

(1988) 03 KL CK 0042
In the High Court Of Kerala
Case No : W.A. No. 314 of 1987

T.A.C.A. Association and Others

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 28-03-1988

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 19B

Citation : (1988) 71 STC 332

Hon'ble Judges : K.S. Paripoornan, J;K. Sreedharan, J

Bench : Division Bench

Advocate : N. Dharmadan, for the Appellant;

Final Decision : Dismissed

Judgement

K.S. Paripoornan, J.—The petitioners in O. P. No. 9373 of 1985-C are the appellants herein. The appellants are carrying on business as commission agents for the sale of cured arecanuts. The respondent is the Revenue. The challenge in the original petition was against exhibits P7, P8 and P9 notices issued by the second respondent-assessing authority u/s 17(3), read with Section 19B, of the Kerala General Sales Tax Act. Exhibits P7, P8 and P9 are only notices intimating the petitioners that the final assessments are proposed to be completed as indicated in the said notices. The objections of the petitioners were invited to the proposal. The petitioners filed the O. P. before this Court and assailed exhibits P7, P8 and P9 notices and also prayed for a declaration that Section 19B of the Kerala General Sales Tax Act is unconstitutional and void. Fathima Beevi, J., held that Section 19B of the Act is well within the competence of the legislature and cannot be struck down as invalid for the reasons stated by the petitioners. It was further held that the petitioners have been served only with notices in accordance with the statutory provisions and that the Revenue is entitled to proceed in pursuance to the said notices and the petitioners are not entitled to any relief as prayed for. The original petition was dismissed. The petitioners in the O. P. have come up in writ appeal.

2. We heard counsel for the appellants. It was argued that Section 19B of the Kerala General Sales Tax Act is unconstitutional and void. Counsel argued that Section 19B vests arbitrary and uncanalised powers on the officers to estimate the value of goods on the basis of the prevailing market price unrelated to the price shown for the goods in the accounts of the dealers. We shall extract Section 19B of the Act, in order to understand its true import:

19B. Assessment in case of undervaluation.--(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods, it may estimate the value of each goods on the basis of the prevailing market price and assess or reassess the dealer to the best of its judgment, after making such enquiry as it may consider necessary and after affording the dealer a reasonable opportunity of being heard.

Under Schedule VII, List II, entry 54, the State Legislature is empowered to enact the law imposing tax on the sale or purchase of goods other than newspapers subject to the provisions of entry 92A of List I. The various entries in the Lists are "fields of legislation". They should be understood in the widest scope. The words used therein should accordingly be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. It is settled law that in the case of taxing statutes the ancillary or subsidiary matters will extend to the making of effective and meaningful provisions for the prevention of evasion of tax. The legislature having power to impose the tax has also the power to prescribe the means by which the tax shall be collected. This will take in the power to enact measures to ensure proper realisation of the taxes due. Measures can also be made to prevent evasion of tax. This is a machinery provision which should be construed liberally. These propositions of law cannot be open to any doubt in determining the validity of a provision in a taxing statute. On a fair reading of Section 19B of the Kerala General Sales Tax Act, we concur with the learned single Judge in her reasoning and conclusion. After referring to the decisions the Supreme Court in *Navnitlal C. Javeri Vs. K.K. Sen*, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, and *Sardar Baldev Singh Vs. Commissioner of Income Tax, Delhi and Ajmer*, , the learned single Judge concluded in paragraphs 4 and 5, to the following effect:

4. Section 19B does not preclude the application of the principles of natural justice. It is not correct to say that it is an arbitrary power to the assessing authority to estimate the value of the goods. He has to conduct necessary enquiry. He has to afford reasonable opportunity to estimate the value of the goods on the basis of the prevailing market price. Whether the prevailing market price is with reference to the date of the actual sale of the goods or the average price for the month or for the year is a matter of discretion and the decision by the authority, if the authority exercised the power u/s 19B arbitrarily, then the assessee is entitled to challenge the same in appropriate proceedings. Section 19B has been inserted as an effective measure for the prevention of evasion of

tax.

5. ...It cannot therefore be contended that Section 19B as a measure to prevent evasion of tax is beyond the competence of the legislature. The argument that the section gives unguided and arbitrary power to the assessing authority is answered by the section itself which provides the safeguards in exercising the power arbitrarily. Before initiating the action the authority has to be satisfied that there had been attempt to evade payment of tax by manipulation of accounts and that satisfaction has necessarily to be on an objective approach. Before making the reassessment the authority has to make an estimate not on surmises but on the basis of the prevailing market price. In all cases where there had been bona fide transactions below the market price it would be open to the authority to hear the assessee in the matter and proceed accordingly. The authority is bound to give the assessee an effective opportunity of being heard. It is only by proceeding as enjoined under the statute an assessment could be made u/s 19B and wherever there is non-compliance with the requirements thereunder the action would be open to challenge before the statutory authorities. Therefore the section is well within the competence of the legislature and cannot be struck down as invalid for reasons stated by the petitioner.

We concur with the said reasoning and conclusion.

3. In this connection we should state that the assessing authority is given the power to estimate the value of goods on the basis of the prevailing market price only in cases where the authority is "satisfied", that a dealer has, with a view to evade the payment of tax, shown in his accounts, sale or purchase of any goods at prices lower than the prevailing market price of such goods. Before the estimate is made, the assessing authority should be "satisfied" that the dealer has, with the object to evade the payment of tax, shown the sale or purchase price lower than the prevailing market price. He should arrive at a finding after enquiry and should be satisfied about the same on the basis of materials available before him. The final estimate can be made only after an opportunity of being heard is afforded to the assessee. We should remember that the legislation in question is to remedy a social evil and it should be read broadly in a meaningful manner, so that the object that is sought to be achieved by the legislation is fulfilled. So understood, we hold that Section 19B of the Act does not suffer from any infirmity, as contended by the appellants. It should be stated that the power to estimate is vested in very responsible officers of the department. The fact that the power vested in the assessing authority is discretionary cannot ipso facto lead to the conclusion that it is discriminatory. There are in-built safeguards in Section 19B of the Act. It is only when the sale or purchase price is shown lower than the prevailing market price, as a "device" to evade the payment of tax, and the assessing authority is "satisfied" about the same, on the basis of "materials", then resort may be made to Section 19B of the Act. In this view, it cannot be said, that Section 19B of the Act vests arbitrary or uncanalised powers in the assessing authority.

4. We affirm the judgment of the learned single Judge and dismiss the writ appeal.