(1959) 12 KL CK 0033

In the High Court Of Kerala

Case No : O.P. No. 658 of 1958

Thomas APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 16-12-1959

Acts Referred:

Kerala Surcharge on Taxes Act, 1957 — Section 3(1)

Citation : (1960) KLJ 169

Hon'ble Judges : T. K. Joseph, J;M. S. Menon, J

Bench : Division Bench

Advocate : K. K. Mathew and George Vadakkel, for the Appellant;

Final Decision : Dismissed

Judgement

M. S. Menon, J.—This petition relates to the levy of the surcharge u/s 3 (1) of the Kerala Surcharge on Taxes Act, 1957. That sub-section (omitting the proviso thereto) reads as follows:-

The tax payable under the Travancore Cochin General Sales Tax Act, 1125 or the Madras General Sales Tax Act, 1939, shall, in the case a dealer whose turnover exceeds thirty thousand rupees in a year, be increased by a surcharge at the rate of two and a half per centum of the tax payable for that year and the provisions of the Travancore-Cochin General Sales Tax Act, 1125, or the Madras General Sales Tax Act, 1939, shall, as the case may be, apply to the levy and collection of the said surcharge.

The Act came into force on 1-9-1957. The question whether the surcharge can be levied on the sales tax of 1956-57 (1-4-1956 to 31-3-1957) came up for consideration in O.P. No. 60 of 1958. This court held that the Act had no retroactive operation, and that no surcharge can be levied in respect of the said year.

2. The year with which we are concerned in this petition is 1957-58 (1-4-1957 to 31-3-1958). The Act, as already stated, came into force on 1-9-1957. The

contention of the petitioner is that he is not liable to the surcharge in respect of his transactions prior to 1--9--1957, and that his turnover from 1-4-1957 to 1-9-1957 will not attract the surcharge under the Act.

3. We are unable to agree. What the charging section of the General Sales Tax Act, 1125-section 3-provides is that "every dealer shall pay for each year a tax on his total turnover for such year". The surcharge is on the sales tax so payable.

4. In other words, the year is the unit and because a few months of the year 1957-58 were anterior to the date on which the Act came into force it cannot be said that the transactions during those months are exempt from the surcharge leviable under the Act. This does not mean that the Act is restroactive in character. A statute is not retrospective simply because "a part of the requisites for its action is drawn from a time antecedent to its passing" (Craies on Statute Law, 5th Edition, page 357). Our view is that the Act applies to the whole of the turnover for the year 1957-58, and that this petition should be dismissed. Order accordingly. No costs.