

(1963) 07 KL CK 0020
In the High Court Of Kerala
Case No : A.S. No. 279 of 1959

V.V. Joseph and Others

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 15-07-1963

Acts Referred:

Cochin Limitation Act, 1908 — Article 110
Limitation Act, 1908 — Article 149

Citation : AIR 1964 Ker 121

Hon'ble Judges : M.S. Menon, C.J;S. Velu Pillai, J;M. Madhavan Nair, J

Bench : Full Bench

Advocate : K.P. Abraham George Kurian, E.M. Jacob, K.K. Poulose and M. Pathrose Mathai, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, C.J.

This is an appeal by the defendants in O. S. No. 112 of 1958 of the court of the Subordinate Judge of Cochin. They are the legal representatives of one Vakkan who died prior to the institution of the suit on 24-6-1955.

2. The suit which has been decreed was for the recovery of the sales tax due from the said Vakkan under the Madras General Sales Tax Act, 1939, for the financial years 1945-46, 1946-47, 1947-48 and 1948-49. The tax due in respect of those four years is Rs. 12,301-4-0, Rs. 18,503-5-0, Rs. 27,858-6-0 and Rs. 2,015-14-3 respectively. The total amounts to Rs. 60,678-13-3, and that is the amount that has been decreed by the trial court with future interest at six per cent per annum.

3. The sales concerned took place in Fort Cochin. At that time Fort Cochin was in the Province of Madras, one of the Governor's Provinces u/s 46 of the Government of India Act, 1935, It became a part of the Part A States of Madras on 26-1-1950 when the Constitution of India came into force, and a part of the

State of Kerala on 1-11-1956, the appointed day under the States Reorganisation Act, 1956.

4. The suit was instituted by the State of Madras in Travancore-Cochin, a Part B State under the Constitution of India. Travancore-Cochin became a part of the State of Kerala when that State was formed on 1-11-1956.

5. The first contention urged on behalf of the appellants is that the amount claimed is arrears of tax due to a foreign State -- the Governor's Province of Madras -- and that it is not recoverable through a suit instituted in the State of Travancore-Cochin and continued in the State of Kerala. It is settled law that the courts of a State will not entertain a suit by a foreign State for the recovery of a tax due to that State. The origin of the rule is not easy to ascertain; but the authorities in support of it are clear and formidable. In *Govt. of India v. Taylor*, (1955) 27 ITR 356 Viscount Simonds said:

"My Lords, I will admit that I was greatly surprised to hear it suggested that the courts of this country would and should entertain a suit by a foreign State to recover a tax. For at any time since I have had any acquaintance with the law I should have said as Rowlatt, J., said in *the King of the Hellenes v. Brostron*, (1923) 16 LIL Rep 190. "It is perfectly elementary that a foreign government cannot come here -- nor will the courts of other countries allow our government to go there -- and sue a person found in that jurisdiction for taxes levied and which he is declared to be liable to in the country to which he belongs". That was in 1923. In 1928 Tomlin, J., in *In re Visser; Queen of Holland v. Drukker*, (1928) 1 Ch. 877 after referring to the case of *Sydney Municipal Council v. Bull*, (1909) 1 KB 7 in which the same proposition had been unequivocally stated by Grantham, J., and saying that he was bound to follow it, added: "My own opinion is that there is a well recognized rule which has been, enforced for at least 200 years or thereabouts; under which these courts will not collect the taxes of foreign States for the benefit of the sovereigns of those foreign States; and this is one of those actions which these courts will not entertain. "My Lords, it is not seemly to weigh the pronouncements of living Judges, but it is, I think, permissible to say that the opinions of few, if any, judges of the past command greater respect than those of Lord Tomlin and Rowlatt, J., and what appeared to one of them to be a "well recognized rule" and to the other "elementary" law cannot easily be displaced."

6. The contention of the appellants, however, has to be negated, not because the proposition of law on which it is founded is incorrect; but because that proposition is not attracted at all. It may be that the Governor's Province of Madras could not have enforced its fiscal right through a court of a princely State like Cochin. But at the time the suit was filed the court had become a court of the Part B State of Travancore-Cochin, and the right had become a right of the Part A State of Madras. It is impossible to discern any element of foreignness as between those two States, or between those two States and the State of Kerala on which the right to recover devolved from the State of Madras on 1-11-1956

and which got itself substituted as the plaintiff on 9-2-1957. The territories comprised in all the three States became integral parts of the Union of India on and from 26-1-1950.

7. The second contention urged on behalf of the appellants is that the suit is barred by limitation. The Limitation Act in force in Travancore- Cochin at the time the suit was instituted was the Indian Limitation Act, 1908, which had been extended to Travancore-Cochin on 1-4-1951 by the Part B States (Laws) Act, 1951. According to Article 149 of that Act the period of limitation for any suit by or on behalf of the Central Government or any State Government is sixty years from when the period of limitation would begin to run under that Act "against like suit by a private person."

8. A suit for arrears of tax cannot be instituted by a private person. But the words "like suit by a private person" do not mean that a private person should be capable of instituting the suit. As stated by the Supreme Court in *R. C. Jall v. Union of India*, AIR 1962 SC 1281.

"The Article does not posit that such a suit should have been maintainable at the instance of a private party: it assumes its maintainability and, on that basis, refers to the appropriate Article of the Limitation Act for the Limited purpose of ascertaining the starting point of limitation."

9. It is common ground that the period of limitation should be reckoned from 24-3-1947, 20-3-1948, 5-1-1949 and 21-12-1949 in respect of the amounts due for 1945-46, 1946-47, 1947-48 and 1948-49 respectively. It is evident that the recovery of none of the amounts will be barred by limitation on the basis of Article 149 of the Indian Limitation Act, 1908.

10. The Limitation Act in force in the region where the court was situate till the extension of the Indian Limitation Act, 1908, on 1-4-1951 was the Cochin Limitation Act, 1112 (M. E.), an Act passed by His Highness the Maharaja of Cochin on 9-11-1936. The Article in that Act corresponding to Article 149 of the Indian Limitation Act, 1908 was Article 138. That Article related only to suits by or on behalf of the Government of Cochin. The suit from which this appeal arises was not by the Government of Cochin but by the State of Madras, and it should necessarily follow that Article 138 of the Cochin Limitation Act 1112, cannot be invoiced.

11. The Article which will apply to the case is Article 110 of the Cochin Limitation Act, 1112, the residuary Article which deals with suits for which no specific period of limitation is provided elsewhere in the Schedule. Under that Article the State of Madras will get only six years from when the right to sue accrued; and if the claim in respect of any of the years was barred under Article 110 of the Cochin Limitation Act, 1112, when the Indian Limitation Act, 1908, was extended to Travancore-Cochin on 1-4-1951, that extension will certainly not remove the bar, revive the remedy and react to the detriment of the appellants. Unfortunately for them, however, none of the claims was barred under Article 110 of the Cochin

Limitation Act, 1112, on 1-4-1951 and no question of the revival of a barred claim arises in this case.

12. The third contention urged on behalf of the appellants is that the sales tax levied in this case amounts to a duty on import into Fort Cochin and export therefrom, and is hence beyond the legislative competence of the Governor's Province of Madras under the Government of India Act, 1935. The sales concerned were no more than ordinary sales of ordinary goods by a non-resident dealer within the limits of Fort Cochin. To hold that they amounted to anything else will be to misunderstand the facts and to mis-state the law.

13. The assessment in respect of 1945-46 was the subject of a challenge before the Supreme Court itself. The challenge did not succeed; the Supreme Court held that Vakkan was a dealer as defined in the Madras General Sales Tax Act, 1939 and that his sales in Fort Cochin attracted the tax under that enactment. The decision is reported, V.O. Vakkan and Others Vs. The State of Madras, .

14. The fourth and the last contention urged on behalf of the appellants is that the Deputy Commercial Tax Officers who made the assessments had no jurisdiction to make them. The sales took place in Fort Cochin; and the fact that the Deputy Commercial Tax Officers responsible for the assessments were capable of assessing sales within the limits of Fort Cochin was admitted before the trial court and is not disputed before us.

15. The contention is only this: that the provisos to Clause (1) of the Notification published in the Fort St. George Gazette dated 15-9-1939, and amended subsequently, will not cover assessments like those before us. We propose to assume, without deciding, that such is the case. But what is the result? If the provisos do not apply, the provision of Clause (1) will apply, untrammelled by the provisos and as if those provisos did not exist.

16. Clause (1), omitting the provisos, reads as follows:

"In exercise of the power? conferred by Clause (a-2) of Section 2 and Sub-sections (1) and (2) of Section 14 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), His Excellency the Governor of Madras is hereby pleased--

(1) to authorise--

" (a) Assistant Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover does not exceed twenty thousand rupees; and

(b) Deputy Commercial Tax Officers to exercise the powers of an assessing authority in the case of dealers whose turnover exceeds twenty thousand rupees."

Vakkan came under the latter category -- his turnover in Fort Cochin exceeded Rs. 20,000/-; the sales took place in Fort Cochin; and the Deputy Commercial Tax Officers who had jurisdiction to assess sales in that area assessed him. There

can be nothing more to be said about it.

17. In the light of what is stated above we must hold that there is no merit in this appeal, and that it should be dismissed with costs. We do so.