
(2002) 05 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 98 of 1996

Gajanana Agencies

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-05-2002

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 30C

Citation : (2002) 2 ILR (Ker) 518

Hon'ble Judges : S. Sankarasubban, J; R. Bhaskaran, J

Bench : Division Bench

Advocate : T.M. Sreedharan, for the Appellant; Raju Joseph, Government Pleader, Georgekutty Mathew and Noble Mathew, for the Respondent

Judgement

S. Sankarasubban, J.—These Original Petitions are filed challenging the constitutional validity of Section 30C of the Kerala General Sales Tax Act (hereinafter referred to as "the KGST Act"). O.P. No. 98 of 1996 is treated as the main case.

2. There are three petitioners in the Original Petition. First petitioner is M/s. Gajanana Agencies, second petitioner is H. Sathish Kamath and the third petitioner is H. Anantha Kamath. According to the petitioners, the first petitioner is a Partnership Firm consisting of seven partners of whom Sathish Kamath is the Managing Partner. The Firm carries on business in purchase and sales of rubber sheets. The business was commenced in 1987. The purchases are made from cultivators and growers of rubber as well as from plantations and the sales are made locally to various dealers. The first petitioner is a registered dealer in rubber under the KGST Act, 1963 and under the Central Sales Tax Act, 1956.

3. The turnover of rubber is taxable at the point of last purchase in the State by a dealer who is, liable to tax u/s 5, Schedule I of the KGST Act. The first petitioner's sales being to local dealers within the State, no tax is payable by the first petitioner on the purchase turnover of rubber. On 27.12.1995, the first petitioner purchased 9 tonnes of rubber sheets from cultivators and growers

situated at Kandanje, Karimbala, Kadapana near Ethadkka, as per purchase bill Nos. 4434 to 4485 dated 27.12.1995 and was transporting the same to the first petitioner's business place in Kanhagad. The transportation was supported by delivery note in Form No. 26 bearing serial No. AB 885105 dated 27.12.1995. The goods were being transported in lorry No. KL 14-5304 belonging to H. Anantha Kamath. A similar quantity of 9 tonnes, which was purchased as per purchase Bill No. 4486 to 4537 dated 27.12.1995 from Chalakkode, Madathadkka, Bykunje in the Ethadkka area was also being transported as per delivery note No. AB 885106 dated 22.7. 1995 and the copies of purchase bills referred to above in lorry No. KL 19-6114 belonging to H. Sathish Kamath. Thus, according to the first petitioner, the purchase and transportation of raw rubber sheets was in accordance with the provisions of Sections 29 and 29A of the KGST Act. Therefore, there was no irregularity in the transaction.

4. It appears that the two lorries carrying rubber sheets were intercepted and seized by the second respondent from Ethadkka road after midnight while these lorries were carrying the rubber sheets after purchase to the petitioners' business place at Kanhagad, on 27.12.1995 and entrusted to Badiadkka Police Station for safe custody. The first petitioner could understand from the drivers of the lorries, Janardhana and Asokan that the second respondent obtained their signatures in some statements without disclosing their contents before taking the lorries into custody. Even though the copies of purchase bills and delivery notes were available in the vehicle at the time of checking, the second respondent was not inclined to verify these, but he was bent upon seizing the lorries and taking them into his custody. Before seizing the vehicles and goods, no notice was given to the petitioners. The seizure was also illegal as there were documents for transiting the rubber and it was accompanied by documents prescribed under the KGST Act.

5. The first petitioner came to know from the Sub Inspector of Police, Badiadkka Police Station that action was taken u/s 30C of the KGST Act in respect of the goods transported in lorries KL 14-5304 and KA 19-6114 u/s 30C of the KGST Act alleging that the transportation was without records. This is clear from the letter sent by the second respondent to the Station House Officer, which is marked as Ext. P6. Since all relevant documents were available for transaction at the time of interception and checking of the vehicles by the second respondent, the respondent sent a letter to the. Sub Inspector of Police, Badiadkka Police Station informing him that the relevant documents are available in the lorries in the custody by the second respondent. The petitioners submit that the seizure of lorries and the goods are illegal and without jurisdiction. The goods and the vehicles have wrongly seized and kept in the Police Station exposed to sun and rain. There is every likelihood of the goods getting deteriorated and rendered unsaleable. In the grounds taken, the constitutional validity of Section 30C of the KGST Act is attacked.

6. According to the petitioners, Entry 54 in List II of the Seventh Schedule to the

Constitution of India gives power to the State Legislature to levy tax on the sale of goods. But the provision for confiscation of the goods and the vehicles transporting the goods cannot be characterised as an ancillary and/or incidental provision. It is further stated that Section 29A of the KGST Act provides for sufficient safeguards for checking evasion of tax and for protecting the interests of the revenue. The provisions in Section 30 C of the KGST Act inserted by the Finance Act, 1994 are unconstitutional and arbitrary, Section 30C of the KGST Act provides for confiscation of the vehicles and the goods only in the case of transport of certain goods, viz., coffee, rubber, cardamom, ginger, pepper, arecanut, cashewnut or iron and steel. There is no rhyme or reason for such discrimination with reference to these types of goods only. The dealers in these types of goods are chosen for discriminatory treatment compared to the dealers in other types of goods. Even the provisions of Section 29A are very stringent which can prejudicially affect the free flow of trade, commerce and industry. There was no question of clandestine transport of rubber outside the State. Hence, the petitioners prayed for a declaration that Section 30C of the KGST Act introduced by the Finance Act, 1994 with effect from 29.7.1994 are unconstitutional as beyond the legislative competence of the State Legislature and ultra vires of Arts. 14, 19 and 21 of the Constitution of India and to declare that the proceedings initiated u/s 30C against the petitioners are unauthorised and also to issue a writ of mandamus directing the respondents to release 9 tonnes of raw rubber transported in lorries, KA 19-6114 and KL 14-5304.

7. In the counter affidavit filed by the State, they have supported the validity of the Section. According to them, the power of seizure and confiscation is incidental to the power of taxation. It is submitted that Section 30C was enacted for the purpose of preventing tax evasion of certain goods. The counter affidavit refers to the previous litigation when Section 29 of the KGST was introduced. Section 29 of the KGST Act came for consideration before a Full Bench of this Court in Yogesh Trading Co. v. The Intelligence Officer of Sales Tax, Cannanore & Anr., (1970) 26 STC 45. By the above decision dated 9th February, 1970, the Full Bench held that Sub-sections (3) to (5) of Section 29 of the KGST Act and Sub-rules (3) to (12) of Rule 35 of the KGST Rules are invalid and unconstitutional. After the judgment of this Court by the above Full Bench, Sections 29A and Section 29B were introduced. Earlier Section 29(5) consisted of the right for confiscation. But this was taken away in view of the above Full Bench decision. Section 29A and Section 29B of the KGST Act were challenged before this Court. But this Court upheld its validity. In 1994, the present Section was introduced as Section 30C of the KGST Act. It is the validity of this Section that is challenged.

8. Section 30C of the KGST Act is as follows:

"30C. Confiscation by Authorised officers in certain cases :-

(1) Notwithstanding anything contained in this Act, where an officer not below the rank of a Sales Tax Officer has reason to believe that a vehicle or vessel is used for smuggling coffee, rubber, cardamom, ginger, pepper, arecanut,

cashewnut or iron and steel into or out of the State, he may seize such coffee, rubber, cardamom, ginger, pepper, arecanut, cashewnut or iron and steel together with the vehicle or vessel used in committing the offence of smuggling and produce it, without any unreasonable delay, before such officer authorised by the Government, by notification in the Gazette, not being below the rank of an Inspecting Assistant Commissioner (hereinafter referred to as the authorised officer).

(2) Where the authorised officer is satisfied that an offence under Sub-section (1) has been committed in respect of the goods produced before him under that Sub-section, he may order confiscation of the goods so seized together with the vehicle or vessel used in committing such offence.

Provided that the authorised officer may release the goods and the vehicle or vessel confiscated under this Sub-section to the person from whom it was confiscated if the owner of the goods or the vehicle or the vessel or the person in charge of the goods or the vessel or the vehicle furnishes to the satisfaction of such officer cash security or bank guarantee from a Nationalised Bank or a Scheduled Bank for the value of the goods and the vehicle or the vessel as the case may be, as estimated by such officer in such manner as may be prescribed.

(3) No order under Sub-section (2) shall be passed, unless the person from whom the same is seized:

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such coffee, rubber, cardamom, ginger, pepper, arecanut, cashewnut or iron and steel, vessel or vehicle;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation; and

(c) is given a reasonable opportunity of being heard in the matter.

(4) No order confiscating any vehicle or vessel shall be made under Sub-section (2), if the owner or the person in charge of the vehicle or vessel proves to the satisfaction of the authorised officer that it was used in carrying such coffee, rubber, cardamom, ginger, pepper, arecanut, cashewnut or iron and steel without the knowledge or connivance of the owner himself, his agent, if any, or the person in charge of such vehicle or vessel and that each of them had taken all reasonable and necessary precautions against such use.

(5) Any person aggrieved by an order of confiscation under Sub-s, (2) may, within thirty days from the date of communication to him of such order, file an appeal, in such manner and in such form as may be prescribed and accompanied by a fee of rupees one hundred before the Deputy Commissioner, and the Deputy Commissioner may pass such orders thereon as he may think fit:"

According to the petitioners, the power does not extend to confiscate a property

because confiscation of property is not within the purview of the Taxation Authorities. The Authorities are to see that due tax is imposed and if the tax is not paid, the Authorities can also resort to collection of tax through recovery proceedings. The question is whether such power of confiscation is unconstitutional.

9. Arguments were addressed by both sides on the validity of Section 30C of the KGST Act. The attack of the learned counsel for the petitioners is that the word "smuggling" is not defined in the Act. It may include very trivial matters as well as serious matters. Then it was submitted that the word used in the Section does not carry any definite meaning. Section 29A and Section 29B of the KGST Act gives power to the State to check the use of vehicle and goods and release them only with sufficient security to the satisfaction of the Authorities. The Act does not say what are the offences, which lay within the ambit of Section 30C of the KGST Act and how this can be compromised with the rest of the provisions. Learned Government Pleader submitted that there is no ambiguity in using the word "smuggling".

10. In this connection, it is pertinent to note that the introduction of Section 29(4) and (5) of the KGST Act enabled the Authorities to detain, seize or confiscate the goods, which are being transported by a vehicle or vessel and not covered by a bill of sale or delivery note or way bill or certificate of ownership and where the vehicle or vessel enters or leaves the State limits without the declaration referred to in Clause (b) of Sub-section (2) also. Section 29 Clauses (3) to (5) of the KGST Act and Sub-rules (3) to (12) of Rule 35 of the KGST Rules were challenged before this Court and the judgment of this Court was reported in *Yogesh Trading Co. v. The Intelligence Officer of Sales Tax, Cannanore & Anr.*, (1970) 26 STC 45. Dealing with the question of its validity, the Full Bench of this Court held that Clauses (3) to (5) of Section 29 of the KGST Act and Clauses (3) to (12) of Rule 5 of the KGST Rules are not valid and unconstitutional. Regarding the question of power of confiscation, in paragraph 14 of the above decision, the Full Bench held thus: "It is well settled that legislative entries have to be considered in their widest amplitude and that a power authorising the imposition of a tax also includes a power to prevent the tax imposed being evaded, and to check such evasion". It then considered the various decisions and finally held as follows: "In the view that we take regarding the validity of the provision, assuming there is power to enact, it and as the provisions have anyway to be struck down as violative of Art. 301, we do not think it necessary to express a final and concluded opinion on the question". This Court struck down Section 29(3) to (5) of the KGST Act as unconstitutional. Regarding the power of seizure, no final opinion was expressed by this Court.

11. The decision in *Yogesh Trading Co. v. The Intelligence Officer of Sales Tax, Cannanore & Anr.*, (1970) 26 STC 45 was challenged before the Supreme Court. When the matter was pending before the Supreme Court, the KGST Act was amended by enacting Section 29A, 29A(2), etc. By the new provisions, the

Authorities were given power to detain the goods at the check post to find out whether they have been transported as per the conditions laid down in the KGST Act, especially when the goods covered by a bill. The power of confiscation was not included in that amendment. Section 29(2A) of the KGST Act enables seizure of the vehicles. Section 29A(2B) prescribes the procedure when such goods or vehicle are seized.

12. It is seen from Section 30C of the KGST Act that power of confiscation of vehicle as well as goods with regard to certain cases is given to the Authorised Officer, if the vehicle or vessel is used for smuggling certain goods, which are mentioned in Section 30C. Thus, while the appeal against the decision in Yogesh Trading Company was pending before the Supreme Court, the legislature introduced power of confiscation with regard to certain goods and the vehicles transporting the same. So far as the power of confiscation is concerned, the Supreme Court, in a decision reported in *Commissioner of Commercial Taxes v. R.S. Jhaver*, (1967) 20 STC 453, held as follows: "We do not propose in the present case to decide the general question whether a power to confiscate goods which are found on search and which are not entered in the account books of the dealer is an ancillary power necessary for the purpose of stopping evasion of tax. Assuming that is so, we have still to see whether Sub-section (4) of Section 41 of the Act can be upheld read along with the second proviso thereof". It was then found that there was repugnancy between the provisions and therefore Clause (a) of the second proviso repugnant to the entire scheme of the Act was struck down. The matter again came before the Supreme Court in *The Check Post Officer, Coimbatore and Ors. v. K.R. Abdulla & Bros.*, (1971) 27 STC 1. In that decision, the Supreme Court held as follows:

"Entry 54 of List II of the Seventh Schedule to the Constitution authorises the State Legislature to legislate in respect of taxes on the sale or purchase of goods. A legislative entry does not merely enunciate powers; It specifies a field of legislation and the widest import and significance should be attached to it. Power to legislate on a specified topic includes power to legislate in respect of matters which may fairly and reasonably be said to be comprehended therein: see *The United Provinces v. Mst. Atiq Begum and Ors.*, (1940) FCR 110, *Navinchandra Mafatlal Vs. The Commissioner of Income Tax, Bombay City*, and *Balaji Vs. Income Tax Officer, Special Investigation Circle*, . A taxing entry therefore confers power upon the Legislature to legislate for matters ancillary or incidental including provisions for preventing evasion of tax. Sub-sections (1) and (2) of Section 42 are intended to set up machinery for preventing evasion of sales tax. But in our judgment, the power to confiscate goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate in respect of taxes on sale or purchase of goods. By Sub-section (3) the officer in charge of the check post or barrier has the power to seize and confiscate any goods which are being carried in any vehicle if they are not covered by the documents specified in the three sub-clauses. Sub-section (3) assumes that all goods carried in a vehicle near a check post are goods which have been sold

within the State of Madras and in respect of which liability to pay sales tax has arisen, and authorises the Check Post Officer, unless the specified documents are produced at the check post or the barrier, to seize and confiscate the goods and to give an option to the person affected to pay penalty in lieu of confiscation. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to be transported after sale within the State is unwarranted. In any event power conferred by Sub-section (3) to seize and confiscate and to levy penalty in respect of all goods which are carried in a vehicle whether the goods are sold or not is not incidental or ancillary to the power to levy sales tax. A person carrying his own goods even as personal luggage from one State to another or for consumption, because he is unable to produce the documents specified in Clauses (i), (ii) and (iii) of Sub-section (3) of Section 42, stands in danger of having his goods forfeited. Power under Sub-section (3) of Section 42 cannot be said to be ancillary or incidental to the power to legislate for levy of sales tax".

In the decision, the Supreme Court further held that the Madras High Court has relied on the decision in R.P. Jhavar's case. That decision has no direct bearing in the present case. The Section which came for consideration before the Supreme Court is Section 42 of the Madras General Sales Tax Act, 1959, which is as follows:

"(1) If the Government consider that with a view to prevent or check evasion of tax under this Act in any place or places in the State, it is necessary so to do, they may, by notification, direct the setting up of a check post or the erection of a barrier or both, at such place or places as may be notified.

(2) At every check post or barrier mentioned in Sub-section (1), or at any other place when so required by any officer empowered by the Government in this behalf, the driver or any other person in charge of any vehicle or boat shall stop the vehicle or boat, as the case may be, and keep it stationary as long as may reasonably be necessary, and allow the officer in charge of the check post or barrier, or the officer empowered as aforesaid, to examine the contents in the vehicle or boat and inspect all records, relating to the goods carried, which are in the possession of such driver, or other person in charge, who shall, if so required, give his name and address and the name and address of the owner of the vehicle or boat as well as those of the consignor and the consignee of the goods.

(3) The officer in charge of the check post or barrier, or the officer empowered as aforesaid shall have power to seize and confiscate, any goods which are under transport by any vehicle or boat and are not covered by,

(i) a bill of sale or delivery note.

(ii) a Goods Vehicle Record, a Trip Sheet or a Log Book, as the case may be, and

(iii) such other documents as may be prescribed under Sections 43 and 44:

Provided that before ordering confiscation the officer shall give the person

affected an opportunity of being heard and make an inquiry in the prescribed manner:

Provided further that the officer ordering the confiscation shall give the person affected option to pay in lieu of confiscation-

(a) in cases where the goods are taxable under the Act, in addition to the tax recoverable, a sum of money not exceeding one thousand rupees or double the amount of tax recoverable, whichever is greater; and

(b) in other cases, a sum of money not exceeding one thousand rupees".

The above decision of the Supreme Court which was of the view that the power of confiscation is not incidental to the power of taxation was referred to in another decision of the Supreme Court in *State of Rajasthan and Another Vs. M/s D.P. Metals*, . In that decision, the Supreme Court referred to the decision in *K.P. Abdulla* 's case. In paragraph 15 of the judgment, the Supreme Court held as follows: "In *K.P. Abdulla*'s case (supra) this Court considered the validity of Section 42(3) of the Madras General Sales Tax Act, 1959 which gave the power to the officer in charge of the check-post or barrier or any other duly authorised officer to seize and confiscate the goods which were not covered by the documents specified therein. It was held that the power to confiscate the goods carried in a vehicle cannot be said to be fairly and reasonably comprehended in the power to legislate under Entry 54 of List II in respect of taxes on sale or purchase of goods. The reason for this conclusion was that Sub-section (3) assumed all goods carried in the vehicle has been those which had been sold within the State and authorised the check-post officer to seize them unless the specified documents were produced at the check-post or the barrier. A provision so enacted on the assumption that goods carried in a vehicle from one State to another must be presumed to have been transported after sale within the State was held to be unwarranted and, therefore, the power to seize and confiscate was struck down and was held not to be ancillary or incidental with the power to legislate for levy of sales tax.

13. Learned Government Pleader brought to our notice the decision in *State of Mysore v. K. Mohamed Ismail*, AIR 1958 Mys 143, wherein it was held as follows: "When the Legislature of a State has the competence to make a law pertaining to taxes on sales or purchases, it has also the competence to provide punishments in that law for the non-compliance or contravention of the provisions of that law and may also for the purpose of the enforcement of that law vest jurisdiction in Courts". Another decision brought to our notice is *K.S. Papanna & Anr. v. Deputy Commercial Tax Officer, Guntakal & Ors.*, (1967) 29 STC 506. The Andhra Pradesh High Court in that decision held that the power to seize and confiscate goods is only by way of punishment or penalty which is intended to operate as the most effective deterrent against tax-evaders and it is therefore ancillary or incidental to the power to levy tax on the sale of goods and falls within the ambit and scope of the legislative power conferred on the State Legislature under Entry

54 of List II of the Seventh Schedule of the Constitution of India. So long as the steps or measures taken by the State Legislature are directed towards the achievement of the object of prevention of evasion of tax, they come within the scope of ancillary powers irrespective of the question whether it may be necessary or not for the Legislature to impose a drastic provision or only a lenient punishment. Therefore Section 28(6) and Section 29(3) of the Andhra Pradesh General Sales Tax Act, 1957, are not ultra vires the State Legislature. The Andhra Pradesh High Court in another decision reported in Kalangi Krishna Murthy & Co. and Ors. v. The Commercial Tax Officer, Guntur and Ors. (1968) 22 STC 540, subsequently confirmed this decision in another decision. But so far as we are concerned, the Supreme Court considered the above decisions in Commissioner of Commercial Taxes and Ors. v. R.P. Jhavar and Ors., (1967) 20 STC 453, but refused to decide the question. That decision is dated 9th August, 1967. That decision was rendered by a five Judge's Bench. K.P. Abdulla's Case was also rendered by a five Judges' Bench. But that judgment is dated 23.11.1970. In that Case, the earlier Case, viz., R.P. Jhavar's case, was considered. As already stated, the Supreme Court held that the power to confiscate was not incidental to the power of taxation. Further, as already stated, in Yogesh Trading Company Case, the earlier Section 29(4) was struck down by this Court. That decision was taken in appeal before the Supreme Court. The appeal came before the Supreme Court and decided along with Civil Appeal No. 1230 of 1970 on 5.2.2002. It was considered by a Bench of seven Judges. This is what the Supreme Court held with regard to Yogesh Trading Company Case:

"Sections 29(3), (4) and (5) of the Kerala General Sales Tax Act, 1963 were struck down by the High Court as being violative of Articles 19(1)(g) and 301 of the Constitution of India. The State of Kerala preferred these appeals therefrom. In the meantime, Section 29A was inserted by the Legislature of the State of Kerala. It was, effect, in terms of the High Court judgment in that it provided for detention of goods at check point but without investing in the officer concerned the power of confiscating the same. It seems to us, in these circumstances, unnecessary to go into the question whether Sections 29(3), (4) and (5) as originally enacted, were not violative of the aforementioned Articles.

The High Court had struck down Rule 35, which followed upon Section 29. That Rule has been replaced by Rule 35-A, which follows upon Section 29-A.

We note the contention of learned counsel for the State that Section 29 was valid because its validity is covered by two decisions of this Court but it is not a question that need detain us, having regard to the circumstances aforementioned".

Thus, we find that because of the introduction of Section 29A, the Supreme Court did not go into the merits of the case. It also noted that the power of confiscation was not included in the amendment. We extracted the above judgment because one of the arguments of the counsel for the petitioners is that the Supreme Court had understood that the power of confiscation was not

included.

14. Now we come to the question of Section 30C of the KGST Act. Section 30C merely says that where an officer not below the rank of a Sales Tax Officer has reason to believe that a vehicle or vessel is used for smuggling coffee, rubber, cardamom, ginger, pepper, arecanut, cashewnut or iron and steel into or out of the State he may seize such coffee, rubber etc. together with the vehicle or vessel used in committing the offence of smuggling and produce it without any unreasonable delay before such officer authorised by the Government. Where the authorised officer is satisfied that an offence under Sub-section (1) has been committed in respect of the goods produced before him under that Sub-section, he may order confiscation of the goods so seized together with the vehicle or vessel used in committing such offence. Learned counsel for the petitioners submitted that the Section does not say what is meant by smuggling of goods. Customs Act mentions what is meant by smuggling of goods by definition under Sections 111, 113 and 125. Here there is no definition. It may be that if the goods specified in Section 30C or attempted to be taken in or outside the State contrary to the provisions of the Act, it will amount to smuggling.

15. Learned counsel for the petitioners submitted that smuggling cannot be an offence in relation to the "goods" because, the goods specified in the section are not prohibited or banned goods or contraband articles. There is no law which prohibits cultivation/acquisition/possession or transportation of these commodities as in the case of ganja, opium or abkari goods, sandalwood or similar items. Similarly, there is no law which prohibits transportation of any of the specified goods within the State or into or out of the State in a vehicle or vessel. No transport document or permit is prescribed for transportation of any of these goods under general law, except perhaps in the case of coffee and rubber. Rubber, coffee, cardamom, tea, etc. are extensively grown in the State under the permit or registration obtained from the Rubber Board, Coffee Board, Cardamom Board or Tea Board the transportation of these goods are regulated by the Rules governing these commodities. Therefore, the offence contemplated in relation to "smuggling" can only be in relation to the provision of the KGST Act. An activity of "smuggling" does not pre-suppose a sale/purchase but only a movement of "goods". Mere movement of goods from one place to another or into or out of the State cannot and does not attract sales tax liability so as to be brought under such a drastic penal provision, where the goods as well as the vehicle/vessel is liable for confiscation. What documents are relevant and necessary to be maintained and produced in an enquiry u/s 30C is nowhere stated in the Section. The Section also does not say the absence of what all documents accompanying the goods, would make the transportation of goods an activity of smuggling.

16. On the other hand, in paragraph 8 of the counter affidavit filed by the State what is stated is as follows: "It is true that the word smuggling is not defined in the Act. It is settled principle of law that if a word is not defined in a statute it's ordinary dictionary meaning shall be applied. Meaning assigned to the word in

common parlance or commercial parlance also can be applied if situation so warrants. The Lexicon Webster's Dictionary of the English Language gives the meaning of the word smuggle as follows: "to import or export (goods liable to customs duty) without paying duty to convey secretly in defiance of the law or of prohibition". The shorter Oxford English Dictionary gives the meaning of the same word as follows: "to convey goods clandestinely into or out of a country or district in order to avoid payment of legal duties or in contravention of some enactment; to convey etc. in a stealthy or clandestine manner". In paragraph 10 of the counter affidavit it is further stated thus: "As per Sections 29(2) and 31 of the KGST Act the documents to accompany the goods are specifically mentioned. If any of the documents mentioned in Section 29(2) or 31 is present in respect of the goods transported in the vehicle in which event its intention in transporting the goods cannot be termed as smuggling. The act of consignment of goods will amount to smuggling only if his intention to transport the goods is in a clandestine manner. If he is able to produce the required documents pursuant to the notice issued by the authority, considering the facts and circumstances of the case the authority will come to the conclusion that his intention was not to smuggle the goods. As per Sub-section (4) of Section 30C, the owner of the person in charge of the vehicle or vessel is given a specific defence that if he is able to prove to the satisfaction of the authorised officer that the vehicle or a vessel was used in carrying any of the goods mentioned in Section 30C was without the knowledge or connivance of the owner himself or agent if any or the person in charge of such vehicle and such vessel and each of them had taken all necessary precautions against such use, his vehicle will not be confiscated. So also this stringent provision is not made applicable to all types of goods. It is made applicable to only certain specified variety of goods. It was so done on the basis of a committee report finding that the tendency to smuggle the goods made mention in Section 30C are too large comparing to other goods and the consequential revenue loss is also huge. Therefore, the legislature rectified the stringent measure in support of those goods keeping in public interest and to avoid similar measure in respect of the other traders who are dealing in other types of goods. It is not necessary to check tax evasion in certain articles."

17. According to us, since the word "smuggling" is not defined in the KGST Act, it will lead to arbitrary exercise of power. If we go by the counter affidavit filed by the State, any attempt to transport without paying tax will amount to "smuggling". If the goods are transported in excess of what is stated in the bill, then the vehicle can be confiscated. Even for trivial matters, if the Authorised Officer feels that offence has been committed, confiscation can be made. Going by the decision in *Check Post Officer v. K.P. Abdulla and Ors.*, (1971) 27 STC 1, we are of the view that Section 30C of the KGST Act is arbitrary and unconstitutional and liable to be struck down.

18. In *K.P. Abdulla's* case, the Supreme Court has clearly stated that the power of confiscation is not incidental or ancillary. Even though that was given on an interpretation of Section 42 of the Madras General Sales Tax Act, according to us,

Section 30C of the KGST Act gives very wide and arbitrary power by not defining the word "smuggling". It is left to the subjective satisfaction of the Authorised Officer to find out whether an offence of smuggling has been committed. Even if the quantity is small or even if the liability for tax is minimum, the Authorised Officer can exercise the power of confiscation not only on the goods, but also the vehicle. Further, the reason stated for invoking the power of confiscation of specified goods shows that the intention appears to be not to regulate the tax evasion, but for other reasons. Taking into consideration all the above, we hold that Section 30C of the KGST Act is unconstitutional and it is hereby struck down. Original Petitions are allowed.

W.A. Nos. 1208, 1323, 1510, 1530 & 1744/95 & 155/96

19. In the light of our declaration in O.P. No. 98/96 and connected cases that Section 30C of the KGST Act is unconstitutional, the judgment of the learned Single Judge is set aside and the Writ Appeals except WA 1530/95 and O.Ps. are allowed. W.A. No. 1530/96 is dismissed.

W.A. No. 1650/96

20. W.A. No. 1650 of 1996 has become infructuous in the light of our allowing the Original Petition.

21. In all these Original Petitions, if the vehicles and the goods have been released on the basis of the direction of this Court on the execution of Bank Guarantee or any other security bond, the validity of the Bank Guarantee or security bond will cease to have effect from today. If the vehicles or the goods are in the custody of the officer, they may be released to the petitioners. If the goods are not available with the Department or if they are not in a state to be delivered, the value of the goods will be given to the petitioners. In case any orders are passed as per the proceedings u/s 30C of the Kerala General Sales Tax Act, those orders will stand quashed. In case any amount is paid for the release of the vehicles by way of tax as per the direction of this Court, those amounts shall be refunded to the petitioners or shall be adjusted towards the arrears of tax, if any, or tax due in future from the petitioners. Learned counsel appearing for the Rubber Board submitted that so far as the rubber sheets are concerned, they were transferred without permission from the Rubber Board. In case any notice has been issued by the Rubber Board, the rubber seized shall be given to the Rubber Board, if they come and claim for the same within 15 days from today. Otherwise, the rubber will be released to the persons from whom it was seized. We make it clear that even if there is any notice for the seizure of the rubber from the Rubber Board, that will not enable the officer to detain the vehicles and the vehicles shall be released immediately.