(1960) 01 KL CK 0036

In the High Court Of Kerala

Case No : O.P. No. 12 of 1959

Parambathkandy ABU APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 28-01-1960

Acts Referred:
General Sales Tax Act — Section 24

Citation : (1960) 11 STC 267

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

Bench : Division Bench

Advocate : T. Narayanan Nambiar and T. Karunakaran Nambiar, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—Sub-section (1) of Section 3 of the General Sales Tax Act, 1125, provides that subject to the provisions of that Act every dealer shall pay for each year a tax on his total turnover for such year. It also provides that the tax shall be calculated "at the rates specified in column (3) of Schedule I for every rupee in the turnover relating to the goods noted against them in column (2) thereof and at the rate of two naye paise for every rupee in the turnover relating to all other goods."

2. Sub-section (4) of Section 3 provides that for the purposes of that section and the other provisions of the Act, turnover shall be determined in accordance with such rules as may be prescribed. Under Sub-section (5) of Section 3 the buyer or the seller but not both, as determined by such rules as may be prescribed, shall be taxed in respect of the same transaction of sale and where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules prescribed, he shall not be taxed again in respect of any sale of such goods effected by him.

3. The expressions "turnover" and "prescribed" are defined in Section 2 of the

Act. The definition of "turnover" is:

''turnover'' means the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment, or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover;

and of "prescribed" :

''prescribed'' means prescribed by rules made under this Act.

4. Section 24 of the Act deals with the power to make rules. Sub-sections (4) and (5) of that section read as follows :-

(4) The power to make rules conferred by this section shall be subjected to the condition of the rules being made after previous publication for a period of not less than two weeks.

(5) All rules made under this section shall be published in the Gazette and upon such publication shall have effect as if enacted in this Act.

5. The only rule with which we are concerned in this case is Rule 4 of the General Sales Tax Rules, 1950. Sub-rules (1) and (2) of the rule read as follows :-

(1) Save as provided in Sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by him.

(2) In the case of groundnut and its kernel and goods notified under Clause (vii) of Section 5 as liable to tax at any point of purchase, the gross turnover of a dealer for purposes of these rules shall be the amount for which the goods are bought by him.

6. Section 5 of the Act deals with exemptions and deductions of tax in certain cases. According to Sub-section (vii) of that section subject to such restrictions and conditions as may be prescribed "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 the sales by successive dealers as may be specified by the Government by notification in the Gazette." A notification under this provision dated 28th September, 1957, was published in the Kerala Gazette Extraordinary, dated 30th 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(1) on the goods mentioned in column 2.

SCHEDULE

SI.

No. Description Taxable point of goods. 1 2 3

27

Pepper Last purchase in the State by a dealer who is not exempt from taxation u/s 3 (3). 28 Ginger do. do.

7. The petitioner is a dealer in pepper and ginger. He has been assessed to sales tax in pursuance of the notification dated 28th September, 1957. His prayer is that this court "may be pleased to issue a writ of certiorari or any other appropriate writ, direction, or order declaring that the notification of the Government of Kerala No. H1-10674/57/RD-2 dated 28th September, 1957, in so far as it fixes the taxable point on pepper and ginger at the last purchase in the State of Kerala is illegal being ultra vires the powers of Government and quashing the order exhibit A1 and all subsequent orders of respondents 2 and 3 demanding tax from the petitioner.

8. The contention in respect of the prayer is stated as follows in paragraph 7 of the petitioner''s affidavit dated 20th December, 1958 :

The above notification (Notification No H1-/10674/57/RD-2 dated 28th September, 1957), issued by the Kerala Government in so far as it seeks to make the last purchase the taxable point in respect of pepper and ginger and some other articles being items 27 to 40 of the above notification is illegal, being ultra vires of the powers conferred upon the Government by Section 5(vii) of Act XI of 1125. Section 5(vii) empowers the Government to issue notification only in respect of sale of goods at such single point; in the several sales by successive dealers and not at any point of purchase.

We are inclined to accept this contention.

9. It is common ground that the answer to the controversy depends on the meaning of the words "at such single point in the series of the sales by successive dealers." According to the petitioner the "single point" that can be specified u/s 5 (vii) in a series of sales is the first sale or the last sale or any of the sales in-between. According to the Department the specification can and should go further and indicate also the person who is liable for the tax. The learned Government Pleader summarised his contention as follows:-

The expression ''point'' means the point at which the sale of goods is liable of tax in the series of sales. It is this point that the Government have to specify. If the Government specify the transaction in respect of which the tax is to be levied, the charge may be on the seller or on the buyer. It does not amount to specifying the point at which the tax is to be levied. Specifying the point at which the tax is to be levied means and involves the idea that both the transaction and the person to be taxed in respect of the transaction have to be specified.

10. A transaction which involves a sale by somebody necessarily involves a

purchase by somebody else. In other words, a sale as pointed out by the Supreme Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, is a bilateral transaction with two facets and either of the two facets can be made the basis of taxation. But that has to be done under the Act, not by a specification u/s 24 as contended by the Department, but by a rule u/s 24 as submitted by the petitioner.

11. The sales tax under the General Sales Tax Act, 1125, is a tax on "turnover" and as to whether the "turnover" liable to taxation should be the amount for which goods are bought or sold by a dealer has to be determined in accordance with such rules as may be prescribed. -This is abundantly clear from Sub-section (4) of Section 3 which says that for the purposes of that section and Ors. provisions of the Act the turnover shall be determined "in accordance with such rules as may be prescribed"

12. Rule 7 of the General Sales Tax Rules, 1950, provides that the tax or taxes u/s 3 or 5 or the notifications u/s 6 shall be levied on the net; turnover of a dealer and that the net turnover should be determined by making the deductions specified therein from the gross turnover of a dealer. Rule 4 deals with the determination of the gross turnover of a dealer and as already pointed out Sub-rule (1) of that rule provides that except, in cases covered by Sub-rule (2) of that rule the gross turnover of a dealer shall'' be the amount for which goods are sold by him.

13. If in respect of any sale it was intended that the gross turnover of a dealer shall be the amount for which goods are bought by him, the proper thing to do would have been to make specific provision for such cases in Sub-rule (2) of Rule 4. Instead of that, Sub-rule (2) has been made entirely dependent on the notification u/s 5(vii), a notification which itself is beyond the power conferred by that provision.

14. Sub-section (4) of Section 24 of the Act as already mentioned provides :

The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication for a period of not less than two weeks.

It has to be noted that the notification, of 28th September, 1957, was not even in existence when the "prior publication" of Sub-rule (2) of Rule 4 was effected by the State.

15. It follows that in the absence of a rule prescribed u/s 24 of the Act there is no valid provision enabling the State to tax the amount for which the goods were bought by the petitioner and that this petition has to be allowed. We decide accordingly, though in the circumstances of the case without any order as to costs.

16. In the view we have taken, it is unnecessary to consider the other points urged in support of the petition and they are not considered in this Judgment.

