
(1974) 03 KL CK 0018
In the High Court Of Kerala
Case No : T.R.C. No. 17 of 1973

K.L. Johar and Co.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-03-1974

Acts Referred:

Kerala General Sales Tax Rules, 1963 — Rule 9(i)

Citation : (1975) 35 STC 52

Hon'ble Judges : P. Govindan Nair, C.J.;V. Khalid, J

Bench : Division Bench

Advocate : C.T. Peter, T.C. Karunakaran, V.M. Kurian, K.K. Gangadharan and E.M. Sardul Anam, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Govindan Nair, C.J.—The only question arising in this tax revision case is whether the petitioner is entitled to have the excise duty paid to the State Government from 1st January, 1966, to 31st March, 1966, being deducted under Rule 9(i) of the Kerala General Sales Tax Rules, 1963, in determining the turnover of the assessee for the year 1965-66. Rule 9(i), before that rule was amended by Notification S. R. O. No. 639/63 dated 8th July, 1963, read as follows :

9. Determination of taxable turnover.-In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer....

(i) the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him.

After the amendment by the notification dated 8th July, 1963, the clause was in these terms :

(i) the excise duty, if any, paid by the dealer to the Government of Kerala or the Central Government in respect of the goods sold by him.

By Notification G.O. (MS) 941/65/RD elated 28th December, 1965, published in the Kerala Gazette, Extraordinary No. 136, dated 29th December, 1965, Clause (i) of Rule 9 was omitted. It is appropriate to read the notification in full in the light of the arguments that have been advanced before us :

"NOTIFICATION

S.R.O. No. 457.-In exercise of the powers conferred by Clause (b) of Sub-section (2) of Section 57 of the Kerala General Sales Tax Act, 1963 (Act 15 of 1963), the Government of Kerala hereby make the following amendment to the Kerala General Sales Tax Rules, 1963, published as S. R. O. No. 331/63 in the Kerala Gazette, Extraordinary, dated 30th March, 1963, as subsequently amended, namely :-

AMENDMENT

In the said Rules, Clause (i) of Rule 9 shall be omitted. This notification shall come into effect on and from 1st January, 1966.

2. The excise duty paid by the assessee, the revision-petitioner, from 1st January, 1966, to 31st March, 1966, amounts to a large figure of Rs. 1,42,266. The tax payable for the commodity sold is fifty per cent and evidently the exemption is vital as far as the assessee is concerned.

3. The contention raised by the counsel on behalf of the assessee can be briefly stated thus: The unit of assessment for sales tax is an year ; the financial year commencing on the 1st of April of an year and ending with the 31st of March of the subsequent year. The turnover assessed is the turnover for that unit, namely, the financial year. The exemptions to be applicable must also be exemptions that will apply for that year. No exemption can either come into operation or cease to be effective during the middle of the year. So according to the counsel, even though Rule 9(i) has ceased to be in the Rules from 1st January, 1966, such omission can take effect only from the subsequent year commencing from 1st April, 1966. Reliance has been placed for this proposition on the ruling of the Supreme Court in Mathra Prashad and Sons Vs. State of Punjab, . There is the following passage in the head-note to that decision which has correctly summarised the dicta in the case :

as the tax under the Act (the East Punjab General Sales Tax Act, 1948) was yearly and was to be paid on the taxable turnover of a dealer, the exemption, whenever it came in, in the year for which the tax was payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption. In the present case, the notification did not fix the date from which the exemption was to operate, because the Act omitted to make such provision enabling the State to do so, and the exemption must,

therefore, operate for the whole year, during which it was granted.

4. The particular exemption came into existence during the year for which the tax was assessed and the notification did not fix the date of commencement of the exemption and there was no provision in the Act that the exemption should not be effective for the whole of the year. Their Lordships proceeded to state that the notification did not fix the date from which the exemption was to operate because of the omission to make such provision in the Act enabling the State to do so. It is unnecessary for us to consider this aspect because it has not been contended before us that the notification dated 28th December, 1965, which deleted Rule 9(i) stating specifically that "this notification shall come into effect on and from 1st January, 1966" is invalid for any lack of power in Government to so issue a notification u/s 57 of the Kerala General Sales Tax Act, 1963. We must therefore take the notification to be a valid one and the Supreme Court decision itself envisaged that the notification can come into effect from a date during the period for which the tax is to be imposed. The Supreme Court decision cannot therefore support the contention that was raised that the notification will become operative only from 1st April, 1966. Isaac, J., followed the decision in Mathra Prashad and Sons Vs. State of Punjab, in O. P. No. 1692 of 1968 and if we may say so with respect, rightly, in view of the nature of the notification that was considered by the learned Judge in the case.

5. Counsel then invited our attention to the decision of the Supreme Court in Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., . This case too is distinguishable on facts, for, it is clear that the assessee had elected the previous year as the basis for the assessment for the year 1948-49. The rate of tax on non-edible oils along with various other commodities was raised from 3 pies to 6 pies per rupee with effect from 9th June, 1948. That was during the year of assessment 1948-49. The question was whether the assessee was obliged to pay the enhanced rate of tax for the year of assessment 1948-49 by applying the proportion of the period for which the new rate was applicable during the year 1948-49 to the previous year 1947-48. Their Lordships held :

Where the assessee who is a manufacturer and a dealer of non-edible oils and who elected the previous year as the basis of his assessment in the assessment year 1948-49, the assessee is liable to pay tax for the assessment year 1948-49 on the turnover of the previous year in respect of sales of non-edible oils at the flat rate of 3 pies per rupee, and not at the rates of 3 pies per rupee and 6 pies per rupee on the turnover of the previous year in proportion to the two periods from 1st April to 8th June, 1948, and from 9th June, 1948, to 31st March, 1949.

This ruling too can have no application because the question was what was the rate of tax that was applicable for the turnover relating to the year 1947-48 during which period the only rate that was applicable was 3 pies in the rupee.

6. Counsel then invited our attention to the principle that is well-established in Income Tax law and contended that it is the law as it stood on the 1st of April of

an year that should be applied for the assessment for the year commencing on that day and any alteration in the law after the 1st of April can have no effect whatever in changing the incidence of liability for the payment of Income Tax by an assessee under the Income Tax Act and that principle must be applied to the assessments under the Sales Tax Act as well. It is no doubt true that the principle is well-established that the law as it stood and as enacted by the Finance Act, which invariably come into force effective from the 1st of April of any year of assessment, is that that should be applied in imposing tax on the income of the previous year to the year of assessment. The Supreme Court in the decision in *Karimtharuvi Tea Estate Ltd. Vs. State of Kerala*, stated that the principle is well-established and in *COMMISSIONER OF Income Tax MADRAS Vs. MAHARAJAH OF PITHAPURAM.*, , the Madras High Court had said the same thing. The decision of the Madras High Court went up to the Privy Council and the Judicial Committee stated the principle in the decision in *Maharajah of Pithapuram v. Commissioner of Income Tax, Madras* [1945] 13 ITR 221 , in these terms :

In the first place, it is clear to their Lordships that under the express terms of Section 3 of the Indian Income Tax Act, 1922, the subject of charge is not the income of the year of assessment, but the income of the previous year. This is in direct contrast to the English Income Tax Acts, under which the subject of assessment is the income of the year of assessment, though the amount is measured by a yardstick based on previous years. The difference is well illustrated by the distinction that in England the source of income must still be extant in the year of assessment but that is not of relevance in India. Their Lordships may refer to the able judgment of Rankin, C. J., in *Behari Lal Mullick v. Commissioner of Income Tax, Bengal* (1927) 54 Cal. 630, with which they agree.

In the second place, it should be remembered that the Indian Income Tax Act, 1922, as amended from time to time, forms a code, which has no operative effect except so far as it is rendered applicable for the recovery of tax imposed for a particular fiscal year by a Finance Act. This may be illustrated by pointing out that there was no charge on the 1938-39 income either of the appellant or his daughters, nor assessment of such income, until the passing of the Indian Finance Act of 1939, which imposed the tax for 1939-40 on the 1938-39 income and authorised the present assessment. By Sub-section (1) of Section 6 of the Indian Finance Act, 1939, Income Tax for the year beginning on the 1st April, 1939, is directed to be charged at the rates specified in Part I of Schedule II, and rates of super-tax are also provided for, and by Sub-section (3) it is provided that "for the purpose of this section and of Schedule II, the expression "total income" means total income as determined for the purposes of Income Tax or super-tax, as the case may be, in accordance with the provisions of the Indian Income Tax Act, 1922". This can only refer to the Indian Income Tax Act, 1922, as it stood amended at the date of the Indian Finance Act, 1939, and necessarily includes the alterations made by the amending Act, which had already come into force on the 1st April, 1939.

7. Chagla, C.J., in the decision in *Scindia Steam Navigation Co. Ltd. Vs. Commissioner of Income Tax, Bombay City, Bombay*, , referred to the decision of the Madras High Court in *COMMISSIONER OF Income Tax MADRAS Vs. MAHARAJAH OF PITHAPURAM.*, at page 694 and of the Judicial Committee of the Privy Council in *Maharajah of Pithapuram v. Commissioner of Income Tax, Madras* [1945] 13 ITR 221 (P.C.) 695 and expressed, if we may say so, with characteristic lucidity, the position under the Income Tax Act at page 693 thus :

In order to appreciate this contention one must bear in mind two basic facts about the Indian Income Tax Act. The first is that the Indian Income Tax Act subjects to tax not the income of the assessee in the year of assessment but in the previous year and the other basic fact is that the liability to tax arises not by reason of the provisions of the Indian Income Tax Act but by reason of the fact that a Central Act fixes the rate at which the assessee is liable to pay tax and it is by reason of the Central Act that the income of the previous year of the assessee becomes liable to tax. If these two basic facts are borne in mind, then the position in law becomes very clear and very simple.

8. These basic principles of Income Tax law are not applicable to the assessment to sales tax and it appears to us as "simple and clear" that those principles cannot be applied in assessing a person to sales tax under the provisions of the Kerala General Sales Tax Act, 1963. The deletion from 1st January, 1966, of Rule 9(i) must take effect from that day and any payments made towards excise duty to the State Government from that date cannot be exempted. The view taken by the Sales Tax Appellate Tribunal in this regard is the correct view to take and we see no reason to interfere with the order of the Tribunal.

9. We dismiss this petition. We direct the parties to bear their respective costs.