
(1961) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 102 of 1960

Sri Krishna Coconut Co.

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-09-1961

Acts Referred:

Central Sales Tax Act, 1956 — Section 1, 14, 15, 2
Constitution of India, 1950 — Article 14, 286

Citation : AIR 1962 AP 375 : (1962) 13 STC 193

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : M. Suryanarayanamurthy, for the Appellant; D.V. Sastry, for The Third Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C.J.—This revision relates to the assessment year 1957-58. The petitioner is a dealer in coconuts and copra. For the relevant period, the taxable turnover was determined by the proper Commercial Tax Officer at Rs. 93,099-15-6 disallowing the exemption claimed by the petitioner on Rs. 69,654-10-0, which was exigible to tax under the Andhra Pradesh General Sales Tax Act, 1957. This turnover covered transactions that occurred subsequent to 14th June, 1957, while the balance related to the prior period. The petitioner made no claim for exemption in regard to Rs. 23,445-5-6 on which tax was levied under the Madras General Sales Tax Act. As no relief was granted to the petitioner in regard to Rs. 69,654-10-0, he carried the matter in appeal to the Deputy Commissioner of Commercial Taxes and a further appeal to the Sales Tax Appellate Tribunal but without success. It is to revise the order of the Sales Tax Appellate Tribunal confirming that of the department that this revision petition is filed.

2. This revision is sought to be sustained on two grounds, (i) that exemption ought to have been granted to the petitioner on the turnover of Rs. 69,654-10-0

as it consisted of transactions that took place after the passing of the Andhra Pradesh General Sales Tax Act, and (ii) that, at any rate, tax should have been imposed only at 2 nP. per rupee and not at 3 nP.

3. We will first take up the point bearing on the exemption. The contention on this issue is based on Rule 27-A(i) of the Andhra Pradesh General Sales Tax Rules, 1957. This rule was inserted by the notification issued in G.O.Ms. 1804, Revenue, dated 30th September, 1958, and it came into force on 1st October, 1958. It is convenient to quote here Rule 27-A.

Rule 27-A. (1) Where any tax has been levied and collected u/s 6 in respect of the sale or purchase inside the State of any declared goods and such goods are subsequently sold in the course of inter-State trade or commerce, the tax so levied and collected shall be refunded to the person in the manner and subject to the conditions specified in Sub-rules (2) to (4).

(2) The refund of tax referred to in Sub-rule (1) shall be made to the dealer who effected the first sale in the course of inter-State trade or commerce.

(3) Every application for refund under this rule shall be filed by the dealer claiming refund before the assessing authority having jurisdiction over his place of business within a period of three months from the end of the month in which he sold the goods :

Provided that the assessing authority may condone for reasons to be recorded in writing, any delay in the filing of such application.

(4) The burden of proving that a dealer is entitled to a refund under this rule shall be with the dealer claiming such refund.

4. It is contended by Sri Suryanarayanamurthy, learned counsel for the petitioner, on the basis of the language of this rule, that this rule operates with retrospective effect from the date the Andhra Pradesh General Sales Tax Act came into being, i.e., 15th June, 1957, and is not confined to transactions happening after the Act came into force.

5. Before we answer this question, we will advert to the setting in which the provision for refund was introduced into the Andhra Pradesh General Sales Tax Act. The Central Sales Tax Act, 1956, was passed by the Parliament pursuant to the powers conferred on it by Article 286(2) of the Constitution read with entry 92A of the Union List, in order to remove certain disabilities created by Article 286(1) and (2) of the Constitution. The Act was intended to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the Act. In exercise of the powers conferred by Sub-section (3) of Section 1 of the Central Sales Tax Act, 1956 (74 of 1956), the Central Government issued a notification appointing 5th January, 1957, as the date on which the provisions of the said Act except Section 15 should come into force. So far as Section 15 was concerned 1st May, 1957, was fixed as the date on which it should come into

force, by a notification dated 22nd January, 1957.

6. For reasons which are not apparent to us and which have no relevancy here, the Central Government postponed the date on which this should come into effect from time to time by several notifications till eventually 1st October, 1958, was fixed for that purpose by a notification dated 23rd September, 1958. On the same date, another notification was issued in respect of this section to the effect that it is Section 15 as amended by the Central Sales Tax (Second Amendment) Act, 1958 (31 of 1958) that should come into force on 1st October, 1958. Thus it is the Central Sales Tax Act, 1956, that was responsible for the insertion of a provision enabling the dealers to claim a refund of the tax paid as laid down in Rule 27-A (1) already extracted above.

7. The two sections of the Central Act that have a material bearing on the present enquiry are Sections 14 and 15. Section 14 has listed goods which are of special importance in inter-State trade or commerce. These goods came to be termed as "declared goods" by virtue of the definition of Section 2(c) of the Central Sales Tax Act, 1956. Section 2(c) defines "declared goods" as meaning, goods declared u/s 14 to be of special importance in inter-State trade or commerce.

8. Among the goods considered to be of special importance in inter-State trade or commerce, are oil-seeds. Item (vi) reads :

Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

9. Incontrovertibly, coconuts also are comprehended within the expression "oil-seeds."

10. Section 15 of the Act as originally stood recites:

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 the law in respect of any sale or purchase of such goods inside the State shall be levied only in respect of the last sale or purchase inside the State and shall not exceed two per cent, of the sale or purchase price ;

(b) notwithstanding anything contained in Clause (a), no tax shall be levied in respect of the last sale or purchase inside the State if the declared goods purchased are intended for sale in the course of inter-; State trade or commerce.

11. We have already pointed out that this section did not come into immediate effect and that it came into operation only from 1st October, 1958. This section was replaced by Act 31 of 1958 by the following :

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 two per cent, of the sale or purchase price thereof, and such tax shall not be levied at more than one stage ;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State.

12. It is to give effect to this provision that the rule on which the claim of the petitioner is founded was incorporated by the Government of Andhra Pradesh. For the same purpose, a suitable amendment was introduced to Section 6 of the Andhra Pradesh General Sales Tax Act in the shape of a proviso, which is in these words

Provided that where any such goods on which a tax has been so levied are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person, in such manner and subject to such conditions as may be prescribed.

13. It is seen that the purpose of these provisions is to clothe a dealer with a right to ask for refund in certain contingencies.

14. The short question that falls for decision here is whether the assessee could take advantage of these provisions of law in respect of purchases and sales that were transacted prior to the promulgation of Rule 27-A or the coming into force of Section 15 of the Central Sales Tax Act, 1956.

15. The point presented by Sri Suryanarayanamurthy, learned counsel for the petitioner, is that the clause "where any tax has been levied" is indicative of the intention of the rule-making power of the legislature to give retrospective operation to this provision of law. According to him, this expression denotes that if tax was levied and collected after the passing of the Andhra Pradesh General Sales Tax Act, 1957, it was obligatory on the department to refund that tax, if the conditions envisaged by the material rule or Section 15 are satisfied. We are unable to accede to this proposition of the learned counsel. We are not persuaded that the language employed lends itself to that interpretation. In our judgment, this is calculated to confer a right on the dealer only in regard to sales and purchases effected after the promulgation of the rule or the coming into force of Section 15.

16. It is a well-recognised canon of construction of statutes that no enactment will be interpreted to have a retrospective operation, unless such construction is inevitable, having regard to the clear and unambiguous language of the Act, or it

arises by "necessary and distinct implication". The following passage in the "Interpretation of Statutes" by Maxwell (Tenth Edition) at page 214 gives support to our view.

No rule of construction is more firmly established than this: that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.

17. In the light of this rule, we hold that the provision of law in question has no retroactivity but it is prospective. Assuming that the construction that is sought to be placed upon this provision of law is plausible and that it is capable of yielding two interpretations, we should accept the one that is in consonance with this presumption, namely, that all statutes are deemed to be prospective, unless the language inevitably leads to the inference that it is retrospective. Thus, the terms of the section do not warrant the conclusion that this provision of law is retrospective. If that were the real position, the petitioner is not entitled to the benefits of Rule 27-A. It follows that the claim for exemption was rightly disallowed by the department.

18. The next controversy relates to the rate of tax leviable on coconuts. The argument in this behalf as formulated by Sri Suryanarayana-murthy is this. Having regard to the scheme of Section 6 of the Andhra Pradesh General Sales Tax Act, all "declared goods" should find a place in Schedule IV appended to the Andhra Pradesh General Sales Tax Act, 1957. "Declared goods" comprise oil-seeds, as could be seen from Section 14 of the Central Sales Tax Act which, in its turn, includes coconuts. When once coconuts come within the range of "declared goods", coconuts should be mentioned in Schedule IV and not in Schedule III as was done by the Andhra Pradesh Legislature. If coconuts are shown in Schedule IV, the department could charge only at 2 nP. in the rupee as per Schedule IV and not at 3 nP., as was sought to be imposed by the department.

19. Before we deal with this contention, it is necessary to look at Section 6 of the Andhra Pradesh General Sales Tax Act. It reads :

Notwithstanding anything contained in Section 5, the sales or purchases of declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase specified against each in the Fourth Schedule, irrespective of the quantum of his turnover in such goods ; and the tax shall be assessed, levied and collected in such manner as may be prescribed.

20. Schedule IV enumerates the declared goods in respect of which a single point tax is leviable u/s 6 and also fixes the rate of tax at two naye paise in the rupee. Schedule III catalogues goods in respect of which a single point purchase tax only is leviable u/s 5(3) (b). A reference to Sections 5, 6 and the two schedules clearly establishes that the inclusion of coconuts in Schedule III was

unwarranted. As already stated, all goods falling within the sweep of Section 14 of the Central Sales Tax Act, 1956, should be comprehended in Schedule IV, having regard to the wording of Section 6 of the Andhra Pradesh General Sales Tax Act, 1957. It is an accepted rule of construction of statutes that where a passage in a schedule to a statute is repugnant to one in the body of the statute, the latter should prevail.

21. Therefore, there was no justification for the State Legislature to have shown coconuts in Schedule III,

22. However, in this case, that question is only of academic interest-having regard to the fact that "coconuts" was deleted from Schedule III and added to Schedule IV by Act III of 1958 [Andhra Pradesh General Sales Tax (Amendment) Act, 1958] with retrospective effect. Under the Amendment Act, the expression "other than coconuts and cotton seeds" was added to the definition of oil-seeds occurring as the third item under Schedule IV. By this amendment, coconuts were excluded from the definition of "oil-seeds". Coconuts were added as item 3B to Schedule IV and the tax was fixed at three naye paise in the rupee. There is also the following proviso:

Provided that the rate of tax shall be only 2 naye paise in the rupee on and from the date on which Section 15 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956) comes into force.

23. The effect of this amendment is that coconuts should suffer sales tax at three naya paise in the rupee upto 1st October, 1958, and subsequently it would be liable to tax only at two naye paise in the rupee, and retrospective operation was given to this amendment. Having regard to these reasons "coconuts" must be deemed to have been included in Schedule IV from 15th June, 1957. That being so, the argument. that it was not competent for the Legislature to have shown "coconuts" in Schedule III is unavailable to the petitioner.

24. The only question that survives is whether a different rate should be adopted for coconuts which finds a place in Schedule IV. Sri Suryanarayanamurthy attacks this differential treatment as between coconuts and other commodities enumerated in Schedule IV as violative of Article 14 of the Constitution. He says that there is no rationale on which this distinction could rest. We do not think that we can accede to this view of the learned counsel for the petitioner. It is pedantion our part now to discuss the scope of Article 14 of the Constitution, as this has been the subject of numerous decisions of various High Courts and of the Supreme Court. Suffice it to say that one of the principles that emerges from these rulings is that Article 14 of the Constitution forbids only class legislation and not reasonable classification for the purposes of legislation. But, in order to pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that the differentia must have a rational relation to the

object sought to be achieved by the statute in question. It is also recognised that the classification could be founded on different bases namely geographical, or, according to objects or occupations or the like. Therefore, all that is necessary in order to save a classification from the vice of discrimination is that there should be a reasonable relation between the basis of the classification and the object of the Act. It cannot be disputed that the classification made in this regard could be treated as a reasonable one. It cannot be postulated that oil-seeds cannot be grouped into different categories. Therefore, the classification as such could not be attacked.

25. The only point to be considered is whether different rates could be justified. We think that it can be done. The object of the Sales Tax Act was to find additional revenues to State Governments. The levy of higher rate of tax on coconuts could bring more revenue to Government, as coconuts are produced in the State of Andhra Pradesh in great abundance. That such differentiation is permissible amongst different kinds of commodities is seen from the following passage in the Constitutional Law by Willis at page 587 :

The Supreme Court permits a wider discretion in classification under the power of taxation if possible than it does under the Police power. One reason for this undoubtedly is the urgent need for revenue by the various Governmental agencies. A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. The Constitution does not say how cases shall be decided. All it says is that the States shall not deny to any person within their jurisdiction equal protection of the laws. It does not say when persons are within the jurisdiction of a State or what are equal laws.

26. It is manifest that a State is not precluded from choosing different rates for taxation for different objects. It cannot, therefore, be postulated that the State would be violating the guarantees enshrined in Article 14 of the Constitution when it imposed different rates on different commodities. Our view gains support from the judgment of this Court in *Kadiyala Chandrayya v. State of Andhra* [1957] 8 S.T.C. 33 and *Goranlla Butchiah Chowdary v. State of Andhra* [1958] 9 S.T.C. 105. We are not persuaded that the imposition of a higher rate of tax on coconuts constitutes an infraction of Article 14 of the Constitution. The tax of three naye paise could be imposed only till 1st October, 1958. Thereafter, all declared goods were liable to be taxed at two naye paise by reason of the prohibition contained in Section 15 of the Central Act. It is in conformity with that provision that the proviso added to Schedule IV enacted that the tax in that behalf would be two naye paise. Hence, the provision in question is free from challenge. For these reasons, we hold that the department acted within its power when it levied three naye paise in the rupee on coconuts. This contention also is repelled.

27. In the result, the tax revision case is dismissed. There will be no orders as to costs.