
(1995) 02 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No's. 6962, 6986, 10882, 11108, 11780, 13940 and 15554 of 1994 and 297 of 1995

Premier Steels and Others

APPELLANT

Vs

The Assistant Commissioner (Assessment) Sales Tax

RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 14, 286, 286(3), 366
Kerala General Sales Tax Act, 1963 — Section 2, 5(1)

Citation : (1995) 02 KL CK 0007

Hon'ble Judges : P. Shanmugam, J;K. Sreedharan, J

Bench : Division Bench

Advocate : K. Srikumar, for the Appellant; T. Karunakaran Nambiar, A.A.G. for Taxes, for the Respondent

Final Decision : Allowed

Judgement

P. Shanmugam, J.—The above Original Petitions are filed seeking for a declaration that the provisions contained in Section 5(1)(vi) and VI Schedule of the Kerala General Sales Tax Act (hereinafter referred to as "the K.G.S.T. Act") as amended by Kerala Finance Act, 1994 (Act 19 of 1994), in so far as they relate to the levy of tax on the declared goods "iron and steel" as unconstitutional and void. All the Petitioners are dealers of iron and steel. According to them, they purchase iron and steel from the Steel Authority of India as well as from other wholesalers within the State and outside the State and sell them in their original form itself to the direct consumers, manufacturers, work shops, small scale retailers, etc., within the State. Iron and steel are declared goods on which 4 per cent tax alone is leviable at a definite single point as per Section 15(a) of the Central Sales Tax Act. In view of the present amendment in the K.G.S.T. Act, the Petitioners are made liable to pay tax on iron and steel at all points of sale at a rate higher than 4 per cent. This, according to the Petitioners, is violative of Article 286(3) of the Constitution of India read with Sections 14

and 15 of the Central Sales Tax Act (hereinafter referred to as "the C.S.T. Act"). Petitioners alleged that by interdicting the provisions contained in Section 15 of the C.S.T. Act read with Article 286 of the Constitution of India, the State Legislature has transgressed the limits of the legislative power conferred on it by Entry 64 of List II of the Constitution of India. The proviso added to Section 5(I) (vi) of the K.G.S.T. Act cannot be validated by exempting the value already subjected to tax during the previous stage of sale. Petitioners further contended that by taking out of the Entry "iron and steel" from the Second Schedule of the Act from among the other declared goods in the Schedule, "iron and steel" has been treated differently. But their insertion in the said Entry of the VI Schedule consisting of luxurious consumer goods is a discrimination meted out to "iron and steel" only and thereby violating Article 14 of the Constitution of India. Petitioners further contend that the new levy will affect the inter-State trade and commerce and will affect freedom of trade.

2. Learned Additional Advocate General while repelling the arguments and contentions raised on behalf of the Petitioners, stated that the value added tax on "iron and steel" is subject to the restrictions contained in Section 15 of the C.S.T. Act. So the total tax incidence on the turnover of "iron and steel" shall not exceed 4 per cent in the State and if in any case, the tax incidence on the sales turnover on a particular sale would come to more than 4 per cent the tax shall automatically get reduced by the quantum by which such tax does not go beyond 4 per cent by the operation of Section 15 of the C.S.T. Act. According to the learned Additional Advocate General, the proviso to Section 5(I)(vi) of the K.G.S.T. Act ensures that every part of the turnover in respect of item included in the VI Schedule is taxed only at one stage. By levying value added tax on iron and steel items the intention is only to levy tax on the "value added" on the commodity in the subsequent stage. What is taxed at one point is only that part of the turnover which had not suffered tax on the proceeding sales in the State. The ultimate result is that there is no increase in the rate of tax above 4 per cent and that every rupee in the turnover of the goods is taxed at only one stage. Entry 54 of List II of VII Schedule to the Constitution authorises the State Legislature to levy tax on the "sale or purchase" of goods. What is sought to be taxed in respect of "iron and steel" is also turnover which is defined under Clause (xxvii) of Section 2 of the Act to mean "the aggregate amount for which goods are either bought or sold, supplied or distributed by a dealer..." and the tax is therefore a tax on the sale or purchase of goods. Unlike in the case of a multistage levy, the levy is only on the turnover on which tax was not levied at the earlier stage.

3. Learned Additional Advocate General further states that "iron and steel" form separate category of goods and there is no discrimination in taxing them differently from other items of declared goods. It is open to the State to treat different items of declared goods differently and it has been done so even prior to the impugned amendment. For instance, sugar, tobacco and textiles are completely exempted from the tax by including them in the 3rd Schedule.

Cereals were being taxed at only 1 per cent under the 2nd Schedule to the Act and pulses, iron and steel, etc., were being subjected to tax at 4 per cent. Learned Additional Advocate General also therefore submits that there is no unreasonable restrictions on the fundamental rights of the Petitioners as contended by them. Learned Additional Advocate General therefore says that the provision for levy is intravires the Constitution and the C.S.T. Act and the challenges to the Act is not sustainable.

4. We have gone through the contentions made on behalf of the parties. To appreciate the points raised, it is necessary to go through the relevant provisions in issue. Article 286 of the Constitution of India imposes restrictions on the power of the State to levy tax on the sale or purchase of goods. Article 286 of the Constitution of India reads as follows:

286. Restrictions as to imposition of tax on the sale or purchase of goods.- (1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of -

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in Sub-clause (b), Sub-clause (c) or sub-clause (d,) of Clause (29A) of Article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

Clause 3(a) of Article 286 of the Constitution mandates that the State law which imposes tax on the sale or purchase of goods declared by Parliament to be of special importance in inter-State trade or commerce should be subject to the restrictions and conditions placed by the Parliament by law in relation to the following aspects:

(i) system of levy to be imposed

(ii) rate of tax to be imposed

(iii) other incidents of the tax

By virtue of the provisions contained in Article 286(3)(a) of the Constitution of India, Section 15(a) of the C.S.T. Act prescribes certain restrictions upon the system of levy to be followed and the rate of tax to be imposed by a State while taxing declared goods. The section is a code in itself, the observance of which is mandatory for the States while imposing tax on goods declared to be of special importance in inter-State trade or commerce u/s 14 of the C.S.T. Act. Sections 14 and 15 of the C.S.T. Act extracted below:

14. Certain goods to be of special importance in inter-State trade or commerce.- It is hereby declared that the following goods are of special importance in inter-State trade or commerce;

(iv) iron and steel, that is to say,-

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-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 four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;

(c) where a tax has been levied under that law in respect of the sale or purchase inside the State of any paddy referred to in Sub-clause (i) of Clause (i) of Section 14, the tax leviable on rice procured out of such paddy shall be reduced by the amount of tax levied on Such paddy;

(d) each of the pulses referred to in Clause (vi a) of Section 14, whether whole or separated, and whether with or without husk, shall be treated as a single commodity for the purposes of levy of tax under that law.

By a combined reading of Sections 14 and 15 of the C.S.T. Act the restrictions that imposed are:

(i) In respect of declared goods a tax either on sale or purchase alone can be levied; and it cannot be on both sale and purchase.

(ii) The rate of tax should not exceed 4 per cent.

(iii) The tax can be levied only at one definite stage.

The essence of a single point fixation or one stage fixation consists of fixation of single point or stage. In other words, in respect of the declared goods, what is left to the State's domain is to determine whether the tax is to be imposed at the point of first sale or purchase or at any one of the successive points of sale or purchase.

5. Originally, the declared goods were enumerated in the Second Schedule of the Act. The Second Schedule is an exclusive Schedule containing the declared goods only. In the Schedule iron and steel are specified as Sub-item (ii) of item 2. As

per the Second Schedule, tax at the rate of 4 per cent is leviable on "iron and steel" at a single point. Now by the amendment brought about by the Finance Act, 1994 (Act 19 of 1994) in the K.G.S.T. Act, the declared goods "iron and steel" have been deleted from the Second Schedule of the Act and inserted in the Sixth Schedule of the Act. By the Finance Act, a new Clause (vi) has been added to Sub-section (1) of Section 5 of the K.G.S.T. Act, which reads as follows:

5. Levy of tax on sale or purchase of goods.- (1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose total turnover for a year is not less than two lakh rupees and every casual trader or agent of a non-resident dealer, whatever be his total turnover for the year, shall pay tax on his taxable turnover for that year:

(vi) in the case of goods specified in the Sixth Schedule, at the rate specified in the said schedule at all points of sale in the State.

Provided that no tax shall be payable on that part of the turnover on which tax has already been levied on the preceding sales in the State.

(emphasis added)

6. Explaining the salient features of the Finance Bill, 1993 which was later passed by the Legislature as the Kerala Finance Act, 1993 (Act 13 of 1993), the Finance Minister in his budget speech stated as follows:

I propose to introduce value added tax (VAT) for the first time, with a view to increase tax revenue without casting additional burden to consumer....

The second Respondent/Board of Revenue has also issued circular No. 9/93 on 15th April 1993, the relevant portion of which reads as follows:

4. The following amendments have been brought about in the Kerala General Sales Tax Act, 1963:

(i) By amending Sub-section (1) of Section 5 of the Act, a new System of levy of tax, value added tax (VAT) has been introduced. It is a multipoint levy. What is taxed at one point is only that part of the turnover which had not suffered tax at the preceding sale in the State.

Illustration.- A dealer "X" manufacture a product inter-state and sell it for Rs. 100. At this point which is the first point of sale in the State, tax is levied on Rs. 100 at the rate applicable to the commodity.

So the bill issued by "X" will be as follows:

Value Rs. 100.00 Sales Tax @ 12 per cent Rs. 12.00 Total Rs. 112.00

"Y" a dealer who purchases the goods from "X" after incurring freight and other incidental expenses, and after realising a profit, Sells the goods at Rs. 130. Value addition at the 2nd point is Rs. 30. So tax is to be levied at the 2nd point on Rs. 30 (130-100). The items which are subject to value added tax are included in the

newly incorporated sixth schedule. The rate of tax is 12 percent.

By the amendment made to the Second and Sixth Schedules of the K.G.S T. Act by the Kerala Finance Act, 1994 the declared goods "iron and steel" have been taken out from the Second Schedule and inserted in the Sixth Schedule as serial No 1. Thus by including "iron and steel" in the Sixth Schedule-, a multipoint levy is imposed on it under clause (vi), Sub-section (1) of Section 5 of the K.G.S.T. Act. In the circular issued by the Board of Revenue also, the nature of "levy is explained as a multipoint levy. The new system of levy known as value added tax as per Section 5(I)(vi) of the K.G.S.T. Act envisages taxation of value added to the commodity at every point of sale. Thus the imposition of multipoint levy upon the declared goods "iron and steel" is plainly contrary to Section 15(a) of the C.S.T. Act regarding the system of levy to be followed. Consequently, it violates the provisions of Article 286(3)(a) of the Constitution of India. The system of levy, rate of levy, incidence of levy, etc. of the tax upon "iron and steel" before and after its inclusion in the Sixth Schedule as per the impugned amendments can be explained with the help of the following illustrations:

(i) Position before the enactment of Kerala Finance Act, 1994.-A registered dealer "X" buys one unit of iron from a wholesaler "W" Suppose that the consideration for that one unit of iron is fixed at Rs. 1000 and the said sale is the first sale of the commodity within the State. As per the Second Schedule to the Kerala General Sales Tax Act, iron and steel is taxable at the first point of sale within the State at the rate of 4 per cent. So "X" is liable to pay 4 per cent tax upon the sale price. Thus in total "X" has to pay Rs. 1040 (1000+40 being 4 per cent tax) to "W" for one unit of iron purchased. Out of Rs. 1040 received from "X" the wholesaler "W" has to remit Rs. 40, being 4 per cent tax collected to the Sales Tax Department. The tax liability of the commodity ends at this point.

Now "X" re-sells the said one unit of iron to "Y" who is a retailer at a sale price of Rs. 1040 (1040+100 being transport and other incidental charges and his normal profit). The said sale price of Rs. 1140 is inclusive of Rs. 40 levied as the tax at the rate of 4 per cent at the first point of sale. Now "Y" re-sells the same commodity to "Z", who is the actual consumer at a sale price of Rs. 1240 (1140+100 being incidental charges and normal profit). Thus the actual consumer is burdened with Rs. 40 only as 4 per cent tax on the sale consideration at the first point of sale. So there is no violation of the restrictions placed by Section 15(a) of the Central Sales Tax Act.

(ii) Position after the inclusion of iron and steel in the Sixth Schedule to the Kerala General Sales Tax Act by the Kerala Finance Act, 1994.-A registered dealer "X" buys one unit of iron from a wholesaler "W". Suppose that consideration for that one unit of iron is fixed at Rs. 1,000 and the said sale is the first sale of the commodity within the State. As per new amendments, "iron and steel" has been included in the Sixth Schedule. As per the said schedule, rate of tax on iron and steel is 4 percent. Vide Section 5(I)(vi) of the Act, the tax at the said rate is leviable at all points of sale. So "X" is liable to pay 4 per cent tax upon the sale

consideration of that one unit of iron. Thus in total "X" has to pay Rs. 1040 (1000+40 being 4 per cent tax) to "W" for one unit of iron purchased. Out of the Rs. 1040 received from "X", the wholesaler "W" has to remit Rs. 40 being the 4 per cent tax collected to the Sales Tax Department.

Now "X" re-sells the said one unit of iron to "Y" who is retailer for a consideration of Rs. 1140 (1040+100 being incidental charges and normal profit). As per Section 5(l)(vi) this sale consideration is also taxable at the rate of per cent excluding the turnover on which the tax has already been levied in the preceding point of sale. That means "X" has to collect 4 per cent tax on Rs. 140 (1140-1000 being turnover on which tax has been levied in the preceding point of sale), so in total, sale price of the one unit of iron at the second point of sale is Rs. 1145.60, i.e.,

Rs. Rs.

Consideration at the 2nd point of sale 1,140.00 Turnover on which tax has been collected at the first point of sale 1,000.00 Additional turnover at the 2nd point of sale 140.00 4 per cent tax on additional turnover 5.60 Total sale turnover at the _____ 2nd point of sale 1,145.60 _____ Now "Y" re-sells the commodity to "Z", who is the actual consumer for consideration of Rs. 1245.60 (1145.60 x 100 being incidental charges and normal profit). At this third point of sale also 4 per cent tax is leviable on the total sale turnover excluding the turnover on which tax has already been collected at the preceding points of sale. That means "Y" has to collect 4 per cent tax on Rs. 105.60 (1245.60 - 1140). So the sale price of one unit of iron at the third point of sale inclusive of tax on the additional turnover is Rs. 1249.82, i.e.,

Rs. Rs. Consideration at the third point of sale 1,245.60 Turnover on which tax has been collected at preceding points of sale 1,140.00 Additional turnover at third point of sale 105.60 4 per cent tax on additional turnover 4.22 Total sale price at the third _____ point of sale 1,249.82 _____ Out of the said Rs. 1,249.82, Rs. 49.82 is the total tax yielded upto the 3rd point. The said amount of tax works out to 4.15 per cent of the value of the commodity at the 3rd point of sale (Rs. 1200 = 1249.82 - 49.82). So the rate of tax leviable as per the amended provisions exceeds the maximum limit of 4 per cent prescribed by Section 15(a) of the Central Sales Tax Act.

7. As seen in the above illustrations, the levy of tax transgresses to all points of sale in a series of sales and the rate of tax exceeds the limits of 4 per cent fixed by the C.S.T. Act. In the illustrations, 3 points of sale were only visualised, whereas in the actual market, there may be indefinite points of sale until the commodity reaches the actual consumer. In that case, the ultimate burden on the consumer will be much heavier, especially defeating the object of Section 14 of the C.S.T. Act by which iron and steel have been declared as goods of special importance in the interstate trade or commerce.

8. The Supreme Court had occasion to consider the scope and ambit of Section

15(a) of the C.S.T. Act in *Bhawani Cotton Mills Ltd. v. State of Punjabi* (1967) 20 S. T. C. 290. The Supreme Court while dealing with the provisions of Punjab General Sales Tax Act, 1948, levying purchase tax on declared goody specified in Schedule C held that the stage at which purchase tax is levied is neither definite nor ascertainable, and there is a possibility of the tax being levied at more than one stage. The Supreme Court also held that if the Central Act makes it mandatory that the tax can be collected at only one stage it is not enough for the State to say that a person, who is not liable to pay tax, must nevertheless pay it in the first instance and then claim a refund at a later stage. In the course of the said judgment, the Supreme Court held that Section 15(a) of the Central Act makes it mandatory that the tax shall not be levied at more than one stage.

9. In *Rajasthan Commercial Corporation and Anr. v. Sales Tax Commissioner and Ors.* (1986) 63 S.T.C. 314. The Supreme Court while dealing with the provisions of the Bengal Finance (Sales Tax) Act extending to Delhi held that in the absence of notification in the official gazette, the point in the series of sales by successive dealers at which any goods or class of goods can be taxed, assessment orders on sales of declared goods will be invalid. The learned Judges in the said decision approved the ratio of Anr. Supreme Court decision in *Govind Saran Ganga Saran v. Commissioner of sales Tax* 1985 60 S.T.C. 1 wherein the Supreme Court held that Section 15(a) of the Central Act provides that every sales tax law of a State shall be subject to the restriction and condition that the tax payable under that law, on any declared goods, shall not exceed 3 per cent of the sale or purchase price thereof and that such tax shall not be levied at more than one stage.

10. While a plain reading of Sections 14 and 15 of the C.S.T. Act imposes a restriction on the rate and stage of the impugned amendment, inspite of the said restriction- makes it clear that the tax is leviable at all points of sale in the State. The imposition of multipoint system of levy is made clear by reading of the circular issued by the Board of Revenue explaining the system of multipoint levy. The new system according to the State known as value added tax, envisages taxation of value added to the commodity at every point of sale. That means the new system of levy could not exist without imposition of multipoint taxation which is clearly a contravention of the mandatory restriction of the C.S.T. Act. The contention of the learned Additional Advocate General that the proviso to Section 5(I)(vi) of the K.G.S.T. Act ensures that every part of the turnover in respect of item included in the Sixth Schedule is taxed only at one stage cannot be accepted. The proviso permits set off that part of turnover which has suffered tax at the immediate preceding points of sale. The proviso only defines the quantum of turnover taxable at successive points of sale. The proviso cannot control the main section since the multipoint levy cannot be validated by exempting the value already subjected to during the previous stage of sale. Admittedly, the declared goods are burdened with levy on all successive points of sale which is a clearly prohibited by Section 15(a) of the C.S.T. Act. Further, it could be seen that the rate of tax which has been specified as 4 per cent will exceed 4 per cent on the implementation of the new system of levy. As could be

seen in the explanation by subsequent points of sale the rate of tax works out more than 4 per cent which is violative of the mandate of Section 15(a) of the C.S.T. Act. In as much as the impugned provisions impose a multipoint levy or tax on the declared goods "iron and steel" in violation of the restrictions in Section 15 of the C.S.T. Act regarding the levy and the rate of tax, the State Legislature has exceeded the limit of its legislative power conferred on it under Entry 54 of the State List.

11. It is rightly contended that "iron and steel" is a base produce for almost all core sectors of the economy. As the iron and steel products are so essential for the community throughout India, a rise in price of the same will have its direct and immediate repercussions in the fields of agriculture, industry and even on the consumer goods. It was on recognising that key role of the iron and steel in the economy that the Parliament declared it as goods of special importance in the inter-state trade or commerce u/s 14 of the C.S.T. Act. The restrictions placed in Section 15(a) of the C.S.T. Act on the taxing power of a state in respect of the goods declared u/s 14 is to ensure a minimum tax burden alone on the said goods because of their special importance in the economy. The Taxation Enquiry Commission Report, 1954 which proposed the enactment of Sections 14 and 15 of the C.S.T. Act comments on the necessity for the enactment of the above provisions as follows:

To give effect to our recommendations regarding the Central Regulation of States Sales taxes on goods of special importance in the inter-state trade, the Central legislation will have, firstly to specify such goods and, secondly to impose conditions and restrictions subject to which State Government can impose their tax on the internal trade in those goods. The main system will be that no state shall have a system of levy other than a single point of levy on such specified goods. The tax may either be on sales or on purchases, but it will be recoverable only at the last stage of sale or purchase by a registered dealer. The condition is necessary to ensure that the tax burden on goods of importance in interstate trade is properly regulated and not allowed to remain vague or undetermined as would be case under any Ors. System of sales Tax.

While reiterating the position, the Supreme Court in the decision reported in *Telangana Steel Industries and others Vs. State of Andhra Pradesh and others*, observed as follows:

At this stage, we may note the object behind interdicting multiple-point tax on declared goods which follows from the mandate contained in Clause (a) of Section 15 of the Act. According to us, the purpose behind this provision is to minimise the tax burden on declared goods because of the special importance of these goods in inter-state trade and commerce.

In the light of the plain meaning of the sections and the clear pronouncement of the Supreme Court, the impugned amendment seeking to impose a levy upon all points of sale is clearly illegal.

12. For the above reasons, we have no hesitation in holding that the impugned provisions contained in Section 5(l)(vi) and Schedule of the K.G.S.T. Act as amended by the Kerala Finance Act, 1994 in so far as they relate to levy of tax on declared goods "iron and steel" are illegal, ultra vires of the G.S.T. Act and unconstitutional and void. We hereby quash the same. Original Petitions are allowed. However, there is no order as to costs.