(1963) 08 KL CK 0024

In the High Court Of Kerala

Case No : T.R.C. No. 48 of 1962

Malayalam Plantations Ltd. — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 07-08-1963

Acts Referred:
States Reorganisation Act, 1956 — Section 119, 3

Citation : (1963) 7 KLJ 731 : (1963) 14 STC 969

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

Bench : Division Bench

Advocate : P.K. Kurien, K. Sukumaran, K.A. Nayar and V. Desikan, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The assessee-The Malayalam Plantations Limited-is the petitioner before us. The assessment year is the financial year 1957-58.

2. The sales concerned were sales by auction in Fort Cochin of tea stored on Willingdon Island. In the light of the decision of the Supreme Court in A.V. Thomas & Co., Ltd. v. Deputy Commissioner of Agricultural Income Tax and Sales Tax, Trivandrum [1963] 14 S.T.C. 363, these sales should be considered as having taken place in Fort Cochin.

3. The assessment was made under the General Sales Tax Act, 1125. That Act-originally called the Travancore-Cochin General Sales Tax Act, 1125-came into operation in Fort Cochin only on 1st October, 1957. It was as a result of the Travancore-Cochin General Sales Tax (Amendment) Act, 1957.

4. The material date to fix the liability is the date of the sale and there can be no doubt that the assessment of all sales from 1st October, 1957, to 31st March, 1958, under the General Sales'' Tax Act, 1125, is justified and has to be sustained.

5. The period from 1st April, 1957, to 30th September, 1957, stands on a different footing. During that period the sales tax law in force in Fort Cochin was the Madras General Sales Tax Act, 1939, and consequently the assessment under the General Sales Tax Act, 1125, was not in order and cannot be sustained.

6. It is true that Fort Cochin became part of the Kerala State as a result of the States Reorganisation Act, 1956, on and from 1st November, 1956. But that, however, did not mean that a law in force on that day in a particular portion of the State automatically got extended to every other portion thereof. Section 119 of the States Reorganisation Act, 1956, provides:

The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to an existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

In Bh. Satyanarayanamurthi v. Income Tax Appellate Tribunal, Madras Bench AIR 1957 A.P. 123, Subba Rao, C.J., referred to this section and some other provisions of the Act, summed up the submission of counsel as follows :

The Telangana area, in which Hyderabad City is situated, formed part of the State of Hyderabad till 1st November, 1956. Section 3 of the States Reorganisation Act, 1956, added the territories comprised in the area popularly called Telangana to the Andhra State. The writ is now sought to be issued against the Income Tax Appellate Tribunal situated in the city of Hyderabad. Learned counsel contends that, though Telangana area was integrated with the Andhra State from 1st November, 1956, the laws of that territory were preserved under the States Reorganisation Act till the competent Legislature made the necessary adaptations and modifications of the laws within one year from the appointed day and as no such adaptations have yet been made, the provisions of the Hyderabad Court-fees Act would apply to proceedings taken in the erstwhile Telangana area.

and said :

The result is that the law obtaining in the State of Hyderabad before the appointed day would still govern the rights of parties in the Telangana area. The law of court-fees obtaining before that date in the State of Hyderabad is the Hyderabad Court-fees Act and, therefore, the Hyderabad Court-fees Act governs the proceedings arising out of that area.

7. In the light of what is stated above we must hold that the petitioner is not liable to sales tax on the sales effected by him in Fort Cochin prior to 1st October, 1957, under the General Sales Tax Act, 1125; and that he will be liable under that Act only for the sales effected by him on and from the said date. We decide accordingly.

8. The same may perhaps be the position as regards the assessee''s sales of tea stored on Willingdon Island and sold in Calicut. This must be investigated.

9. The department will recalculate the assessee''s liability in respect of the assessee''s sales on the above basis and pass appropriate orders in the matter.

10. The T.R.C. is allowed as above. No Costs.