

(2005) 04 KL CK 0010

In the High Court Of Kerala

Case No : W.A. No's. 1634, 1825 and 1828 of 2004

Suma Devi

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 265
Kerala Finance Act, 2000 — Section 7(1)
Kerala Finance Act, 2001 — Section 1, 1(2), 6
Kerala General Sales Tax Act, 1963 — Section 5, 5(1), 7(1)

Citation : (2005) 2 ILR (Ker) 519 : (2005) 2 KLT 870 : (2005) 142 STC 170

Hon'ble Judges : K.S. Radhakrishnan, Acting C.J.; Thottathil B. Radhakrishnan, J

Bench : Division Bench

Advocate : Jose Kuttiyani, Paul Jose, V.C. James, Bechu Kurian Thomas, Sanjay Ramaswami and K.J. Jose, for the Appellant; Raju Joseph, Spl. Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, Ag. C.J.

1. Constitutional validity of the amendments effected to Section 7(1)(b) of the Kerala General Sales Tax Act, 1963 by Sections 1 and 6(c) of the Kerala Finance Act, 2001 (Act 7 of 2001) is under challenge in these cases. Writ petitioners are aggrieved by the introduction of Section 7(1)(c) explanation reckoning primary crushers also for the purpose of computation of quantifying the compounded tax. Petitioners submit that Sections 1 and 6(c) of the Kerala Finance Act, 2001 (Act 7 of 2001) is unconstitutional and violative of Article 265 of the Constitution of India and the unreasonable levy of compound tax on the persons engaging in metal crusher operations is contrary to Articles 14 and 19(1)(g) of the Constitution of India. Further they contend that the retrospective operation of the amended provisions effective from 23.7.2001 as per Section 1 of the Finance Act, 2001 is a colourable exercise of power. They also contend that the enhancement of compounded rate of tax to 300% is disproportionate to the

production in the crusher unit and that since rate of sales tax is not enhanced compounded tax should not have been increased. In the Writ Petition W.P.C.No. 18121 of 2004 against which W.A. No. 1825 of 2004 was filed, petitioner has sought for a declaration that Section 7(1)(c) of the Kerala Finance Bill 2004 is illegal and unconstitutional. Learned Single Judge did not accept the contention of the petitioner and dismissed the Writ Petitions against which the Writ Appeals have been preferred. We heard all the cases together and hence we are disposing of the appeals and the Writ Petition by a common judgment.

2. Granite metal is a taxable item u/s 5 of the Kerala General Sales Tax Act, 1963 which is included in serial No. 70 of the first Schedule to the Kerala General Sales Tax Act for which tax is leviable at the point of first sale in the State by a dealer. Petitioners and others are therefore liable to pay tax at the rate of 8% for the granite metals produced in their crusher units.

3. State Government felt that an option be given for payment of tax at the compounded rates to persons who run modernised crusher units producing granite metals. Consequently as per the Kerala Finance Act, (Act 7 of 2001) Section 7(1)(b) was introduced which reads as follows:

7. Payment of Tax at Compounded rate:

1. Notwithstanding anything contained in Sub-section (1) of Section 5,

(a) xx xx xx (b) Any mechanized crushing unit producing granite metals may at its option instead of paying tax in accordance with the provisions of that section, pay tax at the following rates namely,

(i) For each crushing machine of size 36 x 9 Rs. 50,000/- per annum (ii) For each crushing machine of size 16 x 9 Rs. 25,000/- per annum (iii) For each crushing machine of size 12 x 9 Rs. 12,500/-per annum

Rates mentioned above continued to be in operation till an amendment was introduced. Rates were increased by the Kerala Finance Act, 2000 with effect from 1.4.2000. Amendment brought to Section 7(1)(b) as per Act 20 of 2000 is as follows:

7. Payment of tax at compounded rate:

(1) Notwithstanding anything contained in Sub-section (1) of Section 5,

(a) xx xx xx (b) Any mechanical crushing unit producing granite metals may at its option instead of paying tax in accordance with the provisions of that Section 5, pay tax at the following rates, namely:

(i) For each crushing machine of size not exceeding 30.48cm. x 22.86cm. Rs. 15,000/- (ii) For each crushing machine of size exceeding 30.48 cm. x 22.86cm. Rs. 30,000/- (iii) For each crushing machine of size not exceeding 40.64cm. x 22.86cm. Rs. 60,000/-

State Government later introduced Supplementary Finance Act during November

2001 amending the provisions of Section 7(1)(b) of the Kerala General Sales Tax Act, which reads as follows:

in Section 7, Sub-section (1)

(a) xx xx xx (b) xx xx xx (c) In Clause (b), --

(i) in item (i) for the letters and figures "Rs. 15,000", the letters and figures "Rs. 30,000" shall be substituted,

(ii) in item (ii) for the letters and figures "Rs. 30,000" the letters and figures "Rs. 90,000" shall be substituted,

(iii) in item (iii), for the letters and figures "Rs. 60,000" the letters and figures "Rs. 1,80,000" shall be substituted,

(iv) The following Explanation shall be inserted at the end, namely:

Explanation- Primary crusher shall also be reckoned for the purpose of computation of the quantum of compounded tax".

Compounded rate of tax was later enhanced. In addition to that Clause 4 was introduced explaining that primary crusher shall also be reckoned for the purpose of computation of the quantum of the compounded tax. Further Section 1(2) of Act 7 of 2001 was introduced to give effect to the amendment from 23rd July 2001.

5. The All Kerala Crusher Owners Association have addressed the Government complaining about the enhancement of the rate of compounded tax on primary crusher and Government have considered their grievances. Minister for Finance in the Budget Speech for the year 2003-2004 stated as follows:

"Government have received several representations that the stone crusher industry is facing serious difficulties owing to the imposition of tax on primary crushers, especially since the product manufactured by them is not a saleable commodity. Since this is found to be a genuine grievance I propose to reduce the rate of compounded tax for primary crushers to 50% of the present rate".

Later Government passed Finance Bill 2004. An amendment was brought to Section 7(1)(b) Explanation of the Kerala General Sales Tax Act stating that for the purpose of the clause primary crusher shall also be reckoned for computation of the quantum of compounded tax and the rate of compounded tax applicable to primary crusher shall be 50% of the rates mentioned in items (i), (ii) and (iii). Petitioners attacked the amendment effected to the Explanation to Section 7(1) (b) of the Act stating that it is violative of Article 265 of the Constitution.

6. Counsel appearing for the petitioners Sri. Jose Kuttiyani and Sri. Bechu Kurian Thomas contended that explanation has got the effect of imposing additional tax on the items manufactured through primary crushers. Counsel also submitted that though the difficulties experienced by the petitioners were taken note of the Government as well as the Honourable Minister but the explanation was not

omitted. Counsel also submitted that the explanation has got the effect of overriding various statutory provisions. Counsel also submitted that no criteria as such has been laid down in the explanation as to how the same has to be applied on various categories of primary crushers. Counsel submitted no tax can be levied with retrospective effect.

7. Senior Government Pleader for Taxes Sri. Raju Joseph on the other hand contended that there is no reason to interfere with the judgment of the learned Single Judge and also contended that the petitioners have always got the option to pay tax u/s 5(1) of the Act rather than opting on Section 7(1)(b). Having opted u/s 7(1)(b) they are bound by the explanation contained in the Finance Act. Counsel submitted that there is no illegality in the explanation added since the Legislature in its wisdom felt that primary crushers also form part of crushing units. Counsel submitted that even without using the expression primary crusher or secondary crusher, the expression would take in all the crushers since the same has to be taken as a unit. Explanation was added only to tide over the doubts expressed at some quarters.

8. Crushing unit producing granite metals can either use manual labour or machine. Section 7(1)(b) applies only to the case of mechanised crushing unit producing granite metals. If the crushing unit uses manual labour and not the crushing machine then Section 7(1)(b) would not apply. In case where crushing unit produces granite metals using machine necessarily Section 7(1)(b) would apply. Section 7(1)(b) uses the expression "mechanised crushing unit". With regard to the rates it uses the expression each crushing machine. A mechanised crushing unit may have various machines producing granite metals. There was some doubt as to whether crushing units would take in secondary crusher and not primary crusher. Legislature has never used the expression "primary crusher and secondary crusher". But when doubt arose Legislature in its wisdom made it absolutely clear that primary crusher should also be reckoned for the purpose of computing the tax at compounded rates. That means primary crusher and secondary crusher would also fall within the expression mechanised crushing unit. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. It is well settled construing the fiscal statutes and determining the liability subject to tax one must have regard to law. Law is well settled that hardship has no role to play in determining the eligibility to tax and for the Legislature to decide whether hardship would be mitigated. Legislature in their wisdom has reduced the tax liability to stick on to the rule that primary crusher should also form part of mechanised crushing unit.

9. Explanation was added by Act 7 of 2001 to explain the meaning of the words contained in the Section. The Apex Court in *Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others*, , and *M/s. Oblum Electrical Industries Pvt. Ltd., Hyderabad Vs. Collector of Customs, Bombay*, , held that the explanation shall be so read that it should not be so construed so as to alter the ambit of the Section. Legislature in their wisdom

have explained that the mechanised crushing unit would take in crushing machine which includes primary crusher and secondary crusher etc. This Court is not justified in substituting its wisdom to that of the Legislature and to hold that mechanised crushing unit would not include primary crushing unit. Counsel appearing for the petitioner also referred to the decision of the Apex Court in State of Punjab Vs. Nestle India Ltd. and Another, , and contended that since the Finance Minister has noted in the budget speech the difficulties experienced by the petitioners, State Government is estopped from demanding quantum of tax for the primary crusher as well. We find it difficult to accept that contention. We hold that the Explanation introduced to Section 7(1)(b) of the Kerala General Sales Tax Act, 1963 is not unconstitutional or illegal. Writ Appeals and the Writ Petition would stand dismissed.

10. We may also notice before the learned Single Judge though the petitioners had attacked the rate of compounding tax for each crushing unit as unconstitutional, at the time of hearing they had pressed the challenge only against the Explanation and the retrospectivity given to the amended provision. The Kerala Finance Bill, 2001 was published in the Kerala Gazette Vol. XLVI (No. 1048 dt. 21.7.2001) which contained a declaration under the Kerala Provisional Collection of Revenue Act, 1985 to the effect that all the provisions of the Bill shall have immediate effect from the date of introduction of the Bill in the Legislative Assembly, Learned Single Judge is right in holding that every tax payer is presumed to know that the tax proposals will have effect from the date they are introduced in the Legislative Assembly in view of the declaration under Act 10 of 1985. Legislature is competent to make amendment with retrospective effect. We are therefore not impressed with the contention of the counsel for the petitioners about the retrospectivity of the legislation. We therefore fully concur with the judgment of the learned Single Judge and dismiss the Appeals and the Writ Petition.