

(1998) 01 KL CK 0022

In the High Court Of Kerala

Case No : W.A. No's. 1466 of 1996 and 770, 816, 841, 844, 854, 975, 1003, 1004, 1005, 1022, 1074, 1076, 1115, 1121, 1147, 1149, 1235, 1264 and 1346 of 1997 and O.P. No. 11739 of 1997

Fr. William Fernandez

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-01-1998

Acts Referred:

Central Sales Tax Act, 1956 — Section 2, 3, 5

Citation : (1998) 2 ILR (Ker) 260 : (1999) 115 STC 591

Hon'ble Judges : K.V. Sankaranarayanan, J;B.M. Thulasidas, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; V.V. Ashokan, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.M. Thulasidas, J.—These appeals arise from the judgments in O.P. Nos. 3724 of 1997, 1788, 434, 16729 of 1996, 2408, 5009 of 1997, 17875, 19209, 19885, 20112, 14183, 17299, 20061, 19893, 14950, 16151, 6151, 20249, 20344 and 808 of 1996 respectively. O.P. No. 11739 of 1997 was also filed on the same facts as in the other cases. We admitted W.A. Nos. 770, 841, 844, 854, 975, 1022 and 1235 of 1997. Subsequently by an order dated September 22, 1995 passed by a division Bench, Chief Justice presiding, W.A. Nos. 770, 816, 841 and 844 of 1997 were also ordered to be posted along with the other appeals we admitted in view of the interim orders we passed. The question raised in these appeals is as regards the liability of the appellants to pay entry tax in respect of motor vehicles they had imported from outside the country.

2. The appellants in these appeals and the petitioner in O.P. No. 11739 of 1997 were non-resident Indians who imported to India motor vehicles they had used abroad. They had obtained customs clearance on payment of customs and levies as due. Some of them had their vehicles registered under the Motor Vehicles Act,

but had been given notice of demand of tax under the Act. In a few cases registration had not been given and they have been asked to obtain clearance from the concerned authority that tax due under the Act had been paid. The appellant in W.A. No. 1235 of 1997 is an "A" class contractor, who purchased a JCB 3 CX Backhoe Loader with necessary equipments manufactured in England, that he took delivery from Pondicherry, wherefore customs and other duties were paid, besides sales tax under the Pondicherry General Sales Tax Act. The appellant in W.A. No. 1466 of 1996 is also a contractor, who had purchased two excavators manufactured abroad from an agent in Pondicherry; he brought to Kerala after paying the customs and other duties including sales tax under the Pondicherry General Sales Tax Act. The question for decision is common to all these cases, which were heard together.

3. The Kerala Tax on Entry of Goods into Local Areas Act, 1994, for short, "the Act", was enacted to provide for the levy of tax on the entry of goods into local areas for consumption, use or sale therein. Under clause (d) of section 2 "entry of goods into a local area" is defined as entry of goods into a local area from any place outside the State for use or sale therein. Under clause (ee), "goods" means the goods mentioned in the Schedule to the Act, where 12 items were specified. Clause (g) defines "importer" as a person who brings any goods into a local area from any place outside the State for consumption, use or sale therein or who owns the goods at the time of its entry into the local area. Under clause (j) "motor vehicle" means a motor vehicle as defined in clause (28) of section 2 of the Motor Vehicles Act 1988. Under clause (p) "tax" means tax payable under this Act. Section 3, which is the charging section states :

"Subject to the provisions of this Act, there shall be levied and collected a tax on the entry of any goods into any local area for consumption, use or sale therein. The tax shall be at such rate or rates as may be fixed by the Government, by notification on the purchase value of the goods but not exceeding the rates specified for the goods in the First Schedule to the General Sales Tax Act."

[Provisos 1, 2 and sub-section (2) are omitted].

"Purchase value" of the goods is defined in clause (n) of section 2 as :

"Value of the goods, as ascertained from the original invoice and includes insurance, excise duties, countervailing duties, sales tax, transport fee, freight charges and all other charges incidentally levied on the purchase of the goods and in the case of a motor vehicle includes the value of accessories fitted to the vehicle :

Provided that, where the purchase value of the goods is not ascertainable on account of non-availability or non-production of the original invoice or when the invoice produced is proved to be false or if the goods are acquired or obtained otherwise than by way of purchase, then the purchase value shall be the value or price at which the goods of like kind or quality is sold or is capable of being sold, in open market."

We are not referring to the other provisions being not relevant for these cases. The Government had framed rules in exercise of the powers conferred u/s 19 of the Act. Rule 3, which provides for determination of taxable purchase value, states;

"(a) purchase value of motor vehicles registered in any Union Territory or any other State under the provisions of the Motor Vehicles Act, 1988 (Central Act 59 of 1988) prior to a period of fifteen months or more from the date on which it is registered in the State :

(b) purchase value of goods on which tax has been paid in any other local area in the State."

Under clause (d) of rule 2, "taxable purchase value" means the purchase value of the goods in respect of which an importer shall be liable to pay tax under the Act and "total purchase value" means the aggregate of the purchase value of all the goods imported into the local area, whether the whole or any portion of the purchase value is or is not liable to tax under the Act. [vide clause (e) of rule 2].

4. A division Bench of this Court held in *Rajan v. State of Kerala* 1995 (2) KLT 369 that the Act is intra vires the powers of the State, which is competent to impose tax for entry of goods into local areas, which is not violative of articles 301 and 304 of the Constitution. The decision has become final and has rightly been so accepted by counsel for the appellants, The question raised in these appeals had not been dealt with in the above decision, but before the learned single Judge, who held by the impugned decisions in the light of various decisions of the Supreme Court, which were considered, that there is "little difference between goods entering into a local area whether from abroad or another State", that "the question of origin of the vehicle made no difference inasmuch as the charge is on the entry of vehicle into a local area for use or sale and not on its purchase". It was further observed that :

"So long as the levy is on the entry of the vehicle into a local area for use or sale therein it cannot be said to be invalid merely because the measure of levy has been provided to be on purchase value of the motor vehicle. The Supreme Court also held that tax levied under different legislations enacted in exercise of constitutional power are not rendered bad on assumption that it amounts to double taxation. The taxable event for entry tax is not same as for octroi."

The entry tax imposed by various Legislatures of the country like Bihar, Madhya Pradesh, Andhra Pradesh, have been upheld by the High Courts and the Supreme Court. The purport of the provisions of the entry tax is for imposing a tax on the entry of the goods of the vehicle. The preamble to the Act states that this is an Act provided for levy of tax on entry. Though the object is stated to be for offsetting the loss of sales tax or curb the evasion of sales tax, the entry tax is not to be equated with the sales tax which is a different form of tax.

and concluded that :

"In the light of the clear provisions of the law on the subject and in the light of the clear provisions of the liability imposing a levy of tax, a contention that when there is no loss of sales tax the entry tax cannot be made is not sustainable."

The learned Judge also dealt with the question of exemption granted under the proviso to section 3 of the Act to vehicles registered prior to 15 months, which is unavailable to imported vehicles, that it was urged, was violative of article 14 of the Constitution and held after refining to a number of decisions of the Supreme Court that :

"The definition clause as well as the charging section is very clear. The Legislature has consciously granted an exemption in favour of particular class of vehicles and I do not find any discrimination or arbitrariness in the said exemption or the denial of the same benefit to the petitioners' vehicle."

5. In the Statement of Objects and Reasons for the enactment, it was said that :

"The State is a loser of sales tax on motor vehicles which are purchased from outside the State and brought into the State. In order to curb the evasion of sales tax on motor vehicles purchased from outside the State and brought into the State, Government have decided to levy a tax on entry of such motor vehicles into the State, either for use or sale, which are liable for registration in the State under the Motor Vehicles Act, 1988 (Central Act 59 of 1988)."

In the budget speech in the Assembly during 1994-95 in regard to new tax measures in item No. 237, it was said that the Government proposed to impose entry tax on motor vehicles "in order to prevent loss of revenue on account of vehicles being purchased directly from other States". Indeed the preamble to the Act is consistent with this declaration.

6. In interpreting an enactment the court has normally to go by its language and the words used and if any particular provision is open to more than one interpretation, the court has to choose that which would represent the true intention of the Legislature. [See R. Venkataswami Naidu and Another Vs. Narasram Naraindas,]. In the words of justice Chinnappa Reddy :

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. AIR 1987 SC 1023 (Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd.).]

A bare mechanical interpretation of the words and application of a legislative intent devoid of concept of purpose will reduce most of the remedial and beneficent legislation to futility. As stated by Iyer, J. "to be literal in meaning is to see the skin and miss the soul. The judicial key to construction is the composite perception of the deha and the dehi of the provision. [See The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee,].

The provision in the Act must receive a plain interpretation. No doubt, such tools as are permissible could be used if there is ambiguity or it is necessary to grasp the intention of the Legislature where words had not spoken as they should have taking care not to become subject to the criticism of judicial legislation.

7. In *Shashikant Laxman Kale v. Union of India* : AIR 1990 SC 2114 the Supreme Court observed :

"For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In *A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another*, the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law thereunder consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in *State of West Bengal Vs. Union of India*, that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for "the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation". Similarly, in *Pannalal Binjraj Vs. Union of India (UOI)*, - a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act."

8. As is clear from the object and reasons, the preamble and the provisions in the Act, it seeks to provide for the levy of tax on the entry of goods into local areas of the State from outside, that does not include entry from across the borders of the country. This seems to us to be clear from the several provisions we shall presently advert to. Clause (d) defines "entry of goods into a local area", which means entry of goods from any place outside the State. Obviously the Legislature was aware when it used the words "from any place outside the State" they did not mean to convey outside the country from abroad since the distinction between them is so obvious as not to have escaped notice. Again in clause (n) of section 2, while defining the purchase value, what has been directed to be taken into account is the value of goods as ascertained from the original invoice, which includes insurance, excise duties, countervailing duties, sales tax, transport fee, freight charges and all other charges incidentally levied on the purchase of the goods and in the case of a motor vehicle includes the value of accessories fitted to the vehicle. Here again no reference is made to the customs and other duties that an importer has to pay for clearance of the goods, which is not indeed an omission without significance. Obviously to determine the

purchase value, customs and other duties are not to be reckoned for levy of tax under the charging section 3 of the Act. We must also notice that there is nothing in clause (g) of section 2 to indicate that it takes in a person who imports goods to local areas from abroad, to whom, in our view, the Act is inapplicable. They have not purchased vehicles from outside the State, but from abroad, where there was no sales tax. They are not importers as defined. The submission to the contrary and what was stated in this behalf in the impugned judgment do not commend for acceptance.

9. Counsel for the appellant submitted that under article 265 of the Constitution, no tax shall be levied or collected except by authority of law. Authority of law refers to a valid law and that would mean :

(a) The tax proposed to be levied must be within the legislative competence of the Legislature imposing the tax.

The validity of the tax is to be determined with reference to the competence of the Legislature at the time when the taxing law was enacted and not by any subsequent changes.

(b) The law must be validly enacted, i.e., by the proper body which has the legislative authority and in the manner required to give its Acts the force of law. Of course, there is a presumption that the prescribed procedure has been followed.

(c) The law must not be a colourable use of or a fraud upon the legislative power to tax.

(d) The tax must not violate the conditions laid down in article 13, in other words, it must not violate a fundamental right, such as that in article 19(1)(a) and article 19(1)(g).

(e) It must not also contravene the specific provisions of the Constitution which impose limitation on legislative power relating to particular matters, e.g., articles 27, 276(2), 286, 301.

(f) The tax in question must be authorised by such valid law."

The word tax would include any "impost" - general, special or local duties, cess or fees.

10. It was further said that under article 286 :

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade of commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29-A) of article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

No doubt, under entry 54, List II the State has power to impose taxes on sale or purchase of goods other than newspapers. But under entry 92A, List I, tax on imports and exports are exclusive Union subjects. Article 286 is intended to ensure that sales tax imposed by the States do not interfere with imports and inter-State trade and commerce, which are matters of national concern, and the taxation of which is beyond the competence of the State. Certain limitations have been imposed upon the power of the State to enact sales legislation and they are :

(a) No tax shall be imposed on sale or purchase which takes place outside that State [C1. (1)(a)].

(b) No tax shall be imposed on sale or purchase which takes place in the course of import into or export out of India [C1. (1)(b)].

11. Clause (1)(b) of article 286 prevents a State from levying sales tax so as to interfere with the Union's legislative power with respect to import and export across customs frontiers (entry 41, List I) and duties of customs including export duties (entry 83 of List I). Reliance was placed upon the decision in *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, where it was held that :

"..... the object underlying the exemption from sales taxation given by the present clause is also to avoid double taxation of the foreign trade of the country which is of so great importance to the nation's economy. The double taxation sought to be avoided consisted in the imposition of export duty by the Central Government and the imposition of sales tax by the State Government in its different aspects as an export and as a sale. Such double taxation is avoided by exempting the export-sale and the import-purchase from the levy of sales tax by the State."

The prohibitions in sub-clauses (a) and (b) of article 286 are independent and these will have to be surmounted before a State can impose tax on the sale or purchase of goods.

12. Section 5 of the Central Sales Tax Act, 1956 enacted in pursuance of the power conferred by amended clause (2) of article 286 lays down the principles for determining when a sale or purchase takes place in the course of import or export and says that :

"(1) omitted.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India."

The fact that the importer effects the sale through commission agents resident in another State will not alter the position if the goods are purchased on behalf of the importer and delivered direct from the foreign country into the State of the importer.

13. It was urged that the limitations in article 286 have not been surmounted and as such the Act is inapplicable to the appellants, who had imported vehicles from abroad. These submissions seem to us to be untenable. We do not agree that there are any limitations upon the State's power to legislate, which is covered by item 52 of List II of the Seventh Schedule of the Constitution as has been correctly held. Tax is due upon entry of goods into the local areas. But however in the case of goods brought from abroad, their entry into the local areas, in our view, is outside the scope of the Act, which is confined only to those brought from outside the State, that would not include outside the borders of the country. The finding that "the origin of the vehicle does not make any difference" is rested upon a misconstruction of the provisions in the enactment and the purpose and object it seeks to achieve.

14. In the view we have taken about the applicability of the Act to imported cars, we think it unnecessary to deal with the question of exemption granted under the proviso to section 3 of the Act, that, it was said, is violative of article 14 of the Constitution. This aspect has been dealt with in the impugned judgment, where relevant judicial precedents have been considered and we agree that the contention urged was rightly repelled.

15. We declare that vehicles brought from abroad are not liable to entry tax. They are directed to be given registration in Kerala in terms of the applications made there for before the concerned respondents, who shall not insist upon production of clearance certificate under the provisions of the Act.

The writ appeals and the original petitions are accordingly allowed.

Order on C.M.P. No. 2147 of 1997 in W.A. No. 770 of 1997 dismissed.