

State of Kerala

v.

Aluminium Industries Limited

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. P.B. GAJENDRAGADKAR HON'BLE MR. JUSTICE K.N. WANCHOO HON'BLE MR. JUSTICE J.C. SHAH HON'BLE MR. JUSTICE RAGHUBAR DAYAL HON'BLE MR. JUSTICE S.M. SIKRI HON'BLE MR. JUSTICE R.S. BACHAWATV.RAMASWAMII

Civil Appeal No. 720 Of 1963 | 21-04-1965

WANCHOO, J.

1. This is an appeal on a certificate granted by the Kerala High Court relates to refund of sales tax collected by the appellant, State of Kerala, from the respondent. It appears that sales tax was assessed on the appellant by an order dated May 7, 1951. That order related to two periods, the second being from May 30, 1950, to March 31, 1951. The respondent in its writ petition claimed refund of Rs. 80, 048-13-6 with respect to both the periods on the ground that sales on which this tax had been levied were exempt from tax under Article 286(1)(a) of the Constitution as it then stood. In the present appeal however we are concerned only with refund of Rs. 54, 375-5-0 in respect of which relief has been granted by the High Court. The remember of the claim has been dismissed and the respondent not having appealed that has become final.

2. The circumstances in which this sales tax came to be levied are these. The respondent submitted returns for the period from May 30, 1950, to March 31, 1951, showing a net turnover of Rs. 23, 02, 776-1-9 and deposited necessary sales tax. The respondent's case further was that by mistake it did not claim exemption in connection with sales made to the State of Punjab and that is how it came to pay over Rs. 71, 000 towards sales tax for these periods. The respondent seems to have discovered this mistake soon after May 7, 1951, though the exact date is not available on the record. It therefore addressed the Sales Tax Officer on August 29, 1951, in this connection. Correspondence seems to have gone on between the respondent and the Sales Tax Officer and eventually the Sales Tax Officer wrote to the respondent on October 1, 1952,

that the respondent should move the Government directly detailing all the facts. The respondent then appears to have moved the Government and asked for refund. But it received no reply from the Government and filed the writ petition in the High Court out of which the present appeal has arisen on May 30, 1954. It was thereafter that the Government intimated to the respondent that it would make no refund with respect to the year ending March 31, 1951. The respondent's case in the petition was that it had paid the sales tax by mistake and was entitled to refund as sales outside the State were not liable to tax under Article 286 of the Constitution as it then stood. The petition was opposed on behalf of the appellant and it was urged that the respondent was estopped from claiming any refund because it had paid the tax voluntarily. A number of other points were also raised on behalf of the appellant of which it is only necessary to mention that after some hesitation the appellant had contended that the sales were not outside sales and therefore not exempt under Article 286 of the Constitution.

3. The High Court rejected the contention that the respondent was estopped from claiming refund even if the payment of tax had been made by mistake and relied on the judgment of this Court in *Sales Tax Officer v. Kanhaiyalal* (1959 S.C.R. 1350; 9 S.T.C. 747.). It did not finally decide the question whether the sales in respect of which tax amounting to Rs. 54, 375-5-0 had been levied were outside sales and the levy was contrary to Article 286(1)(a) of the Constitution. It however issued a mandamus to the State Government "to determine the claim of the writ petitioner for return of Rs. 54, 375-5-0 on the ground of such of such levy being contrary to Article 286(1)(a) of the Constitution and paid by mistake and further on the claim being justified, to return what be found to have been wrongly collected". It is this order of the High Court which is being challenged before us.

4. There is no doubt in view of the decision of this Court in *Sales Tax Officer v. Kanhaiyalal* (A.I.R. 1964 S.C. 1006; 15 S.T.C. 450.) that money paid under a mistake of law comes within the word "mistake" in section 72 of the Contract Act and there is no question of estoppel when the mistake of law is common to both the parties, which was the case here inasmuch as the respondent did not raise the question relating to Article 286 of the Constitution and the Sales Tax Officer had no occasion to consider it. In such a case where tax is levied by mistake of law it is ordinarily the duty of the State subject to any provision in the law relating to sales tax (and no such provision has been brought to our

notice) to refund the tax. If refund is not made, remedy through court is open subject to the same restrictions and also to the period of limitation (see Article 96 of the Limitation Act, 1908), namely, three years from the date when the mistake becomes known to the person who has made the payment by mistake (see *State of Madhya Pradesh v. Bhailal* (A.I.R. 1964 S.C. 1006; 15 S.T.C. 450.)). In this view of the matter it was the duty of the State to investigate the facts when the mistake was brought to its notice and to make a refund if mistake was proved and the claim was made within period of limitation. But as we have already indicated, the State the refused to investigate the matter and also to make a refund on the ground that accounts for the year ending March 31, 1951, had been closed. It was in these circumstances that the High Court came to make the order which it did. We have however come to the conclusion that the proper course for the disposal of this appeal is to call for a finding from the Sales Tax Officer on the question whether the sales with respect to which sales tax amounting to Rs. 54, 375-5-0 was levied were outside the State and were therefore exempt under Article 286(1)(a) of the Constitution as it then was. It is also necessary to call for a finding on the question whether the writ petition was within three years of the date on which the mistake first became known to the respondent so that a suit on that date for refund would not be barred under Article 96 of the Limitation Act, 1908. The papers will be sent to the Agricultural Income-tax and Rural Sales Tax Officer, Quilon, for findings on these two questions. The Sales Tax Officer should submit his findings within three months of the receipt of the order by him. It will be open to the respondent to give evidence to substantiate its case on both these points. After findings on these questions are received, the appeal will be listed before any Constitution Bench as early as possible for final disposal.

5. Case remitted.