
(1963) 09 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 1342 of 1962

M/s. Malayalam Plantations Ltd.

APPELLANT

Vs

Commissioner, Quilon Municipality

RESPONDENT

Date of Decision : 24-09-1963

Acts Referred:

Companies Act, 1956 — Section 592(1)(c)
Constitution of India, 1950 — Article 246, 276, 276(2)

Citation : (1964) KLJ 389

Hon'ble Judges : C.A. Vaidialingam, J

Bench : Single Bench

Advocate : K.V.R. Shenoj, P.K. Kurien, K. Sukumaran and K.A. Nayar, for the Appellant; V.K.K. Menon, C.S. Padmanabha Iyer and M. Ramachandran, for the Respondent

Final Decision : Allowed

Judgement

Vaidialingam, J.—In this writ petition Mr. P.K. Kurien, learned counsel for the petitioner company challenges the assessment made to profession tax under the Travancore District Municipalities Act 1116 (Act XXIII of 1116) for the two half-years in 1958-59. The actual order of assessment itself is Ext. E dated 27-A-62. Before I advert to the correspondence that passed between the petitioner company and the respondent in these proceedings, namely the Commissioner, Quilon Municipality, before the passing of the order Ext. E., it is necessary to refer to the assessment order made in respect of the identical period by the same assessing authority and which was the subject of attack before me at the instance of the petitioner company in O.P. No. 982 of 1960. It will be seen that the judgment in that writ petition was rendered by me on 31st January 1962. It is also seen that my judgment was under attack before a Division Bench of this Court in Writ Appeal No. 84 of 1962; and My Lord the Chief Justice and Madhavan Nair J., who heard the writ appeal, by their judgment dated 29th August 1963, confirmed my decision in O.P. 982 of 1960. No doubt the judgment in the writ appeal was rendered only on 29th August 1963; and the order of

assessment in these proceedings was passed, in pursuance of notice issued as per the direction given by me in O.P. 982/60, before the judgment in the writ appeal itself was rendered by this Court.

2. In the previous proceedings, it will be seen, that the Commissioner took up the position that an assessment in respect of the petitioner to profession tax will have to be made under Rule 18 (1) of the Taxation and Finance Rules in Schedule II of the Travancore District Municipalities Act, A further contention was taken by the Commissioner that an assessment can be made under the proviso which originally existed to rule 18 (2) of the Taxation and Finance Rules occurring again in Schedule II. Another contention was also taken by the Commissioner in those proceedings to the effect that the entire transactions which were taken into account for the purpose of making the assessment to profession tax in those proceedings, must be deemed to have taken place in Quilon itself because that is the only place where the petitioner company has the principal and controlling office in the Indian Union. All these aspects have been dealt with by me in my judgment in O.P. 982 of 1960.

3. Ultimately it will be seen, that notwithstanding the fact that a contention was taken by Mr. P.K. Kurien, learned counsel appearing for the same petitioner in O.P. 982/60 that rule 17 of the Taxation and Finance Rules occurring in Schedule II of the Travancore District Municipalities Act must be considered to go far beyond the terms of Section 91 of that Act, that contention was not accepted by me. The exact scope of rule 17 was also laid down by me in the previous judgment. I also rejected the contention that was taken by the Municipal Commissioner that he has jurisdiction to make an assessment to profession tax on the basis of rule 18 (1) of the Taxation and Finance Rules. Ultimately I held that the position was that in as much as the petitioner company must be considered to be one transacting business partly within the area of the Quilon Municipal Council, and partly outside, the proper rule applicable is rule 18 (2) of the Taxation and Finance Rules, in Schedule II of the Travancore District Municipalities Act. The contention that in as much as the office of the petitioner company at Quilon must be considered to practically control the various transactions in relation to the business conducted by the company and therefore in consequence it must be considered that the entire transactions should be deemed to have taken place in Quilon itself, was also not accepted by me. It was really after a consideration of all these aspects and after indicating my opinion in respect of the various matters referred to above, that I ultimately directed the Commissioner of the Quilon Municipality to take up the question of making a fresh assessment, in the light of the directions contained in that judgment. As to what exactly was the turnover of business, if any, transacted, by the petitioner company within the area of the Quilon Municipal Council, was a matter, which was directed by me, to be taken up and investigated by the authority concerned for the purpose of making a proper order of assessment, if ultimately the petitioner company was liable for payment of profession tax.

4. In consequence of the decision rendered by me on 31st January 1962, in O.P. No. 982/60, it is seen that the Commissioner of the Quilon Municipality issued the notice Ext. A dated 7th March 1962. In the said notice, the Commissioner refers to the judgment of this Court in O.P. 982/60; and states that an appeal is being filed from that decision, but subject to that, the Commissioner is bound to start fresh assessment proceedings in compliance with the judgment in O.P. 982/60. The Commissioner also adverts in the notice Ext. A, to the actual decision in O.P. 982/60 to the effect that the petitioner company is to be taxed under Rule J 8 (2) without the proviso thereof. On this basis, the Commissioner makes a request to the petitioner company to furnish him with the figures which would be helpful to fix the aggregate money value of goods purchased or sold by the company or of any other business "transacted by the company within the Municipal area during each half year of 1958-59". There is also a further statement in Ext. A to the effect that if the petitioner company proposes to take up the position that "it is not transacting any business within the Municipal area", then the company will have to give the aggregate money value of the goods purchased or sold in India by the company during the said period, namely 1958-59, with necessary evidence to substantiate the same.

5. Pausing here, it will be seen that in Ext. A the Commissioner specifically asked the petitioner company to furnish him with the "aggregate money value of goods purchased or sold by the company within the Municipal area"; and the Commissioner also asked the petitioner company to furnish him with information regarding "the aggregate money value of any other business transacted by the company within the Municipal area" during each of the half years in 1958-59. This information asked for by the Commissioner under Ext. A is, in my view, strictly in compliance with the provisions of rule 18 (3) of the Taxation and Finance Rules in Schedule II of the Travancore District Municipalities Act. No doubt, in the last paragraph of Ext. A, the Commissioner himself anticipates that the petitioner company may take up the position that "it is not transacting any business within the Municipal area"; and in that contingency, the Commissioner requests the petitioner company to give the aggregate money value of the goods purchased or sold in India by the company during the said period. No doubt, according to Mr. P.K. Kurien, learned counsel for the petitioner, this information called for by the Commissioner is totally irrelevant and beside the point, and opposed to Rule 18 (2) read with Rule 18 (3). On the other hand, the stand taken by Mr. V.K.K. Menon, learned counsel appearing for the respondent, Municipal Commissioner, is that this information is absolutely necessary for the purpose of making a proper assessment as against the petitioner company in accordance with the decision rendered in O.P. 982/60. It may also be indicated at this stage, that according to Mr. P.K. Kurien, learned counsel for the petitioner, the actual order of assessment evidenced by Ext. E, clearly ignores the various principles laid down and directions given in the previous judgment in O.P. 982/60.

6. The petitioner company sends the reply Ext. B dated 13th March 1962, with the information asked for by the Commissioner under Ext. A. After

acknowledging the communication Ext. A, the company points out that the effect of the High Court decision in O.P. 982/60 is only to assess the company under rule 18 (2) without the proviso, provided there is any turnover of business transacted within the Quilon Municipality. The company then refers to some other communication sent to the Commissioner to the effect that their income is derived solely from the cultivation of tea and rubber on the estates situated in the various parts of Kerala and Madras States and that each of their estates is separately assessed to profession tax by the respective Panchayats in which they are situated. Then the petitioner also adverts to the circumstance that the sale of their produce is only dealt with at places other than Quilon and that they do not derive any income from any source within the limits of the Quilon Municipality. This stand, it will be seen from Ext. B, is repeated by the company at every stage, notwithstanding the fact that they give the necessary information asked for by the Commissioner under Ext. A.

7. Then the company states that in as much as they do not derive any income from any source within the Quilon Municipality and as all transactions in respect of sale and purchase of tea and rubber have taken place at places outside the Quilon Municipal area, according to them there is no turnover of any business transacted within the area of the Quilon Municipality. On this basis, the petitioner company also states that there is no income of the company within the Municipality on which any profession tax can be imposed.

8. The petitioner company then refers, in Ext. B. to the request made by the Commissioner under Ext. A for furnishing the money value of the goods purchased or sold in India by the company, and it proceeds on the assumption that the information asked for is the sale price of the tea and rubber sold in India. It also reiterates that there is no such sale in Quilon. But anyhow, the company gives the information regarding the money value of the goods purchased or sold by them in India. In respect of the first half year in 1958-59 regarding sale of rubber and tea they have given the sum of Rs. 1,49,19,170/-; again, for the second half year of 1958-59 in respect of rubber and tea sold in India, the petitioner company has given the sum of Rs. 1,54,93,305/-. The company winds up Ext. B by stating that the above figures are furnished without prejudice to their contention that the same does not form part of the turnover of the company's business, within the Quilon Municipality.

9. After receipt of the reply Ext. B from the petitioner company, the Commissioner, by his communication Ext. C. dated 14th March 1962, calls upon the petitioner company to produce the necessary evidence, within a week, to substantiate the turnover figures furnished by them. To that communication the petitioner company sent the reply Ext. D dated 20th March 1962, wherein, after acknowledging the communication Ext. C, the company states that they have pointed out that the income derived by the company is solely derived from the cultivation of tea and rubber on their estates situated in the various parts of Kerala and Madras States, and that they have also stated that the sale of their

produce is conducted only at places other than Quilon and they do not derive any income from any source within the Municipal limits of Quilon. Again the company states that in view of the matters mentioned in the earlier part of Ext. D, no part of the above-said turnover is within the limits of the Quilon Municipality. The petitioner company also states that the company has several offices in India in its various estates and that the company is not liable to be assessed, as and by way of profession tax, in view of the fact that there is no turnover within the Quilon Municipality for the period in Question.

10. The petitioner company then states in Ext. D that even the tea and rubber sold in India are not sold within the limits of the Quilon Municipality. It also refers to the contract of sale not having been made within the limits of the Quilon Municipality, they also give details as to how exactly the transactions in tea and rubber took place. But I do not think it necessary to consider in greater "detail the various matters mentioned by the company in Ext. D, in view of the stand that has been taken by the respondent in these proceedings. The respondent is prepared to accept the position that all the transactions in respect of which the money value of the turnover has been given by the company in Ext. B, have really taken place outside the limits of the Quilon Municipality. But the Municipality proposes to make them liable on a different basis, to which I will advert, after referring to the order Ext. E, making an assessment as against the petitioner company. Ultimately it will be seen that the petitioner company winds up Ext. D, by saying that no part of the turnover referred to by them, in Ext. B or Ext. D relates to the Quilon office of the company and therefore the company is not liable to be assessed to profession tax.

11. It will be seen that under Ext. E the assessing authority issued a notice of demand of profession tax, u/s 94 of the Travancore District Municipalities Act, Act XXIII of 1116, for the period in question, i.e., for the two half years of 1958-59. Here again it is stated that an appeal is being filed from the decision of the High Court in O.P. 982/60. Ultimately in Ext. E, the Commissioner states that in view of the judgment in O.P. 982/60, the petitioner company is assessed to profession tax under rule 18 (2) of the Taxation and Finance Rules, in Schedule II of the Travancore District Municipalities Act, 1116 (Act XXIII of 1116). The amounts of turnover that is mentioned are Rs. 2,98,383.40 and Rs. 3,09,866/-; and they are stated to be for the first and second half of 1958-59 respectively.

12. Pausing here for a minute, there is no controversy that the turnover mentioned in Ext. E is the 2 per cent of the total money value given by the company in Ext. B.

13. In Ext. E, the total tax liability that is imposed as against the petitioner company is fixed in the sum of Rs. 6,523.65 including surcharge of Rs. 310.65. It may also be stated that the surcharge of Rs. 310.65 is claimed on the basis of Section 4 of the Kerala Surcharge on Taxes Act, 1957 (Act XI of 1957).

14. Therefore, it will be seen that notwithstanding the fact that the claim made

by the petitioner company both under Ext. B and under Ext. D that no part of their turnover of business has taken place within the area of the Quilon Municipality and that the company has not been transacting any business within the area of that Municipality, and also notwithstanding the further fact, that the various sales that the petitioner company claimed as having taken place outside the jurisdiction of the Quilon Municipality, has also been accepted by the Commissioner, nevertheless an order of assessment to profession tax has been made under Ext. E. That assessment, it will be seen, is really on the basis of information asked for by the Commissioner himself under Ext. A and furnished no doubt by the petitioner company under Ext. B. That is, I have already indicated that in Ext. A the Commissioner has stated that if the petitioner company is taking up the position that they are not transacting any business within the Municipal area, the company is to give the aggregate money value of the goods purchased or sold in India by the company during the period in question And it is after taking up the position that the company does not transact any business within the Municipality and after taking up the further position that the various sales of rubber and tea have all taken place outside the jurisdiction of the Quilon Municipality, that the company no doubt, furnished the information regarding the aggregate money value of sale of tea and rubber in the Indian Union.

15. The question, that naturally arises for decision in these proceedings, is whether the assessing authority has acted legally and properly in making the assessment in the manner he has done under Ext. E. Before I consider the stand taken on behalf of the respondent Commissioner in these proceedings, it is necessary to advert to some averments that are made in the affidavit filed in support of the writ petition.

16. It is stated in paragraph 2 of the said affidavit that Messrs. Malayalam Plantations Ltd., namely the petitioner in this writ petition, is a company registered in England, having its registered office in London, and carrying on the business of growing and selling rubber, tea and other plantation crops. It is also stated that the company has an office in Quilon, within the limits of the Quilon Municipality as required by S. 592 (1) (c) of the Companies Act, but no business of the petitioner company, is transacted at that office. Again, in paragraph 3 of the affidavit it is stated that the sales of the produce grown in the estates owned by the petitioner company are dealt with at places other than Quilon and that the petitioner company does not derive any income from any source within the limits of the Quilon Municipality.

17. The stand that has been taken by the petitioner company in paragraph 2 of its affidavit that it is a company registered in England and is carrying on the business in the manner mentioned therein, is accepted by the respondent in the counter-affidavit filed in these proceedings. According to the Commissioner, the company's office at Quilon is the only office in India controlling its business in India, and therefore the entire business activities of the company in India are

controlled from that office. The commissioner also takes up the position that the petitioner company's source of income may be from estates situated outside the Quilon Municipality, but the sale and other activities of the company are controlled from the Quilon Office. The commissioner also states that, in any case, the petitioner company is transacting business within the said Municipality. But the actual stand that has been taken by the Commissioner is to be seen from what has been stated in paragraph 9 of the counter-affidavit. In that paragraph, after referring to various matters, it is stated that in a case like this, where the entire business activities of an assessee are controlled from an office situated within the Quilon Municipality, the turnover, in the sense in which that expression is defined in Rule 18 (3) or rule 21 (3) of the Kerala Municipalities Act, 1960, can only be the turnover of the entire business of the assessee in India.

18. Therefore, it will be seen that though the position that the entire transactions in respect of sale or purchase of tea and rubber, for which the money value has been given by the petitioner company in Ext. B and reiterated in Ext. D, did not take place within the Municipality, has been accepted by the Commissioner, nevertheless according to him, in view of the fact that the company's office at Quilon is its only office in India, controlling its entire business activities in India, it must be considered that the turnover, in the sense in which that expression is defined in rule 18 (3) can only be the turnover of the entire business of the company in India. That is, according to the respondent, where ever the transactions may have taken place namely the sale or purchase of tea and rubber, all those transactions representing the turnover of the assessee, must be considered to be the turnover of the petitioner company at Quilon.

19. The question is whether this stand taken by the respondent can be justified by the provisions of the Kerala Municipalities Act or by the relevant rules bearing on this aspect. Prima facie, I thought most of the contentions that are being advanced on behalf of the respondent Municipal Commissioner are practically concluded, as against him, by my judgment in O.P. 982 of 1960. But nevertheless Mr. V.K.K. Menon, learned counsel for the respondent, pointed out that there was a further direction given by this Court, in that judgment after setting aside the order of assessment, that was, no doubt, passed on an earlier occasion, to the assessing authority to re-investigate the matter in the light of the directions and observations contained in the said judgment, and it is really after having due regard to those directions and observations that a fresh approach has been made by the assessing authority in the matter of making the petitioner company liable to profession tax. In my view, the position has not been in any manner altered in favour of the respondent Commissioner in the approach now made by him. I may also add that the present approach made by the Commissioner and the result achieved by it, both suffer from the same infirmities pointed out by me in O.P. 982/60. In fact, I should state that no serious and sincere attempt has been made by the respondent to understand the full implications of that judgment.

20. It is now accepted that an assessment on the petitioner company can be only under rule 18 (2) of the Taxation and Finance Rules, in Schedule II of the Travancore District Municipalities Act, 1116. That was what was held by me in O.P. 982/60. Both in Exts. A and E, the respondent also proceeds on that basis. As to what the turnover is, has been dealt with in rule 18 (3). The Explanation therein does not come into the picture. Unless the "turnover" satisfies one or other of the matters provided in rule 18 (3), there can be no liability for profession tax.

The respondent also accepts the position that the petitioner has not produced, manufactured, purchased or sold any goods during the year in question. So the respondent must establish that the petitioner has transacted any other business, the turnover of which can be computed in terms of the aggregate money value. Rules 18 (2) and 18 (3) without the Explanation, are as follow:

18 (2). Where a company or person transacts business partly in the area of a municipality and partly outside such area, the income of such company or person, from the transaction of business in the area of the Municipality shall, for the purpose of levying profession tax under this Act, be deemed to be the percentage prescribed under clause (b) of sub-rule (4) of the turnover of the business transacted in such area during the half-year or the corresponding half-year of the previous year, as the case may be

18 (3). For the purpose of clause (b) of sub-rule (1) and sub-rule (2) the turnover of business in any municipality means the aggregate money value of the goods produced, manufactured, purchased or sold or of any other business transacted in such municipality.

Mr. P.K. Kurien, learned counsel for the petitioner company is, in my view, perfectly justified in his contention that if the approach made by the assessing authority, when passing the order Ext. E and the stand that is taken in these proceedings and referred to by me earlier is accepted by this Court, the result would be that the petitioner must be considered to be transacting business exclusively within the area of this particular Municipality and that an assessment has to be made under rule 18 (1) of the Taxation and Finance Rules. According to the learned counsel, that was what was attempted to be done on the previous occasion, but it was not accepted by this court in O.P. 982/60. If that is so, according to the learned counsel for the petitioner the assessing authority will have certainly to consider the question as to whether the petitioner company can be considered to have transacted any other business within the area of the Quilon Municipality. The learned counsel naturally placed considerable reliance on the acceptance of the company's plea that there is no question of the company having produced or manufactured goods or having purchased or sold goods within the area of the particular municipality. If that is so, the learned counsel urged that an assessment to profession tax, can, if at all, be made as against the petitioner company under rule 18 (2) read with Rule 18 (3), only if the assessing authority has come to the conclusion that the petitioner company carries on any

other business within the area of the said Municipality.

21. Mr. V.K.K. Menon, learned counsel appearing for the respondent Municipal Commissioner, also accepted the position that in this case his client does not dispute the stand that has been taken by the petitioner company that the entire transactions of sale of tea and rubber, for which the aggregate money value has been given in Ext. B, have taken place outside the jurisdiction of the Quilon Municipality. But the learned counsel urged that in as much as the company's office at Quilon is the sole controlling office with regard to all those transactions, it must be considered that the turnover of the entire business that may have been transacted according to them outside the Municipal area, must be deemed to have taken place within the jurisdiction of the Municipality itself. I am not inclined to accept this contention of the learned counsel for the respondent. In fact, such an attempt was made even in the previous proceedings, namely O.P. 982/60, and that stand was not accepted by this Court; because, acceptance of that stand taken by the respondent would really mean that an assessment is to be made in respect of the petitioner company, not under rule 18 (2), but really under rule 18 (1) of the Taxation and Finance Rules. It would also result in this, namely that the various matters provided for in rule 18 (3) also will have to be given" the go-by. Rule 18 (3) categorically states that the turnover of business in any municipality means the aggregate money value of the goods produced, manufactured, purchased, or sold, or of any other business "transacted in such municipality" Therefore it will be seen that before the turnover of business is arrived at, it must first of all be established that the turnover in the manner indicated in rule 18 (3) is really in respect of the money value of the goods produced, manufactured, purchased or sold, or any other business transacted in such municipality. If the respondent accepts the position that the goods referred to by the petitioner company in Ext. B have been sold outside the Quilon Municipality, it cannot, in my view, be considered that the aggregate money value of those goods sold outside the Municipality can be said to be turnover, accruing within the jurisdiction of the said Municipality under Rule 18 (3).

22. Again, it will also be seen that the petitioner company, if at all, can be assessed on the basis of the turnover accruing to it, only if the Municipality has investigated and actually come to the conclusion that the petitioner was transacting any other business within the jurisdiction of the Municipality. Even the notice Ext. A, I have already indicated, gives the impression that the assessing authority was prepared to face a claim being made by the petitioner company that it is not transacting any business within the jurisdiction of the Municipality. That was why the Commissioner asked for information on an alternative basis. If the petitioner cannot be considered to carry on any business within the jurisdiction of the Quilon Municipality, and it is also accepted that the transactions in respect of tea and rubber referred to by the petitioner company have really taken place outside the jurisdiction of the Quilon Municipality, then the position will be that there is no question of any turnover existing for the purpose of making the petitioner liable under rule 18 (3).

23. The nature of the assessment to be made as well as how exactly the turnover is to be calculated in particular circumstances, have been clearly indicated in sub-rule (2) and sub-rule (3) of rule 18 of the Taxation and Finance Rules. Then the question is whether the claim made by the respondent, in these proceedings, that the fact that the petitioner company's office at Quilon is the only office which controls the entire business activities of the company throughout India, by itself, can be considered to be carrying on "any other business" in the Quilon Municipality. In my view, the expression "any other business" referred to in sub-rule (3) of rule 18 must be capable of being computed in terms of money because sub-rule (3) itself categorically states that the turnover of business in respect of the various matters mentioned therein must mean the aggregate money value of the goods produced, manufactured, purchased or sold, or of any other business transacted in such municipality. The mere fact that the administration and management of the various estates of the petitioner company, admittedly situated outside the area of Quilon, are done by the office of the company, which is no doubt situated in Quilon, does not also mean that there is a carrying on of business, as that expression is understood, within the Municipality. In fact, in my view, the expression "any other business transacted" in rule 18 (3), must be in the nature of a business activity or a trading activity. Goods may come into the picture in production, manufacture, purchase or sale. Goods do not come into the picture in respect of "any other business transacted". But nevertheless, it must be a business activity or a trading activity within the area of the municipal council. In fact, the petitioner company does not even accept the position that the Quilon office controls and administers all the transactions in the Indian Union. According to the petitioner company, most of the transactions stated in Ext. B, were settled in London, and the Quilon Office had nothing to do with those transactions. Even on the assumption made by the respondent, that the Quilon office controls and administers all the estates, etc., in my view, by such control and administration it cannot be stated that the petitioner company has transacted any other business within the area of the Quilon Municipal Council. Controlling and administering one's own properties, cannot partake of a business or trading activity. If the management and administration of properties of third persons are undertaken for remuneration as a business, the position may be different.

24. Therefore, the result is that, in this case, the respondent, when he made the order of assessment Ext. E, cannot certainly be considered to have due regard to the manner in which the turnover of the petitioner company for the purpose of making an assessment has to be calculated under sub-rule (3) of rule 18. In fact, it is seen that the assessment itself has been made exclusively on the basis of the transactions of sale of tea and rubber, which have admittedly taken place outside the jurisdiction of the Quilon Municipality. If that is so, it cannot certainly be considered to be the turnover of business of the petitioner company within the jurisdiction of the Municipality. On that ground the assessment order under attack will have to go.

25. No doubt Mr. V.K.K. Menon, learned counsel for the respondent urged that the petitioner company which controls large volume of business throughout India escapes without any liability for payment of profession tax. No doubt that aspect is there. But the question of liability is to be considered only in accordance with the provisions of the statute and the rules. No doubt, Section 91 of the Travancore District Municipalities Act makes liable every company for payment of profession tax in the manner indicated therein, provided it transacts business in the Municipality for the period referred to therein. In the previous writ petition O.P. 982/60 a stand was taken by the Commissioner that when once the deeming provision comes into play viz., Rule 17, there is no escape for any company from liability for payment of the tax. The question of a person being called upon to submit return to ascertain the liability, if any, is, as I have already indicated, in that writ petition something totally different from the actual fixing of the liability in the manner indicated by the provisions of the statute and the rules.

26. In this case, as I mentioned already, even at the risk of repetition, I have to state that unless the respondent Commissioner is in a position to establish that the petitioner company has been carrying on "any other business" within the jurisdiction of the Quilon Municipality, there will be no jurisdiction at all in the authority to levy any profession tax as against the petitioner company. I have also indicated that the stand that has been taken by the petitioner company regarding the nature of the transactions of sale of tea and rubber has been accepted by the respondent himself as correct; and I have also stated that the mere fact that the office of the petitioner company at Quilon controls the administration of the various branches of the company which are under its supervision, cannot by itself be considered to mean that the petitioner company is transacting business, as that expression is understood and used in sub-rule (3) of rule 18, within the Quilon Municipality. I have already dealt with this aspect, in the earlier part of the judgment and I do not think it necessary to repeat it over again.

27. In my view, the contention of Mr. P.K. Kurien, learned counsel for the petitioner company, that the clear direction given by this court in the judgment in O.P. 982/60 are not being properly complied with by the respondent, cannot certainly be considered to be without force. But whatever it is, I have already dealt with the further aspect that has been relied upon by Mr. V.K.K. Menon, learned counsel for the respondent in respect of the assessment order Ext. E. The order Ext. E cannot certainly be sustained in view of the clear terms of the provisions contained in sub-rule (3) of rule 18 of the Taxation and Finance Rules, in Schedule II of the Travancore District Municipalities Act, 1116.

28. There is a further contention taken by Mr. P.K. Kurien, learned counsel for the petitioner company, that the levy of surcharge under the assessment order Ext. E, is without jurisdiction. I have already indicated that under Ext. E, apart from the levy of profession tax, it is also stated that the total sum of Rs. 6,523-65 demanded therein, includes the surcharge of Rs. 310-65. The learned counsel for

the petitioner urged that this claim for surcharge of Rs. 310-65 is really made on the basis of the provisions contained in Section 4 of the Kerala Surcharge on Taxes Act, 1957 (Act XI of 1957). The learned counsel urged that the levy of surcharge is invalid and illegal in view of the provisions contained in clause (2) of Article 276 of the Constitution. The learned counsel also urged that in any event it is not saved by virtue of the proviso to clause (2) of Article 276.

29. In the view that I have taken that order of assessment to profession tax itself under Ext. E, is itself illegal, it may not be strictly necessary for me to consider this contention raised on behalf of the petitioner company in these proceedings. But it is seen that the validity of Section 4 of the Kerala Surcharge on Taxes Act, 1957 is being raised in many writ petitions; and in my view, it is desirable that an expression of opinion is made on this aspect also. Even apart from that, if this judgment goes up in appeal and if my view regarding the illegality of the order Ext. E is not acceptable it is necessary that the learned appellate Judges should also have the benefit of my views regarding the validity or otherwise of the said Act. Therefore it is on that basis that I proceed to deal with the second contention raised by the learned counsel for the petitioner company.

30. It may also be stated in this connection that the legality and vires of the Kerala Surcharge on Taxes Act, 1957, particularly section 4 of the said statute, has been sought to be sustained by Mr. V.K.K. Menon, learned counsel appearing for the respondent Municipality, and also by the learned Government Pleader appearing for the State, to whom notice had been issued.

31. The preamble to the Act states that it is considered necessary to increase the taxes on agricultural income, taxes on the sale or purchase of goods, and taxes on profession, by the levy of a surcharge on such taxes. Section 2 deals with levy of surcharge on agricultural income tax, and Section 3 deals with the levy of surcharge on sales and purchase taxes. Section 4, namely the Section with which we are now concerned, deals with the levy of surcharge on profession tax. Section 4 is as follows:

4. The profession tax or tax on companies payable by a person or company whose half-yearly income is not less than one thousand and five hundred rupees to the respective local authorities under the Trivandrum City Municipal Act, the Travancore District Municipalities Act, 1116, the Cochin Municipal Act, XVIII of 1113, the Madras District Municipalities Act, 1920, the Travancore-Cochin Panchayats Act, 1950, the Madras Village Panchayats Act, 1950 or the Madras District Boards Act, 1920, shall be increased by a surcharge for the purpose of the Government at the rate of five per centum of the profession tax or tax on companies so payable and the local authorities concerned shall levy and collect the said surcharge along with the profession tax or the tax on companies in the same manner as if it were a profession tax or a tax on companies, and the provisions of law governing the levy and collection of such taxes shall in all respect apply therefor.

32. Leaving off all unnecessary parts, it will be seen that the substance of Section 4 is that the profession tax or tax on companies payable by a person or company, whose half-yearly income is not less than Rs. 1,500/-, to the respective local authorities mentioned therein, shall be increased by a surcharge for the purpose of Government at the rate of five per centum of the profession tax or tax on companies so payable. The manner in which the said surcharge is to be levied and collected is also indicated in the Section.

33. Before I consider the attack that is made as against section 4 of the Act, it may be necessary to state that section 2, relating to the levy of surcharge on agricultural income tax, was the subject of attack before a Division Bench of this court consisting of M. S. Menon J. (as he then was) and T.K. Joseph J. That decision is reported in *Kunhammad Haji v Agricultural Income tax Officer* (1960 K.L.J. 517). The learned Judges did not accept the challenge, and they upheld the validity of the said provision. Similarly, the provisions of section 3 of the said Act, regarding the levy of surcharge of what I may call sales tax, was again the subject of challenge before this court on several grounds. The attack was dealt with by me in the decision reported in *Ramanatha Shenoi v Sales tax Officer* (1962 K.L.J. 277). In that decision I was not inclined to accept the attack levelled as against the validity of those provisions. Therefore, the position now is that so far as the matters dealt with in Sections 2 and 3 of Kerala Act XI of 1957 are concerned, those provisions have been held to be valid and perfectly within the jurisdiction of the legislature concerned to enact it. I must also state that no attack has been made as against those provisions in this writ petition.

34. The attack in this writ petition, as I mentioned earlier, is regarding the levy of surcharge on profession tax u/s 4 of the Kerala Surcharge on Taxes Act, 1957 (Act XI of 1957). The contention of Mr. P.K. Kurien learned counsel for the petitioner company, is two-fold, namely; (!) that considering this Act to be a post-Constitution Act levying for the first time surcharge on profession tax for the purpose of the Government, the result would be that such a provision, which has resulted in the levy of profession tax far in excess of Rs. 250/-, will be illegal and void, in view of clause (2) of Article 276 of the Constitution. (2) The alternative contention of Mr. P.K. Kurien, learned counsel for the petitioner company, is that the various matters dealt with in the preamble to the Act and also in Section 4 in particular, will clearly show that this is not an independent or new levy made for the first time for the purpose of the State by way of profession tax, but really as and by way of increase or enhancement of the profession tax that was being levied by the various authorities referred to in Section 4; in which case, the learned counsel urged that it will also be invalid in view of the proviso to clause (2) of Article 276 of the Constitution. Article 276 is as follows:

276. (1) Notwithstanding anything in Article 246, no law of the Legislature of a State relating to taxes for the benefit of the State or of a Municipality, District Board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a

tax on income.

(2) The total amount payable in respect of any one person to the State or to anyone Municipality, District Board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments, shall not exceed two hundred and fifty rupees per annum;

Provided that if in the financial year immediately preceding the commencement of this Constitution there was in force in the case of any State or any such municipality, board or authority a tax on professions, trades, callings or employments, the rate or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, Municipalities, boards or authorities.

(3).....

35. In this case, there is no controversy that the actual demand as and by way of surcharge, is in the sum of Rs. 310-65 which is certainly in excess of the limit prescribed in clause (2) of Article 276, namely Rs. 250/-. The attack levelled as against the levy of surcharge under Kerala Act XI of 1957, has been controverted by Mr. V.K.K. Menon, learned counsel for the respondent and by the learned Government Pleader appearing for the State. According to the learned Government Pleader and that stand is also supported by Mr. V.K.K. Menon, learned counsel for the respondent municipality the provisions of section 4 of the Act must be considered to be a fresh and independent new levy as and by way of profession tax for the benefit of the State. The learned Government Pleader also urged that the provisions of Section 4 cannot be considered to effect an increase or enhancement in the profession tax that was already being levied and collected by the authorities referred to in the section. Therefore, the learned Government Pleader urged that the question of the applicability of the Proviso to clause (2) of Article 276, does not come into the picture at all.

36. I will first take up the contention of Mr. P.K. Kurien, learned counsel for the petitioner company that the levy of surcharge on profession tax, even if it is considered to be an independent and new levy for the first time for the benefit of the State, is hit by the provisions of clause (2) of Article 276 of the Constitution. According to the learned counsel, the maximum limit for which the State is entitled to pass legislation for levying taxes on professions etc., as indicated in clause (2) of Article 276, should not exceed Rs. 250/- per annum; i.e., the total demand payable by any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments, is not to exceed Rs. 250/- per annum. If that is so, the learned counsel urged that there is absolutely no indication in section 4 of the Act in question that the said limit prescribed in clause (2) of Article 276 has been taken into account. The learned counsel also

urged that there is no obligation on the part of the authorities concerned, who are charged with the duty of levy and collection of the surcharge, under the Act, to see that the limit of Rs. 250/- is not exceeded. If that is not done, the learned counsel urged that the result, as in this case, would be there will be several assesseees from whom tax higher than the maximum limit of Rs. 250/- prescribed in clause (2) of Article 276, can be levied and collected by the authorities. If that is so, according to the learned counsel, whatever may be the competency of the State Legislature to enact a measure for levying taxes on professions, trades, callings and employments, under Entry 60 in List II of the Seventh Schedule to the Constitution, Section 4 of Act XI of 1957, as it now stands, is far beyond the terms contemplated in clause (2) of Article 276 of the Constitution. Therefore the learned counsel urged that the provisions contained in Section 4 of the said Act must be struck down.

37. I will now consider the contentions that have been urged by the learned Government Pleader, in support of his contention that the provisions of section 4 of Kerala Act XI of 1957 do not in any manner contravene the provisions of clause (2) of Article 276 of the Constitution. The learned Government Pleader urged that clause (1) of Article 276 itself clearly recognises the jurisdiction of the State Government to levy and collect taxes in respect of professions, trades, callings or employments. He also urged that clause (1) of Article 276 clearly says that that is the position notwithstanding anything in Article 246. The learned Government Pleader also relied upon Entry 60 in List II of the Seventh Schedule to the Constitution, dealing with the powers of the State Governments to levy "taxes on professions, trades, callings, and employments". Therefore, the learned Government Pleader urged that the competency of the State Legislature to levy taxes on professions, trades, callings and employments, can be well sustained under clause (1) of Article 276 read with Entry 60 of List II of the Seventh Schedule. Then the learned Government Pleader urged that this court will have to consider the effect of clause (2) of Article 276. According to him, the effect of this particular clause is not to invalidate in toto the provisions contained in Section 4 of the Kerala Surcharge on Taxes Act, 1957, but only to see that whatever may be the nature of the assessment and whatever may be the quantum of the tax that may be levied and notwithstanding the fact that in a particular case the tax may exceed even Rs. 250/- the provisions of Section 4 will have the effect only to the extent of levying surcharge on taxes on professions up to a maximum limit of Rs. 250/- per annum. In this connection, the learned Government Pleader drew my attention to certain observations made by the learned Judges of the Supreme Court in the decisions in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, and *R.M.D. Chamarbaugwalla Vs. The Union of India (UOI)*, . That is according to the learned Government Pleader the question of severability will extent also to the question of separability in the enforcement of the statute itself. According to the learned Government Pleader, the question of asking a party to pay more than a total amount of Rs. 250/-, will be to enforce a liability exceeding Rs. 250/- fixed under

clause (2) of Article 276, and this court can give relief by declaring that no amount exceeding Rs. 250/- can be collected on the basis of the provisions of Section 4 of the Act in question. This stand taken by the learned Government Pleader has also been supported by Mr. V.K.K. Menon, learned counsel appearing for the respondent Municipality.

38. I am not inclined to accept the contention advanced before me by the learned Government Pleader in support of the stand taken by him that the provisions of Section 4 of Kerala Act XI of 1957 are perfectly valid. No doubt, the learned Government Pleader is perfectly justified in the contention that the competency of the State Legislature to enact a measure in respect of levy of taxes on professions, trades, callings and employments, can be certainly sustained on the basis of Entry 60 in List II of the Seventh Schedule to the Constitution read with the provisions contained in clause (1) of Article 276. But the further question does arise whether the legislation which is a post-Constitution legislation and which is passed in the teeth of the prohibition laid down in clause (2) of Article 276 of the Constitution, can be sustained by this court, and whether the approach that is sought to be made by the learned Government Pleader that this court can declare that no relief in excess of the maximum amount mentioned in clause (2) of Article 276 can be given by this court, is correct.

39. I am not inclined to accept the contention of the learned Government Pleader that this court can sustain the provisions of Section 4 of Kerala Act XI of 1957 and give only a declaration that the section will not have any operation in respect of any amount that may be assessed beyond the figure mentioned in clause (2) of Article 276 of the Constitution. It will really mean that this court is making a fresh legislation in the place of the one that exists. This certainly is a case where the provisions of section 4 of Act XI of 1957 are not in conformity with the provisions of Article 276. No doubt the learned Government Pleader pointed out that there is nothing specifically stated in Section 4 of the Act that any amount over and above the maximum limit fixed, namely Rs. 250/-, in clause (2) of Article 276 can be assessed and collected as and by way of profession tax. If such a provision really exists in Section 4, it requires no argument, because such a provision will be in the teeth of the prohibitions contained in clause (2) of Article 276.

40. The learned Government Pleader next urged that the State Legislature, when it enacted particularly Section 4 of Act XI of 1957, was conscious of the limitation regarding the maximum amount that may be levied and collected as and by way of profession tax, in clause (2) of Article 276. If that is so, the learned Government Pleader urged that the Legislature should not be expected to pass a provision which will violate the provisions of clause (2) of Article 276; and therefore the learned Government Pleader urged that this court can very well restrict the operation of the provisions of section 4 to see that the maximum limit mentioned in clause (2) of Article 276 is not violated. Here again, I am not

inclined to adopt the approach that is sought to be made by the learned Government Pleader. As I mentioned earlier, so long as the provisions of section 4 of the Act in question stand as it is, and so long as it will result in the assessment and levy of profession tax beyond the maximum prescribed in clause (2) of Article 276, in my opinion, those provisions cannot certainly be sustained. This court cannot certainly accept the large contention of the learned Government Pleader that the assessment must be allowed to proceed to the final stage, and it is only at the final stage, if it is found that the maximum amount prescribed in clause (2) of Article 276 is reached that this court must give a direction that the assessing authority should go no further. There is no such indication at all in section 4 and the jurisdiction of the authority charged with the duty of levy and collection of surcharge in the manner prescribed in Section 4, is absolutely without any prohibition and any limitation whatsoever. And if the assessing authority proceeds to levy surcharge beyond Rs. 250/- according to the provisions of Section 4 and so long as the provisions of Section 4 stand as they are, it cannot certainly be said that the levy of surcharge to any extent is legal. Therefore, the question has to be considered not at the stage of assessment or collection, as urged by the learned Government Pleader, but really when the basis for such assessment and collection is indicated in an order of assessment. It is really the Act which gives jurisdiction to make such orders of assessment and that basis, in my view, is to be found in Section 4 of Act XI of 1957.

41. I have already indicated that I am not prepared to accept the stand taken by the learned Government Pleader in his attempt to sustain the levy of surcharge in these proceedings, so long as the wording of Section 4 of Act XI of 1957 as it stands, will certainly result in the provisions of clause (2) of Article 276 of the Constitution being contravened. In this case, in my view, the provisions of Section 4 cannot be allowed to stand. Therefore section 4 of Kerala Act XI of 1957, which is under attack in these proceedings will have to be struck down as illegal and one passed in violation of clause (2) of Article 276 of the Constitution. Before I close the discussion on this aspect, I may refer to certain observations of Ansari C.J. in the Division Bench decision reported in *M/s. Harrisons & Crossfield v Commissioner* (1961 K.L.J. 971). At page 978 of the report, the learned Chief Justice observed:

It is obvious that the States' powers to levy the tax have been clarified and they have been authorised within certain limitations to tax income. That limitation on the powers to levy the profession tax has been placed by Art. 276 (2), which unequivocally provides that the total amount payable in respect of any one person to the State or to any one Municipality, District Board, Local Board, or other local authority in the State by way of taxes on professions, shall not exceed Rs. 250/- per annum. It follows that the States have after the Constitution no legislative competence to pass law authorizing the levy or collection of tax on professions beyond the aforesaid limit of Rs. 250/- per annum.....

42. It is not really necessary to consider the alternative attack that has no doubt been made by the learned counsel for the petitioner company regarding the validity of the provisions of Section 4 of Act XI of 1957. I have already indicated that according to the learned counsel, the surcharge that is levied u/s 4 of Act XI of 1957, is not a new tax as and by way of profession tax for the benefit of the State, but an increase in the profession tax that is already payable by any person or company under the various enactments referred to in Section 4. In this connection the learned counsel strenuously relied upon the preamble to the Act itself, wherein it is categorically stated that it is considered necessary to increase the taxes, among the various items, on profession also, by the levy of a surcharge on such taxes. No doubt that may prima facie give an indication that the surcharge that is levied is really an increase in the levy of tax on profession. And the particular wording adopted in Sec. 4 to the effect that the profession tax or tax on companies, payable in the circumstances referred to therein, shall be increased by a surcharge for the purpose of the Government at the rate mentioned therein, may lend some support to the contention of the learned counsel for the petitioner. But there are other factors which if taken into account, will not support the alternative contention of the learned counsel. In fact the learned Government Pleader urged that the increase itself is for the benefit of the Government and there has been no legislation prior to the passing of Kerala Act XI of 1957 whereby profession tax was being levied for the purpose of the Government. Therefore whatever may be the profession tax that may have been levied by the various local authorities prior to the passing of the statute, the learned Government Pleader, is, in my view, perfectly well founded when he urged that the increase, as he calls it, as and by way of levy of surcharge, is really a levy of profession tax by the State for its own purpose; in which case the learned Government Pleader's contention is that it cannot be considered to be an increase in the quantum of the profession tax that is being paid to the municipalities and other local authorities. The learned Government Pleader has also drawn my attention to the manner in which the surcharge is to be collected u/s 4. The learned Government Pleader is also justified in his contention that if the increase is really in respect of the quantum of the profession tax payable to a local authority, these provisions were absolutely unnecessary.

43. Therefore, the alternative contention urged by Mr. P.K. Kurien, learned counsel for the petitioner company, does not appeal to me. But whatever it is, in as much as I have accepted the main contention urged by the learned counsel for the petitioner and in as much as I am not accepting the stand taken by the learned Government Pleader on that aspect, it follows that the provisions of section 4 of the Kerala Surcharge on Taxes Act, 1957, (Act XI of 1957) will have to be struck down as contravening the provisions of clause (2) of Article 276 of the Constitution. In the result, the writ petition is allowed, and parties will bear their costs. Amounts, if any, paid by the petitioner company towards the liability which is now set aside, will be refunded to the petitioner, company.