

(1963) 11 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No's. 2314 and 2363 of 1962

M.T. Kumaran and Co.

APPELLANT

Vs

Secretary, Malabar Market Committee

RESPONDENT

Date of Decision : 28-11-1963

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15, 5
Constitution of India, 1950 — Article 266, 286

Citation : (1964) 15 STC 634

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

Bench : Division Bench

Advocate : V.R. Krishna Iyer and K. Raghavan Nair, for the Appellant; V.B. Eradi and K.P.G. Menon, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, C.J.—The sole question for determination in these petitions relates to the validity of Section 11 of the Madras Commercial Crops Markets Act, 1933. That Section as amended by the Madras Commercial Crops Markets (Amendment) Act, 1955, reads as follows :-

(1) Notwithstanding anything contained in the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), the Market Committee shall, subject to such Rules as may be made in this behalf, levy a cess by way of sales tax on any commercial crop bought and sold in the notified area at such rates as the State Government may, by notification, determine.

Explanation:-For the purpose of this Sub-section, all commercial crops leaving a notified area shall, unless the contrary is proved, be presumed to be bought and sold within such area.

(2) The cess referred to in Sub-section (1) shall be paid by the purchaser of the commercial crop concerned:

Provided that where the purchaser of a commercial crop cannot be identified, the

cess shall be paid by the seller.

(3) Out of the cess levied under Sub-section (1) on the commercial crop or crops bought and sold in any part of the notified area which constitutes a village as defined in Section 2 of the Madras Village Panchayats Act, 1950, such proportion as may be prescribed shall be paid by the market committee to the panchayat concerned.

(4) The cess levied under Sub-section (1) shall be subject to the provisions of Article 286 of the Constitution.

The expression " cess by way of sales tax " in Sub-section (1), and the reference to Article 286-the Article intended to ensure that the sales tax imposed by the States do not interfere with imports and exports, and inter-State trade and commerce-in Sub-section (4), we think, clearly indicate that the impost is a tax coming under entry 54 of the State List (List II) of the Seventh Schedule to the Constitution- " Taxes on the sale or purchase of goods other than newspapers "- and that it is part of the sales tax law of the State.

2. The main changes effected by the Madras Commercial Crops Markets (Amendment) Act, 1955, were the substitution of the words " levy a cess by way of sales tax " for the original words " levy fees " and the introduction of Sub-section. (4). The reason for the amendments was the decision of the Madras High Court in P.P. Kutti Keya and Others Vs. The State of Madras and Others, , wherein the Court said that " a fee is what is charged for services rendered by the person who charges it," that the levy u/s 11 of the Madras Commercial Crops Markets Act, 1933, was " for no services rendered" and that it should accordingly be held, " that the amounts to be collected u/s 11 are taxes notwithstanding that they are not brought into the consolidated fund of the State under Article 266(1) but constituted into a separate fund and that the levy is only on a Section of the public."

3. Section 14 of the Central Sales Tax Act, 1956, declared that the goods specified in that Section " are of special importance in inter State trade or commerce ". Item (vi) of the goods so specified is :

Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

Section 15 of the Act deals with the restrictions and conditions in regard to tax on the sale or purchase of declared goods within a State. That Section reads as follows :

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent, of the sale or purchase price thereof, and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

4. The Travancore-Cochin General Sales Tax (Amendment) Act, 1957, renamed the Travancore-Cochin General Sales Tax Act, 1125, as the General Sales Tax Act, 1125, and extended it to the whole of this State on 1st October, 1957. It is common ground that a sales tax of two per cent, of the price is being levied on coconuts under that Act.

5. The commodity with which we are concerned is coconuts and we entertain no doubt that it is an oil-seed coming under item (vi) of Section 14 of the Central Sales Tax Act, 1956. The General Sales Tax Act, 1125, has been replaced by the Kerala General Sales Tax Act, 1963, from 1st April, 1963. Schedule II of that Act deals with the declared goods in respect of which only a single point tax is leviable u/s 5. Item 2 in that Schedule reads as follows :-

Oil-seeds as defined in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) other than coconut and copra, ground nut and cardamom.

And item 6 is "Coconut and copra". The use of the words "other than coconut and copra, groundnut and cardamom" in item 2 should clearly indicate that but for those words, coconut and copra, ground nut and cardamom are, according to the Legislature, included in the expression "oil-seeds".

6. In the light of what is stated above we must hold (1) that coconut is an oil-seed coming under item (vi) of Section 14 of the Central Sales Tax Act, 1956; (2) that the levy u/s 11 of the Madras Commercial Crops Markets Act, 1933, is a levy by way of sales tax; and (3) that as the permitted maximum of two per cent, of the sale or purchase price is being collected under the general sales tax law of the State it is not possible to levy anything further by way of sales tax u/s 11 of the Madras Commercial Crops Markets Act, 1933. We are fortified in this view by the decision of the Mysore High Court in *Kasturi Seshagiri Pal and Co. v. Deputy Commissioner of South Kanara* AIR 1962 Mys. 1, wherein the Court said:

In our opinion, the expression "oil-seeds" occurring in Section 14(vi) of the Central Sales Tax Act includes coconut and copra. The result of that view would be that the maximum sales tax which could be demanded on the sale or purchase of coconut or copra is two per cent, of the sale or purchase price thereof. That maximum tax was imposed by Section 5(4) of the Mysore Sales Tax Act, 1957, read with Schedule IV to it. It was no longer therefore possible for the State, without infringing the provisions of Article 286(3) of the Constitution and

Sections 14 and 15 of the Central Sales Tax Act, to demand any further sales tax on the sale or purchase of copra and coconut u/s 11 of the Madras Commercial Crops Markets Act.

7. A larger question was also mooted in these petitions. The Madras Commercial Crops Markets Act, 1933, does not prescribe any ceiling for the levy u/s 11 of that Act. The absence of such a ceiling, it was contended, is indicative of a delegation which is not permissible under the Constitution. A similar contention was accepted by Ramachandra Iyer, J., in *Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another*, . After dealing with the various contentions urged before him the learned Judge said :

There is thus no power to control the assessment that may be levied by the executive Government by the authority granted to it u/s 11. I have referred to the authorities which establish that the existence of a mere power to repeal would not be sufficient to say that the Legislature has control over the assessment. It has been held that a taxing provision has essentially three features: (1) a declaration of liability, (2) assessment or quantification and (3) machinery for collection. Section 11 (1), no doubt, declares a liability and provides the machinery.

But the rate of tax which is an essential part of the declaration and assessment has been completely delegated to the executive Government with no principles or basis laid down. Uncontrolled power is vested in the executive to fix such rate as it pleases. In the absence of a legislative provision regarding any policy or limits of assessment for the guidance of the assessing authority, it must be held that the provisions of the Section amount to excessive delegation of legislative power, and, therefore, invalid.

We are in agreement with this view. The decision of Rama chandra Iyer, J., was affirmed on appeal: *State of Madras v. Shanmugha Oil Mills* (1962) 75 L.W. 566. The Court said:

Some indication of a limit, or some principle with reference to which the executive should determine the rates, must be evident in a Section of law delegating the power of taxation, before the delegation could be held constitutional. Otherwise, since, as we observed earlier, the sky would be the only conceivable limit, and the executive might act in the exercise of an altogether unchannelled power and still claim legality, this should be interpreted as amounting to a virtual abdication of its function by the Legislature, and hence as unconstitutional.

8. The learned Advocate-General drew our attention to the following passage in *Pandit Banarsi Das Bhanot Vs. The State of Madhya Pradesh and Others*, :

Now, the authorities are clear that it is not unconstitutional for the Legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be laid, the rates at

which it is to be charged in respect of different classes of goods, and the like.

This passage was cited before Ramachandra Iyer, J., in *Shanmugha Oil Mill, Erode Vs. Coimbatore Market Committee and Another*, , and before the Division Bench in *State of Madras v. Shanmugha Oil Mills* (1962) 75 L.W. 566. The Division Bench said :

We are unable to construe any observations in *Pandit Banarsi Das Bhanot v. State of Madhya Pradesh* AIR 1959 S.C. 909 , either as lending support to the view that the delegated power would be constitutional where it is a taxing power, even if no limits were prescribed or indicated at all. Actually, such an interpretation would be contrary to what the Supreme Court itself has laid down as a canon in *Hamdard Dawakhana and Another*, *Kalipada Deb and Another*, *Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others*, , particular reference being had to the passage that we have set forth." The passage is:

But the discretion should not be so wide that it is impossible to discern its limits. There must instead be definite boundaries within which the powers of the administrative authority are exercisable. Delegation should not be so indefinite as to amount to an abdication of the legislative function.

9. In *The Corporation of Calcutta and Others Vs. Sarat Chandra Ghatak and Another*, , *Das Gupta*, C.J., dealt with the passage from *Banarsi Das Bhanot v. State of Madhya Pradesh* AIR 1959 S.C. 909, as follows :

It is urged that in this passage the Supreme Court was saying that the rate at which the tax is to be levied is a matter of detail. There can be no doubt that if the observation by the Supreme Court be read as suggested, we would be bound to follow it as the law even though the consideration of that question might have been unnecessary for the decision of that particular case. I am unable to persuade myself, however, that the Supreme Court did say or meant to say that the determination of the rate at which a tax is to be levied is a matter of detail. It is, in my opinion, clear that in using the words " the rates at which it is to be charged in respect of different classes of goods", the Supreme Court was laying emphasis on the words " in respect of the different classes of goods".

It is to be noticed further, that none of the authorities which have actually been referred to in the Supreme Court judgment relates to the question whether a law which authorises taxation without laying down any rate whatsoever and leaves the determination of the rate to another authority is valid

I am unable, therefore, to accept the contention urged on behalf of the appellant that the Supreme Court in the passage mentioned above did say or intended to say that the rate at which a tax is to be levied, is a mere matter of detail; and

To my mind the most important question of policy which the Legislature has to determine in a taxing statute is the question of the rate of tax. To leave the determination of this matter to any other authority without indicating clearly

principles on which (sic) principles for determination cannot be considered permissible delegation.

10. In the Calcutta case it was argued that the Legislature should be considered as having provided a standard to guide the Corporation in determining the rate. The argument was that when the Act after laying down the functions to be performed by the Corporation and thereafter in several Sections the manner in which the Corporation should provide itself with funds for the purpose of carrying out those functions provided for the levy of a tax on certain advertisements without mentioning any rate, it was reasonable to think that the Legislature was authorising the Corporation to levy the tax at such a rate as was required to pay the amount still needed by it. Das Gupta, C.J., said :

If the Legislature had in so many words authorised the Corporation to levy the tax at such rate as was needed to meet its needs, it would have been necessary to consider whether that was a sufficiently definite standard laid down by the Legislature and amounted to performance of the legislative function. The Legislature has not used such words. It is contended that such words should be read into the Section. I can see no justification for reading such words into the Section when the Legislature in its wisdom did not use them and I find it impossible to say that these words are there by necessary implication. For the court to read into the Section words to the effect that the tax would be at such rate as was needed by the Corporation to meet its needs, would, in my judgment, amount to legislation and usurping the functions of the Legislature.

The same is the position as regards the Madras Commercial Crops Markets Act, 1933.

11. In the light of what is stated above we must hold that the levy of a cess by way of sales tax u/s 11 of the Madras Commercial Crops Markets Act, 1933, cannot be made. Judgment accordingly.

12. The petitions are allowed as above. No costs.