
(1961) 07 KL CK 0030
In the High Court Of Kerala
Case No : Tax Revision Case No. 44 of 1960

N. Sami Iyer

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 13-07-1961

Acts Referred:

Citation : (1962) 13 STC 21

Hon'ble Judges : T.K. Joseph, J; M.S. Menon, J

Bench : Division Bench

Advocate : K.V. Surianarayana Iyer, C.V. Venkiteswara Iyer and T.L. Viswanatha Iyer, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—The petitioner is a dealer in tobacco. The controversy relates to 1957-58 and a turnover of Rs. 7,757-54.

2. The turnover represents the purchases made by the petitioner between 1st April, 1957, and 30th September, 1957, and the sales effected by him between 1st October, 1957, and 13th December, 1957.

During the period of the purchase 1st April, 1957, to 30th September, 1957, the petitioner was governed by the Madras General Sales Tax Act, 1939. Section 3(5) of that Act provided :

The taxes under Sub-sections (1), (1-A) and 2 shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that-

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed ;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in Clause (1) of this proviso, he shall not be

taxed again in respect of any sale of such goods effected by him.

It is common ground that tobacco was taxable at the purchase point under the Madras Act and that the petitioner has paid the tax due on his purchases between 1st April, 1957, and 30th September, 1957.

3. The Travancore-Cochin General Sales Tax (Amendment) Act, 1957, came into force on 1st October, 1957. That Act changed the short title of the Travancore-Cochin General Sales Tax Act to the General Sales Tax Act, 1125, and extended it to the whole of the State including the area in which the petitioner operated. Section 15 of the Amending Act also repealed the Madras General Sales Tax Act 1939-

4. Section 3(5) of the General Sales Tax Act, 1125, is in the same terms as Section 3(5) of the Madras General Sales Tax Act, 1939. Section 5(vii) of the General Sales Tax Act, 1125,-Section 5 corresponds to Section 5 of the Madras General Sales Tax Act, 1939-provides:

The sale of goods specified in column (2) of Schedule I shall be liable to tax u/s 3, Sub-section (1), only at such single point in the series of sales by successive dealers as may be specified by the Government by notification in the Gazette ; and, where the taxable point so specified is a point of sale, the seller shall be liable for the tax on the turnover for which the goods are sold by him at such point, and where the taxable point so specified is a point of purchase, the buyer shall be liable for the tax on the turnover for which the goods are bought by him at such point.

The description of item 2 in column (2) of Schedule I at the relevant time was "tobacco other than beedi tobacco (suka).

5. In exercise of the powers conferred by Section 5(vii) the Government issued a notification, No. H1-10674/57/RD-2 dated 28th September, 1957. The relevant portion of the notification reads as follows :

In exercise of the powers conferred by Clause (vii) of Section 5 of the General Sales Tax Act (Act XI of 1125), the Government of Kerala hereby specify the point mentioned in column 3 of the Schedule, hereto appended as the point liable to tax u/s 3(i) on the goods mentioned in column 2.

Schedule. Sl. No. Description of goods. Taxable point, (1) (2) (3) 2. Tobacco other than beedi tobacco, Ist sale in the State by a (suka). dealer who is not exempt from taxation under section 3(3).

It is clear from the notification that it changed the taxable point in respect of tobacco from the first purchase in the State under the Madras Act to the first sale in the State. The contention of the Department which has been accepted by the Appellate Tribunal is that the State is entitled to realise tax at the sale point from the petitioner in respect of his sales between 1st October, 1957, and 13th December, 1957, even though he had paid tax at the purchase point at the time

of his purchase under the Madras General Sales Tax Act, 1939. The Appellate Tribunal dealt with the matter as follows in paragraph 7 of its order dated 16th February, 1960 :

Regarding the fourth claim we find that the appellant's contention is that the sales turnover of Rs. 7,757-54 after 1st October, 1957, relates to the tobacco bought on own account and taxed and included in the turnover of Rs. 17,007-46. As the purchase has been taxed the sales of the same cannot be taxed in his own hands. But it has to be remembered that the tax on the purchase was levied under the Madras General Sales Tax Act and the tax on the sales is levied under the General Sales Tax Act. Even though the purchases and sales of the same commodity are taxed by the same State in the same hand, yet they are so taxed under two different Acts and therefore the relief claimed does not appear to be allowable. Hence the fourth claim is disallowed.

6. The contention of the petitioner is that he had a right not to be taxed in respect of the sale of the goods u/s 3(5) of the Madras General Sales Tax Act, 1939, as he had already been taxed in respect of their purchase and that the said right will survive in spite of the repeal of the Act in view of Section 4(c) of the Interpretation and General Clauses Act, 1125. Section 4(c) is to the effect that "where any Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed".

7. Section 4 of the Interpretation and General Clauses Act, 1125, corresponds to Section 6 of the General Clauses Act, 1897. That section came up for consideration in *State of Punjab v. Mohar Singh* AIR 1955 SC 84. The Supreme Court said:

Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law.

The above passage was quoted and followed in *Indira Sohanlal Vs. Custodian of*

Evacuee Property, Delhi and Others, .

8. We are unable to gather any "different intention" from the Travancore-Cochin General Sales Tax (Amendment) Act, 1957, and the General Sales Tax Act, 1125, which in any way militates against the preservation of the petitioner's immunity from taxation at the sale point. If the immunity survived the repeal and the re-enactment, we must also hold that it cannot be destroyed by any notification issued by the Government.

9. It follows that the petition has to be allowed and we do so, though in the circumstances of the case, without any order as to costs. In view of the conclusion we have reached, it is unnecessary to consider the other contentions urged on behalf of the petitioner and they are not considered in this judgment.