to be a collection by way of tax under the Act. And he referred in this connection to Ext. B letter dated 30-6-1951 addressed to the assessing authority, Sales Tax Department, Quilon, to pay:

"Since we come to understand that no sales tax is to be paid on sales effected outside the State we have remitted sales-tax for the month of May 1951: only on sales effected within our State. We trust that our action is in order."

But there can be no doubt that the only authority which empowered the petitioners to collect sales-tax at all was by virtue of the registration which they bad u/s 10 of the Travancore-Cochin General Sales Tax Act. The collections were also at rates provided for by the Act. The finding of the Sales tax authority on this matter is also perfectly clear. There is no substance, therefore, in this ground as well.

11. Learned Counsel for the petitioners suggested that inasmuch as the collections were made by the petitioners in the nature of deposits, the question

had still to be ascertained whether such amounts amounted to a collection "by way of tax" within the meaning of Section 11 as held in 1955 KLT 898: ((S) AIR 1956 Trav Co. 111 (B). But the petitioners'' case was clear at all stages that it was only as tax that they made the collections at all and the only point raised was that the collections were not made under the Travancore-Cochin Act.

12. The third ground as to refund already made was not pressed and therefore, does not arise or consideration. But I should say that the observations in die orders impugned that the petitioners had no right to do this and if they had done so, they did it at their risk is certainly wrong, A claim preferred by the person who had paid the amount to the registered dealer would lie against the Government without doubt. If so, an earlier payment over by the registered dealer himself to the rightful claimant would be unobjectionable.

13. In the result the petition has no merit. It is therefore rejected with costs. Counsel''s fee Rs. 150/- (one set only).

