

(1960) 10 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No's. 38, 173, 183, 187, 295, 296, 297, 338, 345, 346, 353, 354, 355,; 356, 386, 391, 416, 417, 424, 521, 593 and 729 of 1960

Hassan

APPELLANT

Vs

Sales Tax Officer, Manjeri

RESPONDENT

Date of Decision : 26-10-1960

Acts Referred:

General Sales Tax (Amendment) Act, 1960 — Section 2
General Sales Tax Act, 1125 — Section 5

Citation : (1961) KLJ 307

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer in O.P. 38/60, 296/60 and O.P. Nos. 353 to 356/60, T. Karunakaran Nambiar in O.P. Nos. 173/60, 187/60, 295/60, 296/60, 297/60, 353 to 356/60, 593/60 and 729/60, K.P. Madhava Menon in O.P. 183/60, T. Narayanan Nambiar in O.P. 296/60, K.P.G. Menon in O.P. Nos. 338/60, 345 and 346/60, 386 and 391/60, 416/60, 417/60 and 521/60, M.A. Joseph in O.P. Nos. 386 and 391/60 and P.K. Shamsuddin in O.P. 424/60, for the Appellant;

Final Decision : Dismissed

Judgement

M.A. Ansari, C.J.—This batch of writ petitions challenges the legality of the General Sales Tax (Amendment) Act, 1960 (III of 1960). The aforesaid Act consists of 4 Sections. The first contains the Title, and the fourth is concerned with the repeal, which leaves the following sections:

2. Amendment of Section 5, Act XI of 1125-

(1) In Section 5 of the General Sales Tax Act, 1125, (hereinafter referred to as the principal Act), for clause (vii), the following clause shall be substituted, namely:-

(vii) the sale of goods specified in column (2) of Schedule I shall be liable to tax u/s 3, sub-section (1), only at such single point in the series of sales by successive dealers as may be specified by the Government by notification in the

Gazette; and, where the taxable point so specified is a point of sale, the seller shall be liable for the tax on the turnover for which the goods are sold by him at such point, and where the taxable point so specified is a point of purchase, the buyer shall be liable for the tax on the turnover for which the goods are bought by him at such point.

(2) The amendment made by sub-section (1) shall be deemed to have come into force with effect from the first day of October, 1957.

3. Validation of certain notifications, orders, etc.-

Notwithstanding anything contained in any judgment, decree or order of any Court-

(a) all notifications issued on or after the 28th day of September, 1957, by the Government in exercise of the powers conferred on them by clause (vii) of Section 5 of the principal Act shall be deemed to have been issued under the principal Act as amended by this Act, on the respective dates on which the said notifications were issued:

Provided that Notification II No. H1-10674/57/RD-2, dated 28th September, 1957, shall be deemed to have been issued on the first day of October, 1957;

(b) all taxes levied, assessed or collected in pursuance of the notifications issued under clause (vii) of Section 5 of the Principal Act shall for all purposes be deemed to be and to have always been validly levied, assessed or collected; and

(c) all proceedings taken, orders passed and acts done by any officer, authority or Tribunal in pursuance of the notifications issued under clause (vii) of Section 5 of the principal Act shall for all purposes be deemed to be and to have always been validly taken, passed and done, and all such proceedings, orders and actions may be contained as if the notifications in pursuance of which they were taken, passed or done were issued under clause (vii) of Section 5 of the principal Act as amended by this Act:

Provided that nothing in this Act shall render any person liable to be convicted of an offence in respect of anything done or omitted to be done by him before the date of publication of this Act in the Gazette, if such act or omission was not an offence under the principal Act at the aforesaid date but for the provisions of this Act.

The circumstances, that preceded the aforesaid Act, may be shortly narrated. The tax under the principal Act, No. XI of 1125, is charged u/s 3(1), which provides that, subject to other provisions, every dealer should pay for each year a tax on his total turnover for such year; and the tax would be calculated at the rates specified in column (3) of Schedule I for every rupee in the turnover relating to the goods noted against them in column (2) thereof, and at the rate of two naye paise for every rupee in the turnover relating to all other goods. Section 3(4) enacts that for the purposes of the Section, the turnover should be

determined in accordance with the prescribed Rules; and section 3(5) that the buyer or the seller, but not both, should be taxed in respect of the same transaction of sale, and where a dealer has been taxed in respect of the purchase of any goods, he should not again be taxed in respect of any sale of such goods effected by him. The two terms of "turnover" and "prescribed" used in the Section, have been defined earlier in Section 2, by which "turnover" is to mean the aggregate amount, for what goods are either bought by or sold by a dealer, and "prescribed" to be prescribed by Rules made under the Act. Section 5 authorizes exemptions and reductions of tax in certain cases, and originally consisted of seven clauses, out of which, clauses (ii), (iv) and (v) have been deleted. The last clause of the Section, before the amendment introduced by Section 2 of the Amendment Act, that is challenged by these writ petitions ran as follows:

(vii) the sale of goods specified in column (2) of Schedule I shall be liable to tax u/s 3, sub-section (1), only at such single point in the series of the sales by successive dealers as may be specified by the Government by notification in the Gazette.

2. It is common ground that the notification was issued under the aforesaid clause, which is dated September 28, 1957, and was published in the Kerala Gazette Extraordinary, on September 30, 1957. The notification states that in exercise of the powers conferred by clause (vii) of Section 5 of the General Sales Tax Act (Act XI of 1125), the Government of Kerala hereby specify the point mentioned in column (3) of the Schedule, hereto appended, as the point liable to tax u/s 3(1) on the goods mentioned in column (2). The Schedule consisted of 40 items and the third column specifies the taxable point of some goods to be the first sale and of others to be the last purchase points in the State by a dealer, who be not exempt from taxation u/s 3(3).

3. But to continue the statement of another provision of and the rules under the General Sales Tax Act, Section 24 authorizes the Government to frame Rules subject to the two conditions mentioned in clauses (4) and (5) of the Section, which are that the Rules should be made after previous publication for a period of not less than two weeks; and the Rules must be published in the Gazette, upon which publication, they shall have effect, as if enacted in the Act. Rules had been framed, and Rule 4 reads as follows:

4. (1) Save as provided in sub-rule (2). the gross turnover of a dealer for the purposes of these Rules shall be the amounts for which goods are sold by him.

(2) In the case of groundnut and its kernel and goods notified under Clause (vii) of Section 5 as liable to tax at any point of purchase, the gross turnover of a dealer for purposes of these Rules shall be the amounts for which the goods are bought by him.

(3) * * *

4. Such was the legal position when O. P. 12/59 in Abu v. State of Kerala, 1960 K. L. J. 457 at p. 460, was filed in this Court, which was decided on January 28, 1960. The petitioner in the case was a dealer in pepper and ginger, had been assessed in pursuance of the notification of September 28, 1957, to sales tax at the purchase point of pepper and ginger, that being the taxable point under the notification; and claimed that the notification, in so far as it fixed such taxable point for the aforesaid commodities, was illegal and ultra vires. That objection was upheld by the Division Bench and the learned Judges held that in the absence of a valid Rule prescribed u/s 24, there was no provision under the General Sales Tax Act that enabled the State to tax the goods bought by the petitioner at the purchase point, the notification being beyond any power conferred by Section 5 (vii). In this connection, we would quote the following passages from the judgment.

If in respect of any sale it was intended that the gross turnover of a dealer shall be the amount for which goods are bought by him, the proper thing to do would have been to make specific provision for such cases in sub-rule (2) of Rule 4. Instead of that, sub-rule (2) has been made entirely dependent on the notification u/s 5(vii), a notification which itself is beyond the power conferred by that provision.

* * *

It has to be noted that the notification of 28-9-1957 was not even in existence when the "prior publication" of sub-rule (2) of Rule 4 was effected by the State.

It follows that in the absence of a rule prescribed u/s 24 of the Act, there is no valid provision enabling the State to tax the amount for which the goods were bought by the petitioner....

The decision was followed by the General Sales Tax (Amendment) Ordinance, 1960 (No. I of 1960), and then by the General Sales Tax (Amendment) Act, No. III of 1960, whose preamble reads thus:

Whereas it is necessary to amend the General Sales Tax Act, 1125, for the purpose hereinafter appearing and to validate certain notifications, orders, and proceedings under the said Act;

Be it enacted....

Therefore the amendments to the General Sales Tax Act mentioned earlier in this judgment, are to validate the notification and to avoid the consequences following the pronouncement in Abu's case (1960 K. L. J. 457) concerning the illegality of the taxes levied under the notification. The Amending Act has been challenged before us on various grounds, that can be classified under the following heads:-

(1) The Amending Act reverses the judicial decision and amounts to exercise of judicial function, which is ultra vires;

(2) Section 2 of the Amending Act amounts to excessive delegation of power, and is bit by the principle of delegates non potest delegare;

(3) The amendments do not change the legal position of the tax being assessable on turnover determined in accordance with the Rules and the notification referred to in Rule 4(2) having been required to be deemed to be on October 1, 1957 comes after the date of the Amended Rule 42), which was published in the Gazette on September 30, 1957, there thus being no rule to authorize tax at the purchase point of the commodities mentioned in the Notification;

(4) The notification has wrongly been issued u/s 5, and should really be u/s 6; inasmuch as it tries to bring about reduction of tax.

5. Before dealing with these grounds seriatim, it is necessary to summarize what the Amendment Act provides. It has done three things:

(1) By Section 2 certain words been added to Section 5 (vii);

(2) By Section 3(b), all taxes levied, assessed or collected in pursuance of the notifications, are directed to be deemed to have been validly levied, assessed or collected, and by Section 3(c), all proceedings taken, orders passed and acts done by any Officer, authority or tribunal, are to be deemed to have been validated;

(3) By Section 3(a) the notification is to be treated as having been made under the amended Clause (vii) of Section 5, and to have been issued on the 1st October 1957, and u/s 3(c), further proceedings are to be continued under the amended Clause (vii) of Section 5.

6. It follows that the Amendment Act intends what had been done earlier to the enactment, to be validated, and the notification to be treated as issued under the amended Clause (vii). Now let us examine the objections to the aforesaid things. The first is that they vary a judicial pronouncement and the Legislature under our Constitution cannot discharge such functions. But it is well settled that the legislature notwithstanding such pronouncement can vary existing rules of law. In this connection we would refer to our decision in O.S. No. 3 of 1957, where we have stated when the Legislature would be exceeding the limits of enacting powers. In the case, claim had been filed to recover amounts of entertainment tax, that had been held earlier not to be legal, and thereafter the Travancore Cochin Entertainments Tax (Validation of Levy and Collection) Act XXVI of 1955 was passed. This enactment was relied upon in the defense to this suit, and, a Constitutional question having arisen, the Case, along with several others, raising similar questions were transferred to this Court. We held therein as follows:-

We feel the correct position to be that the legislature can lay down new rules which may be contrary to earlier judicial pronouncements and such law can be made to operate prospectively or retrospectively.

7. Section 3 of the Amendment Act provides for several presumptions, and

nobody can dispute that such provisions are legislative, even though they be contrary to existing judicial decisions. It is clear that judicial disputes are not decided by the vigor of the enactment, and the courts still have power to apply the new rules to pending cases. Therefore the Amendment Act is within the legislative limits, as the Court must apply the rules to facts of cases before them. We feel the first ground taken against the legality of the enactment in these circumstances must fail.

8. The next is of excessive delegation; but this argument overlooks the limits of delegated legislation in modern states. In this connection it would be useful to recall what has been said in *United States v. Shreveport Grain & Elevator Company* (287 U. S. 77 at p. 85):-

The effect of the provision assailed is to define an offence, but with directions to those charged with the administration of the act to make supplementary rules and regulations allowing reasonable variations, tolerances and exemptions, which, because of their variety and need of detailed statement, it was impracticable for Congress to prescribe. The effect of the proviso is evident and legitimate, namely, to prevent the embarrassment and hardship which might result from a too literal and minute enforcement of the Act, without at the same time offending against its purposes. The proviso does not delegate legislative power, but confers administrative functions entirely valid within principles established by numerous decisions of this Court.

Viewed in this light, we think that the Clause authorizing issuance of notification, is nothing but authorization to the executive to avoid hardship from a too minute application of the General Sales Tax Act. We should not overlook that section 3(1) creates the liability and Section 3(4) deals with qualification of the liability. Section 5 Clause (vii) provides for the charge being relaxed and the same object is sought to be achieved by Section 6. That such permission is not bad on ground of excessive delegation, is clear from the pronouncement in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, where Venkatarama Ayyar J. dealing with the provisions of another Sales Tax enactment, has observed as follows:-

Now the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at which it is to be charged in respect of different classes of goods, and the like.

The learned advocate in O.P. Nos. 295,296 and 297 has argued, relying on *D.S. Garewal Vs. The State of Punjab and Another*, and *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, , that inasmuch as the delegation u/s 5(vii) is through notification and not by rules, that would not be within the limits of proper delegation to legislate. The Supreme Court in the cases adheres to the rule formulated in the earlier cases that the authorization to frame rules would be proper, where the policy be clearly indicated by the

enactment authorizing the delegation. Indeed, the policy may be got at in several ways and in this connection, observations of Gajendragadkar J. in *Bhatnagars and Co. Ltd. Vs. The Union of India (UOI)*, would be relevant:

This decision shows that if we can find a reasonably clear statement of policy underlying the provisions of the Act either in the provisions of the Act or in the preamble, then any part of the Act cannot be attacked on the ground of delegated legislation by suggesting that questions of policy have been left to the delegate.

In our opinion, where the Legislature has declared the policy, the legal principle, which is to control, the standard to guide the executive, the authorization to frame rules or to grant exemption would not be hit by the principle of delegates non potest delegare. It is clear that Section 5, clause (vii), cannot be treated as not having laid the standard to control the exercise of the power. It shows the goods, whose series of sale are to be taxed at a single point, and under the Amendment Act the taxable point is either the selling or the purchase point. It, therefore, provides only for the rigor of the taxation being relaxed on sales of given goods by the executive selecting which goods out of the list should pay single tax and whether the purchaser is to pay or the seller. We think the delegated power is not excessive with such limits.

9. But the petitioner's learned advocate argues that the authorization within such limits should be through Rules alone, where the control of the Legislature is possible through the Rules being laid for sometime before the House, which is not possible when the authorization to exempt is by notification. We regret our inability to accept the argument. The limits within which delegation is authorized, are well settled, and they cannot be further circumscribed; for, should we uphold the objection, the authorization to the executive to make conditional legislation operative on fulfillment of the condition would become impossible, and such authorization is now a settled form of delegated legislation. Indeed with the executive's responsibility to the Legislature the delegation to legislate through Rules alone would be unnecessary restriction and something beyond a well established rule of constitutional law. Therefore the second ground also fails.

10. Coming to the third, in substance it amounts to this: The Amendment Act having not amended Rule 4 and the quantification of the liability to pay the tax being dependent upon proper Rules being operative the petitioners, notwithstanding the Amendment Act are still not liable. In support of this contention, our attention has been drawn to Section 3(4) and to the grounds on which the earlier decision had held that the notification did not make the petitioner therein liable to assessment at the purchase point. Briefly put the grounds are that the statutory provisions of two weeks' earlier publication not having been fulfilled, the notification could not authorize tax at purchase point. The argument before us is that as the tax can be quantified through proper rules, and inasmuch as there is no proper rule, the petitioners cannot be taxed. The argument is open to the objection, that it overlooks Section 3(b) of the

Amendment Act, which, in express terms, provides that all assessments made prior to the Amendment Act coming into force, are deemed to have been validated. It follows that the Legislature has, by such validation clearly recognized quantification of the liability through the notification, that does not form part of the rule; and, if that can be true of past assessments, there should be cogent reasons for holding the intention to be different as regards future assessments. That apart, it appears to us that should the intention of the legislature by enacting Section 5 (vii) be to prevent hardships one would not expect exercise of the power being made part of the Rules. Its exercise would be kept separate, and would not be confused with the provisions, whose main purpose be to quantify the liability. It is, therefore clear that the legislature has, by not amending the Rules, emphasized the nature of the power, under which the notification had been issued. The addition to clause (vii) further indicates that the relief may be either to the purchaser or seller; and the provision of Section 3(a) as well as of Section 3(c) show the authorization to be one for the future as well. In other words, the intention is to continue the practice of giving the executive the authority to afford relief from taxation through the notification. In such circumstances no amendment of the rules is necessary, nor the Notification, concerning the exercise of such an exempting power, should be required to comply with provisions of how the rules should be published. It follows that this ground of attack also fails.

11. We come to the last ground, namely, that the notification must be u/s 6 and after having been earlier published for two weeks. We think Section 5 cannot be so interpreted as to let all acts of exemptions or reduction be exercisable only u/s 6. Nor do we find anything in Section 24(4) that requires Notifications under the General Sales Tax Act to be published earlier for two weeks, which is required only of Rules that quantify the liability. It follows that the assessments, whether concluded or pending, in pursuance of the notification, are saved by the Amending Act; and, for such validation, any amendment to Rule 4(2) is not necessary. It further follows that all the grounds for holding the Amending Act not legal and the assessments under it invalid, fail; and, the validity of the Amending Act is upheld. The Writ Petitions therefore, fail and are dismissed with costs, Advocate's fee Rs. 100/- in each. This order will govern all the petitions.