**(1990) 07 KL CK 0017**

**In the High Court Of Kerala**

**Case No :** O.P. No. 4057 of 1988

O.K. Narayanan and another — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

**Date of Decision :** 19-07-1990

**Acts Referred:**

Kerala General Sales Tax Act, 1963 — Section 2, 8

**Citation :** (1990) 2 KLJ 320

**Hon'ble Judges :** K.P. Radhakrishna Menon, J

**Bench :** Single Bench

**Advocate :** P.A. Mohammed T, for the Appellant; K.G. Anil Babu Govt. Pleader, for the Respondent

**Final Decision :** Dismissed

## Judgement

K.P. Radhakrishna Menon, J.—The questions arising for consideration in these writ petitions, except those pertaining to the prayer in O.P. 4057/1988 for the issuance of a direction to complete the assessments and the prayer in O.P. 4897/88 for a direction to dispose of the appeals expeditiously, are identical with the points dealt with and rejected by my brother K.A. Nair., J. as is seen from the judgment in O.P. 4374 of 1984. With respect 1 agree with the views expressed by K.A. Nair J., and therefore the questions require to be answered against the petitioner. However the counsel for the petitioners argued that the assessment orders under challenge are liable to be quashed in view of the Division Bench ruling of this court in Deputy Commr. of Sales Tax v. Keveyam & Co. (1986 (63) S.T.C. 387). To appreciate this argument it is necessary to refer to the admitted fact namely., that the turnover sought to be assessed represents the value of the goods transported to other states on consignment basis.

2. The learned counsel for the petitioner submits that no purchase tax can be levied on such turnover because the purchases do not acquire the quality of being the last purchases inside the State. These purchases will become last purchases only on the sale of the goods within the State to which they are

 

transported. Since it is not the case of the Department that the said goods have been sold in the State to which they were transported, the purchases effected by the petitioners in the State do not acquire the quality of being the last purchases inside the State.

3. The learned counsel for the petitioner, going by the decision in Keveyam & Co., is well founded in this submission. But the effect of this decision stands erased by the Kerala General Sales-tax (Amendment) Act. 1988, for short The Amendment Act. That this is the object that is sought to be achieved by the amendment is clear from the statement of objects and reasons which read:-

According to clause (b) of the Kerala General Sales Tax Act, 1963 the point of levy of purchase tax will conclude where the goods are exported outside the State. The Kerala High Court in its decision reported in 63 STC (387) has held that the closing stock of goods held outside the State will not acquire the character of last purchase till it is sold. Under the cover of this decision, many dealers claim that their stock of goods held outside the State will not acquire the character of last purchase until'' the goods are sold and as such they are not liable to pay tax. As a result, Government are losing huge amount of tax. To overcome this situation Government decided to amend the Act suitably.

In the explanation to Clause 26 of Section 2 (of the Principal Act) after the words "Notwithstanding anything contained in any other provision of this Act", the words "but subject to the provisions of Section 8" has been inserted. By this amendment, the legislature, in my view, has clarified the position that in cases of the nature on hand, the situs of the purchase requires to be determined in the light of Section 8 of the Principal Act. Relevant part of Section 8 reads :

8. Stage of levy of taxes in respect of imported and exported goods:-Where in the ease of any goods tax is leviable at one point in a series of sales or purchases, such series shall--

(a) xxx xxx xxx xxx xxx

(b) In the case of goods exported out of the State to any place outside the territory of India to any other State in India, be deemed to conclude at the stage of the sale or purchase effected immediately before the export of such goods.

The situs of the last purchasers possible to be determined by applying the fiction introduced by Section 8 of the Principal Act. The taxable event, going by Section 8, is determined on the occurrence of the transport of the goods on consignment basis. In other words the moment the goods cross the territorial jurisdiction of the State, the value thereof is liable to be included in the turnover for the purpose of levy of purchase tax, because the purchases in such cases will be the last purchases within the meaning of the Act. The argument of the learned counsel for the petitioners relying on the Division Bench railing in Keveyam & Co, therefore is liable to be rejected.

4. The learned counsel for the petitioners has no case that the legislature is not

 

competent to enact a law on the subject purchase tax. If that be the position the legislature is equally competent to exercise power in respect of subsidiary or ancillary matter of preventing evasion of tax. Section 8 considered in this background prevents evasion of tax because it helps determination of the situs of the last purchases. The argument of the learned counsel for the petitioners that the legislature is not competent to enact Section 8 therefore is liable to be rejected. It should in this connection be remembered that K.A. Nair, J. after elaborately considering this aspect has arrived at the same conclusion.

5. Yet another argument of the learned counsel for the petitioners is that the ordinance has no retrospective operation. The question whether the ordinance is retrospective or prospective does not arise because what is sought to be achieved by the amendment is not to enact Section 8 for the first time but only to clarify the object with which Section 8 was enacted. This clarification was necessitated on account of the Division Bench ruling mentioned above. The Full Bench ruling in Season Rubbers v. State of Kerala (1981 (48) S.T.C. 256) had made it clear that in cases like the one on hand, taxable event is determined on the occurrence of the event which determines the question whether or not the purchase would be the last purchase. This event here is the transport of the goods from this state to some other state on consignment basis. The above argument therefore is without any substance.

6. The Original Petitions therefore are dismissed. However it is necessary in the circumstances of the case to issue the following directions-:-

i. The respondent in O.P. 4056/88 shall complete the assessment for the years in dispute namely., 1983-84 and 1984-85 expeditiously and in accordance with law.

ii. The Appellate Authority in O.P. 4897/88 shall dispose of the appeals Exts. P12 and P16 expeditiously.

 