

(2005) 06 KL CK 0068
In the High Court Of Kerala
Case No : W.A.No. 136 of 1997

Collector of Central Excise and Customs
Vs
State of Kerala

APPELLANT
RESPONDENT

Date of Decision : 13-06-2005

Acts Referred:

Constitution of India, 1950 — Article 285
Customs Act, 1962 — Section 22(1), 22(2)
Kerala General Sales Tax (Amendment) Act, 1978 — Section 2

Citation : (2005) 3 ILR (Ker) 217 : (2005) 3 KLT 474 : (2008) 11 VST 832

Hon'ble Judges : Rajeev Gupta, C.J.; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : John Varghese, Asst. Solicitor General, for the Appellant; C.K. Abdul Rahim, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ Petition was preferred by the Collector of Customs and Central Excise seeking a declaration that the Central Excise and Customs Department of the Government of India administering the Customs Act, 1962 and is not liable to pay sales tax under the Kerala General Sales Tax Act on disposal of goods during the course of administering the Customs Act, 1962 and also for a declaration that the Kerala General Sales Tax Act, 1962 as amended by Act 3 of 1968 and Act 21 of 1978 particularly Section 2 thereof is ultra vires in so far as the said Act pertains to Central Excise and Customs Department of Government of India administering the Customs Act, 1962 and disposal of the goods by the said Department.

2. Learned Single Judge repelled the contention placing reliance on the decision of a learned Single Judge of this Court in Collector of Customs v. State of Kerala 1993 (1) KLT 850. Collector of Customs and Central Excise aggrieved by the judgment of the learned Single Judge has preferred this appeal.

3. Contention was raised that the Kerala General Sales Tax Act, 1962 as

amended by Act 3 of 1968 and Act 21 of 1978 particularly Section 2 thereof is ultra vires and offends Article 285 of the Constitution of India and is liable to be quashed. It is also pointed out that the expression "carrying on business" used in Section 22(1) and 22(2) of the said Act and other connected provisions are judicially interpreted by the Apex Court and by this Court to mean activity for profit or gain which intention is conspicuously absent in the matter of disposal of confiscated goods by Central Excise and Customs Department.

4. We notice same contention was raised before the Apex Court in 1998 (102) ELT 513 (SC) , placing reliance on the decision of the Apex Court in State of Punjab and Others Vs. Union of India (UOI) and Others, . Apex Court repelled the contention and pointed out that when the two Judges Bench of the Court decided the case in State of Punjab and Others Vs. Union of India (UOI) and Others, , the decision of the nine Judges Bench in Sea Customs Act AIR 1963 SC 1760, was not placed before the Court. In 1998 (102) ELT 513 (SC) , the Apex Court placing reliance on the decision in Sea Customs Act case, supra AIR 1963 SC 1760, held as follows:

"We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the sales tax".

The Apex Court noticed that the principle laid down by the nine Judges Bench in Sea Customs Act case AIR 1963 SC 1760, was followed by another nine Judges Bench in New Delhi Municipal Council v. State of Punjab 1997 (7) SCC 39. Apex Court therefore held that the Tribunal was right in taking the view that the Collector of customs was a "dealer" within the meaning of the definition of the word in the Bengal Finance (Sales Tax) Act, 1941 when he sold goods confiscated under the provisions of the Customs Act, 1962 because of non-payment of customs duty thereon. We are of the view, same is the position so far as the Kerala General Sales Tax Act is concerned. Therefore, we are in full agreement with the decision of the learned Single Judge of this Court in Collector of Customs v. State of Kerala 1993 (1) KLT 850 and hold that Collector of Customs is liable to pay sales tax on the sale of confiscated goods or unclaimed goods. The appeal therefore lacks merits and would stand dismissed.