(1964) 06 KL CK 0030

In the High Court Of Kerala

Case No : T.R.C. No. 15 of 1963

K.C. Antony APPELLANT

Vs

Sales Tax Officer RESPONDENT

Date of Decision : 03-06-1964

Acts Referred:

Travancore-Cochin Interpretation and General Clauses Act, 1125 — Section 4

Citation : (1964) 15 STC 620

Hon'ble Judges : M.S. Menon, C.J;P. Govindan Nair, J

Bench : Division Bench

Advocate : P. Ramanarayanan, E.A. Benny, P.K. Subramonia Iyer and C.S. Ananthakrishna Iyer, for the Appellant; V.P.G. Nambiar, General, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The petitioner was assessed to sales tax in respect of his transactions in copra for the year 1959-60. The assessment was under the General Sales Tax Act, 1125.

2. In Poulose Bros. Vs. The State of Kerala, this Court held that an assessment of the turnover relating to the last purchase of copra is not possible in view of the defective wording employed when the General Sales Tax Act, 1125, was amended by the General Sales Tax (Second Amendment) Act, 1958. The amending Act came into force on 1st April, 1958.

3. In order to avoid the impact of the decision above-mentioned the General Sales Tax (Validation) Ordinance, 1964 (Ordinance No. 1 of 1964) was promulgated on the 1st January, 1964. It was subsequently replaced by the General Sales Tax (Validation) Act, 1964 (Act No. 8 of 1964). That Act received the assent of the Governor on 29th February, 1964, and was published in the Gazette dated the 3rd March, 1964.

4. Section 3 of the Validation Act (omitting the proviso thereto) reads as

follows :-

Notwithstanding anything contained in any law, or in any judgment, decree or order of any court, authority or tribunal,-

(a) all taxes assessed, levied or collected on the purchases of cashewnut with or without shells, coconut or copra made on or after the 1st day of April, 1958, and before the 1st day of April, 1963, shall for all purposes be deemed to be, and to have always been, validly assessed, levied or collected as if they were assessed, levied or collected under the said Act as amended by this Act; and

(b) all proceedings taken, orders passed and acts done for the assessment, levy and collection of tax on the purchases of the goods specified in Clause (a) during the period specified in that Clause by any officer, authority or tribunal shall for all purposes be deemed to be, and to have always been taken, passed and done in accordance with law, and all such proceedings, orders and acts may be continued as if taken, passed and done under the said Act as amended by this Act:

It is clear from the section that what we are concerned with is not an independent Act imposing a tax but an amending Act making changes in the General Sales Tax Act, 1125.

5. The General Sales Tax Act, 1125, however, was not in existence at the time Ordinance No. 1 of 1964 was promulgated and Act No. 8 of 1964 was passed. It had been repealed earlier-on 1st April, 1963- by the Kerala General Sales Tax Act, 1963. The contention on behalf of the petitioner is that as the General Sales Tax Act, 1125, had disappeared by the time Ordinance No. 1 of 1964 and Act No. 8 of 1964 were placed on the Statute-Book, it is not possible to amend the General Sales Tax Act, 1125, and that as a result Ordinance No. 1 of 1964 and Act No. 8 of 1964 should be considered as totally ineffective for the purpose of getting over the impact of the decision in Poulose Bros. Vs. The State of Kerala, .

6. We are inclined to accept this contention. In repealing the General Sales Tax Act, 1125, all that the Kerala General Sales Tax Act, 1963, said in Section 61 of that Act is :

(1) The General Sales Act, 1125 (Act XI of 1125), is hereby repealed :

Provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred there under, and subject thereto, anything done or any action taken, including any appointment, notification, notice, order, rule, form, Reulation, certificate, licence or permit in the exercise of any power conferred by or under the said Act, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(2) Notwithstanding anything contained in Sub-section (1), any application, appeal, revision or other proceeding made or preferred to any officer or authority under the said Act and pending at the commencement of this Act, shall, after such commencement, be transferred to and disposed of by the officer or authority who would had jurisdiction to entertain such application, appeal, revision or other proceeding under this Act if it had been in force on the date on which such application, appeal, revision or other proceeding was made or preferred.

7. The learned Advocate-General emphasized the words " provided that such repeal shall not affect the previous operation of the said Act or any right, title, obligation or liability already acquired, accrued or incurred there under." The trouble in the way of the Revenue is that what we are concerned with is neither the previous operation of the General Sales Tax Act, 1125, nor any right, title, obligation or liability already acquired, accrued or incurred thereunder. In the light of the decision in Poulose Bros. Vs. The State of Kerala, that Act did not operate regarding the copra transactions of the petitioner and cannot be considered as the foundation for any right, title, obligation or liability in respect of those transactions. Section 4 of the Interpretation and General Clauses Act, 1125, also affords no assistance. All that it says is:

Where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.

7. Such being the case we must hold that the General Sales Tax (Validation) Ordinance, 1964 (Ordinance No. 1 of 1964) and the General Sales Tax (Validation) Act, 1964 (Act No. 8 of 1964) did not effect any amendment as intended for lack of a parent Act on which the amend- ment could operate and that this petition should be allowed as far as the tax in respect of the petitioner''s transactions in copra is concerned. We do so, but without any order as to costs.

