

(1956) 08 KL CK 0013
In the High Court Of Kerala

K.J. Mathew

APPELLANT

Vs

First Member, Board of Revenue and Another

RESPONDENT

Date of Decision : 30-08-1956

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : AIR 1957 Ker 300 : (1957) 8 STC 854

Hon'ble Judges : K.T. Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : V.K.K. Menon and C.S. Padmanabha Iyer, for the Appellant; V. Rama Sheno, The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner is a tobacco licensee (A class) whose turnover has been estimated at Rs. 1,20,000 in respect of the accounting period, 1st January, 1952, to 31st March, 1952, and at Rs.6,24,000 in respect of the accounting period, 1st April, 1952, to 31st March, 1953. The correctness of the estimate is not disputed and the petitioner admits liability to sales tax "at the rate of three pies for every Indian rupee in such turnover" as directed by Sub-section (1) of Section 3 of the Travancore-Cochin General Sales Tax Act, 1125.

2. Sub-section (2) of Section 3 of the Travancore-Cochin General Sales Tax Act, 1125, provides :-

Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed ; and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods and shall be in addition to the tax to which he is liable under Sub-section (1) on his total turnover for the year:

Description" of the goods Rate of tax for every Indian rupee in the turnover relating to such goods, 1 2 (ix) Tobacco Four annas"

and Rule 6 of the Travancore-Cochin General Sales Tax Rules, 1950 :

The sale of any of the goods mentioned in items (1) to (ix) in Section 3, Sub-section (2), shall be subject to the tax specified in that subsection at the stage of sale by the person who in the State is the first dealer in such goods, who is not exempt from taxation u/s 3(3)"--

Section 3 (3) mentioned in the Rule relates to dealers "whose total turnover in any year is less than ten thousand Indian rupees" and has no application to the present case.

3. "Tobacco" is defined in Section 2(jj) of the Act as including "snuff, cigars, cigarettes, beedies, tobacco powder and other preparations or admixtures of tobacco" and we are concerned in this case only with products which definitely come within the ambit of that definition. By a notification (No. SRI-4789/5I/B. RD) dated 18th July, 1951, the rate of tax was reduced from four annas to one and half annas. The notification reads as follows :-

In exercise of the powers conferred by Section 6(1) of the Travancore-Cochin General Sales Tax Act, 1125 (XI of 1125), the Government of Travancore-Cochin are hereby pleased to make the following reduction in the rate in respect of the tax payable for the sale of tobacco u/s 3(2) of the said Act, viz., the single point tax of 4 annas in the rupee now payable on the sale of tobacco, shall be reduced to 11/2 annas in the rupee at single point.

Government Secretariat, By order of His Highness Revenue Department, The Rajapramukh Trivandrum, 18-7-1931. (Sd) Secretary to Government."

4. The petitioner's contention is that he is not "the person who in the State is the first, dealer in respect of the goods concerned" and so he is not liable to pay any tax under Sub-section (2) of Section 3 of the Travancore-Cochin General Sales Tax Act, 1125, read with Rule 6 of the Travancore-Cochin General Sales Tax Rules, 1950. According to him "the person who in the State is the first dealer" is the Imperial Tobacco Company of India, Ltd., Coimbatore, who supplies the article to him.

5. The learned counsel for the petitioner admits that if the sales by the Imperial Tobacco Company of India, Ltd., Coimbatore, are sales which are not taxable under the Travancore-Cochin General Sales Tax Act, 1125, then it is his client who is bound to pay the tax under SubSection (2) of Section 3 of that Act read with Rule 6 of the Travancore-Cochin General Sales Tax Rules, 1950, and so the main question for determination is whether the sales by the Imperial Tobacco Company of India, Ltd., Coimbatore, to the petitioner are sales which can be taxed under the Travancore-Cochin General Sales Tax Act, 1125, or not.

6. Ex. R-16 is a letter from the Imperial Tobacco Company of India, Ltd., Coimbatore, to the Deputy Commissioner of Agricultural Income Tax and Sales Tax, Trivandrum, dated the 17th February, 1954. It states :-

The relationship between this company and its customers is purely that of a seller and buyer. In the orders that the customers place on us for the goods they require, it is specifically mentioned that delivery is to be made in Coimbatore. Our invoices to the customers make it clear that we accept no responsibility for loss of or damages to goods in transit...once the goods are placed on rail at Coimbatore, the property in the goods passes to our customers and we have no legal control over the goods.

We see no reason not to accept this statement or to hold that the property in the goods passed from the company to the petitioner anywhere other than at Coimbatore.

7. We are assured that the procedure followed in railing the goods from Coimbatore to Trivandrum is for the Imperial Tobacco Company of India Ltd., Coimbatore, to take the railway receipts in its own name, then endorse them in favour of the petitioner and post them to his Trivandrum address. There is a full discussion of the cases dealing with the endorsement of railway receipts at pages 37 to 40 of Aggarwala's Commentary on the Indian Sale of Goods Act, 1930. The view that appeals to us is the view expressed in Sheo Prasad Vs. Dominion of India, wherein it is stated :

A railway receipt, therefore, being a mercantile document of title to goods, it is possible to transfer the title in the goods, to the endorsee by mere endorsement. It is, therefore, not possible to accept the contention that a mere endorsement of a railway receipt was not by itself enough to transfer the property in the goods represented by the receipt and the endorsee has to prove aliunde that he is the owner of the goods covered by the railway receipt endorsed in his favour.

The presumption must be in favour of the endorsee though from other facts and circumstances it may be possible to hold that the goods had not been transferred to the endorsee and he was merely deputed to act as agent.

There is nothing in the papers produced before us to rebut the presumption and we must hold that the petitioner became the owner of the goods as and when the railway receipts were endorsed in his favour at Coimbatore and posted to his address at Trivandrum.

8. Sale is denned in Section 2(j) of the Travancore-Cochin General Sales Tax Act, 1125, as follows:-

"Sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge ;

Explanation (1).-A transfer of goods on the hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains the title in the goods as security for payment of the price, be deemed to be a sale.

Explanation (2).-Notwithstanding anything to the contrary in the Sale of Goods Act for the time being in force, the sale or purchase of any goods shall be deemed for the purpose of this Act, to have taken place in the State of Travancore-Cochin wherever the contract of sale or purchase might have been made-

(a) if the goods were actually in the State of Travancore-Cochin at the time when the contract of sale or purchase in respect thereof was made; or

(b) in case the contract was for the sale or purchase of future goods by description, then if the goods are actually produced in the State of Travancore-Cochin at any time after the contract of sale or purchase in respect thereof was made

and it is agreed that if the property in the goods passed at Coimbatore (as we have held) then the sales concerned will not come within the ambit of the definition and be taxable under the Act but for the petitioner's contention based on Section 26 of the Act.

9. Section 26 was inserted by Ordinance No. IV of 1951 which has since been replaced by the Travancore-Cochin General Sales Tax (Amendment) Act, 1951 (Act XII of 1951) and reads as follows :-

(1) Notwithstanding anything contained in this Act-

(a) a tax on the sale or purchase of goods shall not be imposed under this Act-

(i) where such sale or purchase takes place outside the State of Travancore-Cochin; or

(ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India ;

(b) a tax on the sale or purchase of any goods shall not, after the 31st day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The Explanation to Clause (1) of Article 286 of the Constitution of India shall apply for the interpretation of Sub-clause (i) of Clause (a) of Sub-section (1).

10. The petitioner's contention is that Section 26 modifies the concept of sale under the Act and makes the transactions between the Imperial Tobacco Company of India, Ltd., Coimbatore, and the petitioner sales taxable under the Act. Such a contention has apparently been approved by the High Court of Madras in Tax Revision Petition No. 129 of 1955 Mettur Industries Ltd. Vs. The State of Madras, where the effect of Section 22 of the Madras General Sales Tax Act, 1939, which corresponds to Section 26 of the Travancore-Cochin General Sales Tax Act, 1125, came up for consideration. The judgment summed up the position as it stood on the date the Constitution came into force as follows:-

As we have already pointed out, the State purported to tax only sales "within the State", and this has to be understood as meaning sales where the property in the goods passed within the jurisdiction. Where the goods were outside, and the property also passed outside the State, the fact that they were brought over into the State for delivery or consumption was not by itself an element which attracted tax liability on the terms of the Madras General Sales Tax Act as it stood on 26th January, 1950

and proceeded to deal with the contention urged on the basis of Section 22 as follows :-

The argument was that even if the "Explanation sales", where the property in the goods passed outside the State, were not within the Madras General Sales Tax Act, read in the light of the Constitution, the position was altered when Section 22 was introduced by the Adaptation of Indian Laws (Fourth Amendment) Order. As we have already indicated, the effect of Section 22 was to render a sale "within the State", one which fell under the Explanation to Article 286(1)(a), so that, from that date, such sales became taxable under the Sales Tax Act, notwithstanding that in some cases, an inter-State element might have been involved in the transaction. This really did not affect the enforceability of the levy in view of the decision of the Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, which held that "Explanation sales" were outside the fetter imposed by Article 286(2). But when this view was overruled by the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, the position which emerged was, that though these sales were "inside" sales for the purposes of the Sales Tax Act, the tax upon them became obnoxious to the provisions of Article 286(2), and, therefore, they would have been exempt from tax. The Ordinance (The Sales Tax Laws Validation Ordinance, 1956, which has since been replaced by Act No. VII of 1956) therefore, applies to such sales, and the tax liability arising thereon, and after the Ordinance, the exemption based upon Article 286(2) would no longer be applicable. The conditions of the Ordinance are therefore fully satisfied.

Mr. Subbaraya Iyer, learned counsel for the petitioner-assessee, drew our attention to a passage in the judgment of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, where his Lordship the Chief Justice refers to the fact, that in the Bihar Act, the Explanation to Article 286(1)(a) was introduced, as an Explanation to the definition of "sale", the argument being that unless this were done, it could not be said that what might be termed "the Explanation sales" were sales liable to tax under the Sales Tax Act. We are of opinion, that there is no difference in the legal effect achieved by the different methods of drafting adopted in Madras and Bihar. Section 22, with the Explanation of what an "inside" sale is, must be read as really part of every provision in the Act, and so read, the same result is achieved as in Bihar.

11. With respect, we are unable to agree. The wording of Section 26, as we understand it, provides no warrant for the conclusion that it amplifies any of the

provisions of the Act. When a section says that notwithstanding anything contained in the Act a tax on the sale or purchase of goods shall not be imposed under the Act in certain specified cases that cannot possibly mean that what was not taxable prior to the insertion of such a section became taxable thereafter as a "result of such insertion."

12. In AIR 1932 138 (Privy Council) a contention somewhat similar to the one urged by the petitioner was raised in respect of Section 4(3)(v) of the Indian Income Tax Act, 1922. Their Lordships dealt with the contention as follows :-

Some reliance has been placed in argument upon Section 4(3) (v) which appears to suggest that the word "income" in this Act may have a wider significance than would ordinarily be attributed to it. The subsection says that the Act "shall not apply to the following classes of income" and in the category that follows, Clause (v) runs :

"Any capital sum received in commutation of the whole or a portion of a pension, or in the nature of consolidated compensation for death or injuries or in payment of any insurance policy, or as the accumulated balance at the credit of a subscriber to any such provident fund".

Their Lordships do not think that any of these sums, apart from their exemption, could be regarded in any scheme of taxation as income, and they think that the clause must be due to the over-anxiety of the draftsman to make this clear beyond possibility of doubt. They cannot construe it as enlarging the word "income" so as to include receipts of any kind which are not specially exempted. They do not think that the clause is of any assistance to the appellant.

13. As pointed out by Mr. Subbaraya Iyer the position under the Bihar Sales Tax Act, 1947, is quite different as the expression "sale" is defined in that Act, Section 2(g), as follows :

"Sale" means, with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract but does not include a mortgage, hypothecation, charge or pledge :

Provided that a transfer of goods on hire-purchase or other instalment system of payment shall, notwithstanding the fact that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale :

Provided further that the sale of goods in respect of a forward contract, whether goods under such contract are actually delivered or not, shall be deemed to have taken place on the date originally agreed upon for delivery:

Explanation :-The sale of any goods actually delivered in Bihar as a direct result of such sale for the purpose of consumption in Bihar shall be deemed for the purpose of this Act to have taken place in Bihar, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has, by

reason of such sale, passed in another State.

14. It is agreed that if our conclusion is as stated above it is unnecessary to consider the scope and meaning of the Sales Tax Laws Validation Act, 1956, or of the Sales Tax Laws Validation Ordinance, 1956, which it replaced. It is also unnecessary to consider the contention of the petitioner that *K.J. Mathew v. Sales Tax Officer, Alwaye* [1954] 5 S.T.C. 58, and *Kunju Moideen Kunju v. State of Travancore-Cochin* [1954] 5 S.T.C. 462 require reconsideration and of the learned Government Pleader that the words "sale by the person who in the State is the first dealer" occurring in Rule 6 of the Travancore-Cochin General Sales Tax Rules, 1950, indicate a sale by a resident dealer and not by a non-resident dealer like the Imperial Tobacco Company of India, Ltd., Coimbatore.

15. It follows that the petition has to be dismissed and it is hereby dismissed with costs, advocate's fee Rs. 150.