

(1960) 01 KL CK 0050

In the High Court Of Kerala

Case No : Tax Revision Petition No. 6 of 1958

Shanmugha Vilas Cashew Factory

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 18-01-1960

Acts Referred:

States Reorganisation Act, 1956 — Section 91

Citation : (1960) 11 STC 367

Hon'ble Judges : T.C. Raghavan, J;M.A. Ansari, J

Bench : Division Bench

Advocate : S. Narayanan Potti, P. Karunakaran Nair and N.K. Varkey, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Raghavan, J.—The petitioners in this Tax Revision Case are a firm with their head office at Quilon, in the erstwhile Travancore-Cochin State and with a depot at Perinthalmanna in the Malabar area. For the assessment year 1953-54 the Deputy Commercial Tax Officer, Perinthalmanna, inspected their accounts and found that they had purchased in that year cashew-nuts worth Rs. 13,11,206-6-0 through their agent, C.V. Francis. The assessee represented to the Deputy Commercial Tax Officer that the goods were given delivery to them at Trichur, in the Travancore-Cochin area by their agent and that they had already been assessed to sales tax on this amount by the Sales Tax Authorities of the Travancore-Cochin State. They also produced a copy of the assessment order of the Sales Tax Officer, Second Circle, Quilon. The Deputy Commercial Tax Officer was of opinion that the turnover was assessable to tax under the Madras General Sales Tax Act and issued notice to the petitioners proposing to assess them on the whole turnover. At this stage the assessee and their purchasing agent, C.V. Francis, filed a statement that cashew-nuts worth Rs. 6,40,561-9-0 were purchased from the erstwhile Malabar District and cashew-nuts worth Rs. 6,70,644-13-0 were purchased from the erstwhile Travancore-Cochin State. On

the basis of this the Deputy Commercial Tax Officer held that the turnover of Rs. 6,40,561-9-0 relating to purchases effected within the Madras State was liable to tax under the Madras General Sales Tax Act and assessed the petitioners on that turnover. The petitioners filed an appeal before the Commercial Tax Officer, Palghat, which was rejected by him.

2. Against the above decision of the Commercial Tax Officer, Palghat, Tribunal Appeal No. 38 of 1957 was filed before the Kerala Sales Tax Appellate Tribunal, Trivandrum. It was contended before the Tribunal that the turnover of Rs. 640,561-9-0 relating to purchases alleged to have been effected in the Madras State, was not liable to be taxed under the Madras General Sales Tax Act. The contention of the petitioners was that these purchases were made by their agent, C.V. Francis and the goods were delivered to the petitioners at Trichur in the Travancore-Cochin area and hence the sales were completed in the Travancore-Cochin area. But the Tribunal held that the goods were purchased and taken delivery of by the petitioners in Madras State itself through their commission agent and so the sales were completed within that State.

3. Then it was further urged by the petitioners that the same purchases were included in the assessment made by the Sales Tax Officer, Quilon, for the same year and hence the same transactions could not be taxed over again by the Sales Tax Authorities in Perinthalmanna. This argument did not find favour with the Tribunal. The Tribunal dismissed this contention with the observation that the fact that the Travancore-Cochin State Sales Tax Authorities have wrongly assessed the petitioners to tax in respect of the turnover was no reason why they should not be assessed to tax under the Madras General Sales Tax Act. The Tribunal also observed that if there was double taxation the remedy of the petitioners was to get the assessment made by the Travancore-Cochin State Authorities revised. In that view the Tribunal confirmed the order of the Taxing Authorities and dismissed the appeal.

4. Aggrieved by the said order the petitioners have filed the present revision case before the High Court. Though four questions of law have been raised in the memorandum of grounds before us, only questions (iii) and (iv) have been pressed before us. The first two questions of law in the memorandum of grounds relate to the nature of these transactions as inter-State in character. No arguments have been adduced on these questions as it is conceded before us that no questions of inter-State sales arise and the transactions which are the subject-matter of these proceedings took place in the erstwhile Malabar area and the inclusion of these in the assessment by the Quilon Sales Tax Officer was wrong. Questions (iii) and (iv) read as follows:-

(iii) As the purchases in question have been already assessed to sales tax under the Travancore-Cochin Act by the Travancore-Cochin Sales Tax Authorities on the footing that the purchases were effected in the said State, is it open to the successor State Authorities, viz., the Commercial Tax Officer, Palghat and the Sales Tax Appellate Tribunal to treat the identical sales as having taken place

elsewhere than in the State of Travancore-Cochin.

(iv) If the Travancore-Cochin Sales Tax Authorities were wrong in assessing those transactions, as observed by the Appellate Tribunal, are not the authorities of the successor State bound by the said proceedings so long as they stand.

5. Before considering these questions, we will dispose of one contention raised by the learned Government Pleader. The learned Government Pleader contends before us that there is no finding either in the assessment order of the Sales Tax Officer, Quilon, or in the assessment order of the Deputy Commercial Tax Officer, Perinthalmanna, or the Commercial Tax Officer, Palghat, to the effect that the purchases which are the subject-matter of these proceedings have been included in the assessment order of the Sales Tax Officer, Quilon. Though there is no definite finding to this effect in the assessment orders above-mentioned, the proceedings before the Deputy Commercial Tax Officer, Perinthalmanna, the Commercial Tax Officer, Palghat and also before the Appellate Tribunal went on the assumption that these transactions have been included in the assessment of the Quilon Officer. So it is too late in the day for the learned Government Pleader to arise this contention and we disallow the same.

6. It is first urged before us by the learned counsel for the petitioners that whatever might be the position in September, 1953, when the assessment order was made by the Perinthalmanna Sales Tax Officer, the position now is that, since the Malabar area and the Travancore-Cochin area have been constituted into the Kerala State, the State is estopped from holding that these transactions, which have already been held in the Quilon assessment to have taken place within the erstwhile Travancore-Cochin area, have taken place in the Malabar area. According to the learned counsel for the petitioners, both the Perinthalmanna officer and the Quilon officer are agents of the same State, viz., the Kerala State and hence the principles of equitable estoppel applied in this case. Considerable arguments have been advanced on either side on this question. The learned Government Pleader has invited our attention to Halsbury, Vol. 15, page 168, as to the meaning of estoppel. He has also invited our attention to some pages in American Jurisprudence, Vol. 19, pages 640 to 643, dealing with general principles of Elements and Grounds of Estoppel. Our attention has also been drawn to page 845 of American Jurisprudence, Vol. 51. In paragraph 966 the following passage occurs :-

Doctrines of estoppel are not applied against the State and its agencies such as Counties and Municipal Corporations to the same extent as they are against individuals and private corporations.

In this connection the learned Government Pleader also relies on a decision of the Privy Council in AIR 1937 114 (Privy Council) . The head note of this case reads :-

In case of a Statute enacted for the benefit of a section of the public, that is, on grounds of public policy, where the Statute imposes a duty of a positive kind not

avoidable by the performance of any formality, for the doing of the very act which the party suing seeks to do, it is not open to the opposite party to set up an estoppel to prevent it. This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action; it cannot therefore avail in such a case to release the party suing from an obligation to obey such a statute, nor can it enable the opposite party to escape from a statutory obligation of such a kind on his part. It is immaterial whether the obligation is onerous or otherwise to the party suing. The duty of each party is to obey the law.

7. Giving our careful consideration to this question, we are of opinion that principles of estoppel have no application to the present case. It will be going too far to say that the Quilon Sales Tax Officer had made any representation of fact, by words or conduct, either with knowledge of its falsehood or with the intention that it should be acted upon or had so conducted himself that another would, as a reasonable man, understand that the representation of fact was intended to be acted on and that the petitioners acted on such representation and thereby altered their position to their prejudice. It is even conceivable that the petitioners filed their return in which they included these impugned transactions as transactions which took place in the Travancore-Cochin area and if on the basis of such return the Quilon Sales Tax Officer assessed the petitioners, it will be too much to hold that there was a representation, at least impliedly, by the Sales Tax Officer on which the petitioners acted. In this case it is not clear as to how and at whose instance these transactions came to be included in the Quilon assessment. In the above circumstances we are inclined to hold that principles of estoppel have no application to the present case.

8. The next argument of the learned counsel for the petitioners is that the State, having assessed the petitioners through their agent, the Quilon Sales Tax Officer on the basis that these transactions took place in the Travancore-Cochin area, cannot now through their another agent, the Perinthalmanna Deputy Commercial Tax Officer, assess the same transactions on another basis, that they took place in the Malabar area. In support of this contention he invited our attention to several decisions under the Income Tax Act. We shall refer to only a few of them, for, the principle laid down by them is the same. In *Joti Prasad Agarwal and Others Vs. Income Tax Officer (B) Ward Mathura*, the head note reads :-

Once the income of an association has been assessed and charged in the hands of the individual members of the association and that assessment remains a valid assessment, there can be no fresh assessment of tax on that income in the hands of the association.

Another decision relied on by the learned counsel for the petitioners is *KANIRAM GANPAT RAI Vs. COMMISSIONER OF Income Tax, BIHAR and ORISSA.*, . On page 528, the following passage occurs:-

It is conceded that the principle of *res judicata* does not apply in Income Tax

proceedings; but it is said that in such proceedings an Income Tax Officer should not differ from a previous decision on the same matter unless new facts have been placed before him.

Again in *Tejmal Bhojraj v. Commissioner of Income Tax, C.P. and Berar* AIR 1953 Nag. 21, it was held that a previous finding or decision of the Income Tax Authorities may be re-opened and departed from in subsequent years only under certain circumstances and in the absence of such circumstances the Income Tax Officer could not arbitrarily depart from the finding reached after due enquiry by his predecessor in office simply on the ground that the succeeding officer does not agree with the preceding officer's finding.

9. The learned Government Pleader does not contend that the propositions laid down by the above decisions are not correct. His argument, on the other hand, is that the assessment in Quilon was made under the Travancore-Cochin Sales Tax Act and the present assessment by the Perinthalmanna officer has been made under a different Act, the Madras General Sales Tax Act. According to him the Perinthalmanna Sales Tax Officer was entitled, under the Madras General Sales Tax Act, to impose a tax on the sales which took place within the Malabar area and the petitioners were liable to pay the same irrespective of the fact that the petitioners have already been assessed on the same transactions by the Quilon Sales Tax Officer under another law. All the cases cited by the learned counsel for the petitioners arise, under the Income Tax Act and what they hold is that under the same law, the Indian Income Tax Act, two different Income Tax Officers, who administer the same Act, are not entitled to tax the same transactions on different bases. We are of the opinion that these decisions have no bearing on the present question before us. u/s 91 of the States Re-organisation Act, 1956 (Central Act 37 of 1956) the benefit or burden of any assets or liabilities of an existing State, not dealt with in other provisions of the Act, shall pass to the successor State. In the present case the successor State, viz., the Kerala State, has succeeded to the benefits and burdens of both the Travancore-Cochin State and the Madras State. Therefore with regard to the erstwhile Malabar District the Kerala State is entitled to impose a tax on sales taking place within the Malabar area under the Madras General Sales Tax Act. It may be that the burden or the liability of the Travancore-Cochin State to refund the tax wrongly collected by it under the Travancore-Cochin Sales Tax Act at Quilon has also devolved on the Kerala State. But that burden or liability arising under a different Act does not merge in the benefit under the Madras, General Sales Tax Act. Hence we are of the opinion that the petitioners' remedy, if any, is to get a refund of the tax which has been collected from them wrongly by the Quilon Sales Tax Authorities and not to get the Perinthalmanna assessment set aside. In this view we hold that the order of the Sales Tax Appellate Tribunal is correct. We confirm the order of the Appellate Tribunal and dismiss the revision petition. In the circumstances of the case we order no costs.