

(1965) 07 KL CK 0020

In the High Court Of Kerala

Case No : Tax Revision Case No's. 13 and 14 of 1964

Laxmi Starch Factory Ltd.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-07-1965

Acts Referred:

Central Sales Tax Act, 1956 — Section 6, 9
Kerala General Sales Tax Act, 1963 — Section 6

Citation : AIR 1966 Ker 60 : (1965) 16 STC 794

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

Bench : Division Bench

Advocate : K.V.R. Shenoj, P.K. Kurian, V. Desikan, K.A. Nayar and K. Sukumaran, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner, the Laxmi Starch Factory Limited, Kundara, has been assessed to sales tax under the Central Sales Tax Act, 1956, in respect of its inter-State sales of tapioca chips in the assessment years 1958-59 and 1959-60. T. R. C. No. 13 relates to the assessment year 1958-59 and T. R. C. No. 11 relates to the assessment year 1959-60.

2. The intra-State sales of tapioca chips are exempt from taxation under the General Sales Tax Act, 1125, by virtue of a notification issued u/s 6 of the Act and dated 23-9-1958. The notification was published in the Kerala Gazette dated 30-9-1958.

3. Section 6 of the General Sales Tax Act, 1125 deals with the power of the Government to notify exemption and reduction of tax, and reads as follows:

"(1) Government may by notification in the Gazette, make an exemption, or reduction in rate, in respect of any tax payable under this Act-- (i) on the sale of any specified class of goods at all points or at any specified point or points in the series of sales by successive dealers; or

(ii) by any specified class of persons in regard to the whole or any part of their turnover.

(2) Any exemption from tax, or reduction in the rate of tax notified under subsection (1)--

(a) may extend to the whole of the State or to any specified area or areas therein;

(b) may be subject to such restrictions and conditions as may be specified in the notification, including conditions as to licences and licence fees".

The relevant portion of the notification is in the following terms:

"In exercise of the powers conferred by Section 6 of the General Sales Tax Act, 1125 (Act XI of 1125) the Government of Kerala hereby make an exemption in respect of the tax payable under the said Act on the sale of goods specified below subject to the condition that the dealers, in such goods shall take out licences under Rule 21 of the General Sales Tax Rules, 1950 on payment of the fees prescribed under Rule 22 thereof;

Provided that the burden of proving that a transaction is not liable for taxation shall be on the dealer.

SCHEDULE

1. Vegetables including tapioca except its manufactured product."

4. The sales in question were effected after 30-9-1958 and it is common ground that the petitioner has complied with the condition for the exemption specified in the notification. The petitioner's contention is that as the sales concerned would have been exempt from taxation under the General Sales Tax Act, 1125, if they were intra-State sales in Kerala, they are also not liable to taxation under the Central Sales Tax Act, 1950 by virtue of Section 9 of that enactment.

5. Section 9 of the Central Sales Tax Act, 1956, deals with the levy and collections of tax. Section 6 of the Central Sales Tax (Second Amendment) Act, 1958 substituted a new section for the old Section 9 in the Central Sales Tax Act, 1956, Sub-section (1) of the substituted Section 9 (omitting the proviso thereto) reads as follows:

"The tax payable by any dealer under this Act on sales of goods effected by him in the course of inter-State trade or commerce (whether such sales fall within clause (a) or clause (b) of Section 3) shall be levied and collected by the Government of India in the manner provided in sub-section (3) in the State from which the movement of the goods commenced:" and Sub-section (3) of that section (omitting the proviso thereto):

"The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under

this Act assess, collect and enforce payment of any tax, including any penalty payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly."

6. Section 9 of the Central Sales Tax Act, 1956, as it stood before the substitution- The substitution does not seem to make any material alteration as far as the case before us is concerned--was in the following terms:

(1) The tax payable by any dealer under this Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in sub-section (2).

(2) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate state shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly.

(3) The proceeds (reduced by the cost of collection) in any financial year of any tax levied and collected under this Act in any State on behalf of the Government of India shall, except in so far as those proceeds represent proceeds attributable to Union territories, be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India."

This section came up for consideration before the Supreme Court in *State of Mysore Vs. Yaddalam Lakshminarasimhaiah Setty and Sons*, .

7. The turnover of the assessee sought to be taxed in the case before the Supreme Court, a case from Mysore, arose out of the sales of handloom and powerloom cloth in the course of inter-State trade or commerce. Under the Mysore Sales Tax Act, 1957, the sales of those goods were liable to tax u/s 5(3) (a) read with entry 7 in Schedule II of that Act at a single point, on sale by the first or the earliest of successive dealers in the State. It was common ground that the assessee was not the first or the earliest of successive dealers in the State in respect of the transactions sought to be taxed and that if the inter-State sales were intra-State sales, no tax would have been attracted under the Mysore Sales Tax Act, 1957. The majority judgment of the Supreme Court extracted Section 6, 8 and 9 of the Central Sales Tax Act, 1956 and said:

"Section 6 of the Central Act is the charging section. Subject to the other provisions contained in the Act, every dealer is liable to pay tax under the Act on all sales effected by him. It will be noticed that the liability is not absolute but subject to the other provisions of the Act. If the effect of another provision is to take away the liability, effect will have to be given to it. Section 8 prescribes the rates of tax to be levied. It is common ground that Section 8(1) does not apply to the facts of the case, but the proviso is important as it indicates that in some cases falling within the proviso the rate may be nil. In other words, notwithstanding Section 6, the dealer may not be liable to pay any tax if he comes within the proviso to Section 8(1). It follows that the scheme of the Act is not that every transaction in inter-State trade must bear some tax,

Section 8(2) provides for the method of calculating the tax; under that subsection, the tax shall be calculated at the same rates and in the same manner as would have been done if the sale had, in fact, taken place inside the appropriate state. The expression "in the manner" may give rise to two conflicting views namely (i) it is concerned only with the calculation of the tax, and (ii) it deals not only with the calculation of rates but also the manner of levy of the tax. But Section 9(1) dispels the ambiguity for it says that the tax payable by any dealer under the Central Act shall be levied and collected in the appropriate State by the Government of India in the manner provided in Sub-section (2); and Sub-section (2) of Section 9 empowers the appropriate State authorities to assess, collect and enforce payment of any tax payable by any dealer under the Central Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected. The expression "levy" means "impose". u/s 5(3) (a) of the Mysore Sales Tax Act, 1957 hereinafter called the State Act, tax shall be levied in the case of the sale of any of the goods mentioned in column (2) of the Second Schedule by the first or the earliest/one of successive dealers in the State, who is liable to tax under that section, a tax at the rate specified in the corresponding entry of column (3) of the said Schedule on the turnover of sales of such dealer in such year relating to such goods. When Section 9(1) says that under the Central Act tax shall be levied in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, it is reasonable to hold that the expression "levied" in Section 9(1) of the Central Act refers to the expression "levied" in Section 5(3) (a) of the State Act. There is no reason why the Central Act made a departure in the manner of levy of tax on the specified goods which are taxed only at a single point under the State Act; if any such radical departure was intended, the Central Act would have expressly stated so. The Central Act was passed to levy and collect sales tax on inter-State sales to avoid confusion and conflict of jurisdictions; the tax is also collected only for the benefit of the States. Therefore, the construction we accept avoids the anomaly of the State collecting tax on power loom textiles only at a single point and the Centre, through the agency of the State authorities, collecting the said tax for and on behalf of the State at multi-points.

There has been considerable difference of opinion among the High Courts about the true construction of Section 8(2), but none of them has relied on Section 9 of the Central Act. Therefore, it is not necessary to refer to the cases cited before us."

8. It is agreed that by virtue of the notification u/s 6 of the General Sales Tax Act, 1125, the petitioner would not have been liable to sales tax under that Act if the sales in question were sales in intra-State trade instead of sales in inter-State trade. In the light of the decision of the Supreme Court we must hold that the non-liability to taxation under the State Act if the sales were in intra-State trade postulates a non-liability to taxation under the Central Act even when the sales were in inter-State trade, and allow these petitions. We do so; but in the circumstances of the case without any order as to costs.