

(2001) 04 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No's. 7241 and 9716 of 2001

Surabhi Steels Pvt. Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 05-04-2001

Acts Referred:

Central Sales Tax Act, 1956 — Section 3

Kerala Tax on Entry of Goods into Local Areas Act, 1994 — Section 12

Citation : (2001) 123 STC 491

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : Mohammed Nias, C.P., Premjit Nagendran and V. Giri, for the Appellant; N. Manoj Kumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—In view of the common nature of the contentions taken up by the parties, and reliefs prayed for, the above four original petitions were jointly heard, and are being disposed of by a common judgment.

2. In O.P. Nos. 7241 and 7687 of 2001, the State has filed statements clarifying their stand, and it had been submitted that contentions were identical. Preliminary objections were raised by the State to the effect that assessment orders are yet to be issued and the original petitions are premature. And after assessment there is statutory remedy of appeal available to them.

3. It is however pointed out that in two of the cases, assessment orders are served, subsequent to the filing of the original petitions and there is proposal disclosed for imposition of penalty and opportunity for filing returns were expressly denied. The interpretation and application of two S.R.Os. are also involved. In the aforesaid circumstances, the matter was decided to be finally heard on merits. Advocates Nagendran, V. Giri and Mohammed Nias had appeared for the petitioners and Sri. N. Manoj Kumar, Government Pleader represented the State. Facts in O.P. No. 9834 of 2001 may be taken as a

representative case. It is a limited company and the others are also companies, having their factories in the State of Kerala.

4. United Alloys (P) Ltd., is engaged in the manufacture of iron and steel products, including M.S. ingots. Most of the purchases for manufacture is from outside the State, and using C forms. They have Kerala general sales tax and Central sales tax registration. The purchases suffer four per cent Central sales tax, invariably. A demand had been raised against them for entry tax under the Kerala Tax on Entry of Goods into Local Areas Act, 1994 ("Entry Tax Act") on March 8, 2001, for the years 1997-98, 1998-99 and 1999-2000. Notice u/s 15(1) by the Intelligence Officer (2nd respondent) alleged as following :

"You have not filed the return as required u/s 7(1) of the Act before the authority concerned. A notice dated February 24, 2001 was issued to remit the entry tax along with penalty u/s 15(2) of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 on or before March 3, 2001. The reply dated March 2, 2001 filed by you is not satisfactory and hence rejected: Since the notice is relating to the year 1997-98 and hence further time to file return cannot be granted. Thus you have violated the provisions under Sections 7(1), 10(1) and 10(2) of the Act and sought to evade entry tax amounting to Rs. 30,530 (rupees thirty thousand and five hundred and thirty only). It is proposed to impose a penalty of Rs. 61,060 (rupees sixty one thousand and sixty only) u/s 15(1) of the Act. Your objections, if any, against the proposal shall be filed within 7 days of receipt of this notice. You will also be heard on March 15, 2001 at 11 A.M., in my office at Palakkad."

This shows that returns were omitted to be filed, that they had violated provisions of the Act, no opportunity would be granted for filing of return, and imposition of penalty was contemplated.

5. In O.P. No. 7241 of 2001, exhibit P2 is the notice issued on January 19, 2001, for the year 1998-99. The same petitioner, Surabhi Steels (P) Ltd., filed O.P. No. 9716 of 2001 as well, exhibits P2 and P3 notices respectively for 2000-2001 and 1999-2000. The impugned orders in O.P. No. 7687 of 2001 are exhibits P4, P4(a), P4(b), P5, P5(a), P5(b), P6, P6(a) and P6(b), for various years. All such notices are dated January 19, 2001. It is submitted by the petitioners that the notices have been issued experimentally, they have no legal backing and amounts to harassment of assesseees and therefore deserve to be quashed.

6. The claims are projected on the following three broad propositions :

I. S.R.O. No. 263 of 1998 and 702 of 1998 governs the issue, and demand of entry tax on a misinterpretation thereof is impermissible.

II. The goods having suffered Central sales tax it was improper and illegal to subject the goods for further taxation, and it violates Articles 301 and 304 of the Constitution of India.

III. Alternatively, if in case the benefit of the S.R.O. is not extended to the petitioners, Sections 3 and 4 of the Entry Tax Act are to be read down in such a

manner as to exclude from its purview, goods exigible to taxation under the Central Sales Tax Act, by giving credit to the tax paid.

7. The State stoutly opposes the claim. They submit that the validity of the Entry Tax Act had been upheld by this Court, and it was no more open to challenge at the hands of the petitioners. It is further submitted therefore that the issue of reading down the provisions never arises. The original petitions are premature if not misconceived. Over and above these the benefit of S.R.O. Nos. 263 and 702 were not intended to be made available to the persons like the petitioners, and the demand of entry tax and penalty was therefore admissible under the statute.

The factual statements filed Substantially supported the above submissions. I may also make it clear that the decision in these original petitions solely concern about the demand made about the ingot moulds imported by the petitioners.

8. In order to appreciate the situation arising in the case, it may be necessary that the nature of the business of the petitioners are understood. The process is manufacturing of steel and alloys. Steel scrap and ferro alloys are melted by adding additives and the molten liquid is poured into ingot moulds. This gradually solidifies as M.S. ingots and are later removed. The ingot moulds are of cast iron. After putting them for short such use as receptacles, the ingot moulds which lose shape are on their turn subjected to melting again to make steel products. According to the petitioners, the goods purchased, viz., ingot moulds from outside the State in the course of inter-State movement had suffered Central sales tax and are ultimately raw materials for manufacture of steel, and it was precisely for taking care of those nature of transaction and situations that the orders had been issued by the Government. The present interpretation attempted by the Revenue is therefore, according to them, impermissible.

9. The parties have no dispute that iron and steel do fall under item 2(ii) of the Second Schedule to the Kerala General Sales Tax Act, 1963. Under the Entry Tax Act, goods are defined as coming u/s 2(ee), that is those listed in the Schedule [Section 2(nn)]. Item 9 of the Schedule links iron and steel as items falling under the Second Schedule to the K.G.S.T. Act. Section 3 of the Entry Tax Act, 1994 is the charging section. The position, therefore, is that iron and steel are items exigible to tax under the Act.

10. The petitioners have referred to S.R.O. Nos. 263 and 702 in the above context. S.R.O. No, 263 of 1998 is in the following terms :

"In exercise of the powers conferred by Section 12 of the Kerala Tax on Entry of Goods into Local Areas Act, 1994 (15 of 1994) the Government of Kerala, having considered it necessary in the public interest so to do, hereby make an exemption in respect of the tax payable u/s 3 of the said Act by the importers in respect of cement or iron and steel imported by them for use as raw materials in the manufacture of other goods, subject to the condition that the goods in respect of which exemption is claimed is purchased inter-State by issuing "C" forms and manufactured product thereof is liable to sales tax either under the

Kerala General Sales Tax Act, 1963 (15 of 1963) or under the Central Sales Tax Act, 1956 (Central Act 74 of 1956)."

In fact impact of S.R.O. No. 702 of 1998 is minimal, since the insistence for purchase by "C" forms was done away with. It had however been pointed out that the Government wished to extend the concession to manufacturers of ingot and steel and liberally.

11. The claims of the petitioners, in a nut shell are that they satisfy the three conditions, viz., that (1) they are importers of the ingot/steel ; (2) that it is used by them in their manufacturing of other goods as raw materials and (3) the manufactured goods are liable to be taxed under the K.G.S.T. Act/C.S.T. Act. They submit that when the statutory provisions and the Government orders are clear and unambiguous, a demand for tax in a belated occasion is without authority of law and illegal.

12. The argument is impressive, and if the above position is acceptable, it is submitted that it may not be necessary or required to go into the other contentions urged, viz., the legality of taxation, overlooking the import of Article 401 and a requirement for, reading down Sections 3 and 4 of the Entry Tax Act. The respective contentions could be subjected to examination in the aforesaid circumstances.

13. Learned Government Pleader had invited my attention to the judgment of this Court reported in 1995 TC 376 (Jose Electricals v. State). It may be necessary to scan through the cited authorities to appreciate the arguments highlighted. In the Jose Electricals case (1995) TC 376, the validity of Act 15 of 1994 had been upheld by a division Bench of this Court. The challenge was on the ground that the Act opposed Articles 301 and 304 of the Constitution of India, as it hampers free-flow of trade.

14. The petitioner in Jose Electrical case (1995) TC 376 had attempted to challenge the Entry Tax Act, but the division Bench, by pointing out that the Kerala Act was regulatory and compensatory in nature, had repelled the contentions. Regulatory and compensatory measures of tax do not come within the purview of restrictions contemplated in Article 401 of the Constitution. See *State of Bihar v, Bihar Chamber of Commerce* [1996] 103 STC 1 and the court had held that regulatory measures for the use of trading facilities, do not come within the purview of restrictions contemplated by Article 401.

15. Another decision referred to was *Abdul Nazar v. State of Kerala* (1997) 5 KTR 463, where a learned Judge upheld the contention of the State that entry tax under the Act, equally covered the imported vehicles from abroad. The decision was reversed by a division Bench, and is presently pending before the Supreme Court, and it also may not be necessary to advert to the observations therein as the contentions raised therein do not have any application to the facts of the present original petitions. The Government Pleader, therefore, highlighted the definition of the term "importer" [Section 2(g)] and stressed that the words used

as "who owns the goods at the time of its entry into the local area" and the charging section was to be given utmost importance. It had been pointed out that tax is collected on the entry of any goods into the local area. Therefore, he submits that the ingots had to suffer entry tax on the point of entry, and the benefit of S.R.O. quoted did not enure to the benefit of the assessee as they were imported for the purpose to aid manufacture. The S.R.O. therefore had no relevance. As there was omission for payment of tax dues, there simultaneously arose the liability for the penalty as well.

16. Essentially this is the precise point of dispute. It is submitted that the decision relied on so as to assert the validity of the Entry Tax Act was rendered when the tax had within its purview motor vehicles alone. The discussions centres around that position only. The motor vehicle is only one of the entry to the Schedule now, and if the import is after 15 months of purchase date, it is not exigible to tax. But that is not the case with other items, and the law governing them are practically different. Section 12 of the Act authorised Government to grant exemptions and the S.R.O. relied was issued in exercise of such powers. What is given by one hand could not have been taken back by the other. They point out that the original Section 4(2) of the Act had been deleted, and the present Section 4 conferred benefits only on dealers, and the notification was taking note of the impact of amendment brought by Section 9 of the Kerala Finance Act, 1996.

17. I may, at this juncture, point out that the argument to read down Section 3 of the Act, in case of liability under the Entry Tax Act is upheld, may not be sustainable, since the entry tax does not amount to a species of sales tax at all. Entry tax is a tax leviable at the point of entry of goods into local area for the purpose of consumption, use or sale. It is not a tax on sale. It is a tax on entry, and the contention that Article 401 is attracted arises from their understanding it as not sales tax. As pointed out by the Supreme Court in *State of Bihar v. Bihar Chamber of Commerce* [1996] 103 STC 1, the petitioners cannot at the same breath say that it is not a tax on entry, but a tax in the nature on sale. Therefore a reading down of the sections does not at all arise. The legal position is settled.

18. The solitary circumstance that may come to the help of the petitioners if at all is the argument that they do come within the protective purview of S.R.O. No. 263 of 1998, And submissions made claiming the benefit, according to me, is valid and sustainable; The contention of the Revenue that the point of time for liability is the time of entry, is too technical and cannot be countenanced. "As pointed out earlier, the thrust of the order is clear from the position that after import, the goods should have been used for manufacture as a raw material. That it is used for a while for facilitating manufacture, and then only it is consumed, according to the Government Pleader, disentitled the petitioners from claiming the benefits. This does not constitute as a circumstance for forfeiting the benefit of the order. I am of the view that this position is not envisaged at all, even from a plain reading thereof. Again to rely on the decision of the Supreme

Court in Bihar Chamber of Commerce case [19961 103 STC 1 , mere entry of goods is not enough to attract the levy, nor the mere sale thereof within the local area (see page 16). It is for consumption, for use or for sale, and the S.R.O. makes its presence felt at the precise stage and comes to the rescue of the petitioners. To accept the submissions of the Government would result in drastic propositions. There is no time-limit prescribed for its use, it cannot be treated as a part of machinery and the inventory of the articles and accounting thereof in an imprecise manner will not lend power to the Revenue to tax it if it is really to be exempted. The ingots are consumed as raw materials in the manufacture of other goods, these having been purchased inter-State, and the manufactured products are liable to tax under the K.G.S.T. Act. The essential pre-conditions are thus satisfied and to quote the Supreme Court in *Sutlej Cotton Mills Ltd. Vs. Commissioner of Income Tax, West Bengal III*, Calcutta, when a passage was cited with approval from *Cape Brandy Syndicate case (1921) 12 Tax Gas 358* has full relevance. There is no presumption as to tax ; you read nothing in ; you imply nothing, but you rely on what is said and what is said clearly and that is the tax. The observation in *Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad* , that provision of a statute is to be read together and not in isolation is the interpretation to be attempted to. The idea conveyed by the S.R.O. becomes clear and perceivable, when examined in this background.

19. Petitioners had also brought to my notice, decision of the Supreme Court in *Mafatlal Industries Ltd. Vs. Nadiad Nagar Palika and Another*, highlighting the meaning of the words consumption and use. Consumption is explained as a process of conversion of a commodity into a different commercial commodity by subjecting it to some processing. The process of the petitioners well adapt themselves to this test, say excepting the case of the petitioner in O.P. No. 7687 of 2001, where the items assessed are more than one. The rest of the case answer to the eligibility. I, therefore, hold that excepting in the above case (but there also the M.S. ingot are to be brought within the benefits) the demand for entry tax and penalty proceedings complained of was without authority of law. It is so declared.

20. Before concluding I may also refer to observations from the reported case in *R.K. Garg and Others Vs. Union of India (UOI) and Others*, and especially paragraph 19. It is held that the court while examining the constitutional validity of a legislation must be resilient, not rigid, forward looking, not static, liberal, not verbal ; of course not substituting their economic and social beliefs vis-a-vis judgment of legislative bodies. The rule according to me is clear, and not ambiguous and as pointed out by the petitioners, in situations when Central sales tax was paid, and tax under the Kerala General Sales Tax Act is assured, there was a benevolent approach by exempting them from a levy under the entry tax as well. This has come in form of S.R.O. No. 263 of 1998. To deny the petitioners the protection and privilege of the S.R.O. may not be proper or valid.

21. It will therefore be appropriate that the items not coming under the purview of this judgment in respect the demand put up as against the petitioner in O.P. No. 7687 of 2001 alone be delinked. The rest of the goods, viz., ingot moulds, do not attract entry tax. The original petitions are allowed to the extent indicated. Appropriate follow up orders are to be passed in that case. There will be no order as to costs.

Order on C.M.P. No. 12543 of 2001 in O.P. No. 7687 of 2001-M closed.

Order on C.M.P. No. 15628 of 2001 in O.P. No. 9716 of 2001-F dismissed.

Order on C.M.P. No. 11887 of 2001 in O.P. No. 7241 of 2001-K dismissed.