
(1962) 10 KL CK 0014
In the High Court Of Kerala
Case No : A.S. No. 686 of 1958

State of Kerala

APPELLANT

Vs

Raghavan Pillai

RESPONDENT

Date of Decision : 31-10-1962

Acts Referred:

General Sales Tax Act, 1125 — Section 2(k)

Citation : (1963) 14 STC 483

Hon'ble Judges : M. Madhavan Nair, J

Bench : Single Bench

Advocate : Government Pleader, for the Appellant; T.K. Narayana Pillai, for the Respondent

Final Decision : Allowed

Judgement

M. Madhavan Nair, J.—This appeal is by the State against a decree setting aside an order of assessment of sales tax. In the period from 17th August, 1950, to 31st March, 1951, the plaintiff, a dealer in tobacco at Quilon, had collected Rs. 9,041-13-9 as sales tax from his customers. The Sales Tax Authorities reckoned the tax so collected as part of his turnover and assessed tax thereon amounting to Rs. 2,201-8-1. In this suit, the plaintiff pleaded that the tax collected by him for remittance to the State could not be part of his turnover and therefore was not assessable to tax. The State, on the other hand, supporting the impugned order of assessment, contended that "the sales tax collected with the sale value formed part of the turnover which is the aggregate amount for which goods are either bought or sold by a dealer." The Additional District Judge, following a ruling of the Travancore-Cochin High Court reported in *Velayudhan v. Agricultural Income Tax and Sales Tax Officer* AIR 1953 T.C. 618 accepted the plaintiff's plea and decreed the suit. Hence this appeal.

2. The only question that materially arises for consideration is whether the sales tax collected by the dealer from his customers would be part of his turnover as defined in the General Sales Tax Act, XI of 1125.

3. Section 2(k) of the Act defined,

"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 Section 3(4) of the Act directed: "...turnover shall be determined in accordance with such rules as may be prescribed." Rule 7 of the General Sales Tax Rules provided certain deductions to be made from the gross turnover to ascertain the net turnover on which alone sales tax was directed to be levied. By a notification dated 31st March, 1951, "all amounts of sales tax collected by the dealer" was also made an item of exclusion from computation. In view of the above developments a learned Judge of the Travancore-Cochin High Court held in Velayudhan v. Agricultural Income Tax and Sales Tax Officer AIR 1953 T.C. 618 even in regard to sales effected before 31st March, 1951, thus:

The amount collected as sales tax is to be deducted in ascertaining the net turnover on which alone sales tax can be levied....The sales tax collected by the petitioner is immune from the levy of any sales tax as the collection was made by him for and on behalf the State and his obligation was to make it over to the State on whose behalf he made the collection. No part of the money collected by way of sales tax belongs to him

and that decision was accepted on appeal by a Division Bench of the Travancore-Cochin High Court "(Agricultural Income Tax and Rural Sales Tax Officer, Perumbavoor v. Velayudhan ILR (1955) T.C. 181, who observed:

We are not concerned in this case with a registered dealer charging a composite or "tax included" price but one who collects separately the price for his commodity and the sales tax thereon.

The indication there is that the tax, separately collected as tax, cannot be viewed as part of the price of the goods sold. But this view has recently been repelled by the Supreme Court in George Oakes (P.) Ltd. Vs. State of Madras, . Their Lordships observed:

The expression "turnover" means the aggregate amount for which goods are bought or sold, whether for cash or for deferred payment or other valuable consideration, and when a sale attracts purchase tax and the tax is passed on to the consumer, what the buyer has to pay for the goods includes the tax as well and the aggregate amount so paid would fall within the definition of turnover. In Paprika Ltd. and Anr. v. Board of Trade [1944] 1 All. E.R. 374 Lawrence, J., said : "Whenever a sale attracts purchase tax, that tax presumably affects the price which the seller who is liable to pay the tax demands but it does not cease to be the price which the buyer has to pay even if the price is expressed as x plus

purchase tax." The same view was again expressed in *Love v. Norman Wright (Builders) Ltd* [1944] 1 All E.R. 618 when Goddard, L. J., said:

"Where an article is taxed, whether by purchase tax, customs duty, or excise duty, the tax becomes part of the price which ordinarily the buyer will have to pay. The price of an ounce of tobacco is what it is because of the rate of tax, but on a sale there is only one consideration though made up of cost plus profit plus tax. So, if a seller offers goods for sale, it is for him to quote a price which includes the tax if he desires to pass it on to the buyer. If the buyer agrees to the price, it is not for him to consider how it is made up or whether the seller has included tax or not."

We think that these observations are apposite even in the context of the provisions of the Acts we are considering now, and there is nothing in those provisions which would indicate that when the dealer collects any amount by way of tax, that cannot be part of the sale price. So far as the purchaser is concerned, he pays for the goods what the seller demands, viz., price even though it may include tax. That is the whole consideration for the sale and there is no reason why the whole amount paid to the seller by the purchaser should not be treated as the consideration for the sale and included in the turnover

In the light of the clear dictum of the Supreme Court it cannot now be contended that the aforequoted definition of turnover would not include sales tax collected by the dealer as part of the consideration for the goods at sale. The dicta of the Travancore-Cochin High Court in *Velayudhan v. Agricultural Income Tax and Sales Tax Officer* AIR 1953 T.C. 618 and *Agricultural Income Tax and Rural Sales Tax Officer, Perumbavoor v. Velayudhan* I.L.R 1955 T.C. 181 have to be held to be impliedly overruled by the Supreme Court decision in *George Oakes (P.) Ltd. Vs. State of Madras*, It then follows that the assessment impugned in this case was legal, and the action of the plaintiff to set aside the same as illegal and without jurisdiction must fail.

4. It was contended by counsel for the plaintiff that the amendment in the rules excluding sales tax collected by the dealer from computation of his net turnover for levy of tax by the State having come into force before the order of assessment was made in the instant case, the plaintiff is entitled to the benefit thereof. But, the amendment has not been made retroactive. Rules are always presumed to be prospective in effect unless there be indication otherwise in the enactment concerned. The liability to tax in regard to sales effected in the period 17th August, 1950, to 31st March, 1951, has become complete before the exemption came into force, though the order of assessment was made only on 3rd November, 1952. The plaintiff cannot therefore claim the exclusion under the amendment which came into force on 1st April, 1951, only.

5. In the result, the appeal is allowed, and the suit dismissed. The appellant will have its costs of this appeal from the respondent.

6. The cross-objection by the plaintiff in regard to costs disallowed to him by the

trial court is not pressed and is dismissed without costs.