

E. J. Mathew

v.

State of Kerala

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE VAIDYNATHIER RAMASWAMI
HON'BLE JUSTICE A. N. GROVER

(Supreme Court Of India)

Civil Appeal No. 2256-2257 Of 1966 | 28-08-1968

GROVER, J.

1. These appeals by special leave are from judgments of the High Court of Kerala, the main point involved being the liability of the appellant to payment of additional sales tax under section 3(2) of the General Sales Tax Act (Act No. 11 of 1125 M.E.) (originally Travancore-Cochin Act of 1950) as amended in 1951, hereinafter called "the Act", in respect of sales of tobacco made by the appellant in the erstwhile State of Travancore-Cochin out of purchases from dealers outside that State for the assessment years 1953-54 and 1954-55.

2. The assessee, who is the appellant, was a dealer in tobacco at Trivandrum in the erstwhile State of Travancore-Cochin during the years mentioned above. He made purchases of tobacco from dealers outside that State. The assessing authority as also the Appellate Assistant Commissioner of Sales Tax held that the assessee was liable to be taxed under section 3(2) of the Act because the sales made to him by the non-resident dealers were not covered by the explanation to article 286(1)(a) of the Constitution as it stood before the passing of the Constitution (Sixth Amendment) Act, 1956. The assessee filed appeals before the Sales Tax Appellate Tribunal. The Tribunal agreed with the view of the departmental authorities that the assessee was liable to pay the tax and dismissed the appeals. The assessee filed tax revision petitions before the High Court of Kerala which were also dismissed. Thereafter the assessee sought special leave under article 136 of the Constitution which was granted.

3. The charging section 3, at the relevant time, read as follows :

"3. Levy of taxes on sales of goods. - (1) Subject to the provisions of this Act -(a) Every dealer shall pay for each year a tax on his total turnover for such year; and

(b) the tax shall be calculated at the rate of three pies for every Indian rupee in such turnover.

(2) Subject as aforesaid, the sale of any of the goods mentioned below shall be subject to a tax at the rate specified in respect thereof, at such single point in the series of sales by successive dealers as may be prescribed; and the tax shall be paid by the dealer concerned on his turnover in each year relating to such goods, and shall be in addition to the tax to which he is liable under sub-section (1) on his total turnover for the year.

----- Sl. No. Description of the goods Rate of tax

----- (ix) Tobacco 1 1/2 annas

(3) A dealer whose total turnover in any year is less than ten thousand Indian rupees shall not be liable to pay any tax for that year under sub-section (1) or sub-section (2).

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that -

(i) in respect of the same transaction of sale, the buyer or the seller but not both, as determined by such rules as may be prescribed, shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him.

(6) Subject to such rules as may be prescribed, the assessing authority may assess a dealer for any year as if his transactions in such year had been the same as in the previous year."Rule 6 of the Travancore General Sales Tax Rules, 1950, hereinafter called the Rules, was in these terms :

Rule 6 : "The sale of any of the goods mentioned in items (i) to (ix) in section 3, sub-section (2), shall be subject to the tax specified in that sub-section at the stage of sale by the person

who in the State is the first dealer in such goods, who is not exempt from taxation under section 3(3)."

4. It has been contended that the Tribunal gave a finding that the sales to the assessee by the non-resident dealers fell within the explanation to article 286(1)(a) of the Constitution. According to the explanation a sale or purchase was to be deemed to have taken place in the State in which the goods had actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State. It is submitted that all the sales made by the non-resident dealers to the assessee must be deemed to have taken place in the erstwhile State of Travancore-Cochin and therefore it were those dealers who had made the first sales in the State who were liable to pay the tax under section 3(2) of the Act. It is rule 6 which prescribes that the sale shall be subject to the tax specified in sub-section (2) of section 3 at the stage of sale by the person who in the State was the first dealer in such goods. Therefore according to the appellant he was not the first dealer and it was the non-resident or the seller in each transaction who was liable to the payment of tax.

5. The High Court relied on certain decisions, namely, *Sundaramier & Co. v. State of Andhra Pradesh* ([1958] 9 S.T.C. 298) and *State of Kerala v. Cochin Coal Company Ltd.* ([1961] 12 S.T.C. 1) and was of the view that according to these decisions the Act imposed or authorised the imposition of a tax on the sale or purchase of goods where such sale or purchase took place in the course of inter-State trade or commerce subject to authorisation by Parliament as provided in clause (2) of article 286 and that the Parliament provided the necessary authorisation for the period between the 1st day of April, 1951, and 6th day of September, 1955, by the Sales Tax Laws Validation Act, 1956. There was a Presidential Order under the proviso and the High Court observed that when rule 6 was framed on May 30, 1950, it was possible for the State to tax what may be called "explanation sales" on that date and till March 31, 1951. This is how the High Court proceeded to deal with the matter : "A reading of rule 6 which was fixing a point of taxation for the additional tax under section 3(2) of the Act, however, does not indicate that the point was being fixed with a view to future parliamentary legislation under article 286(2) of the Constitution or only for the limited period of less than a year between the 30th day of May, 1950, and the 31st day of March, 1951. In these circumstances we think we should hold that 'explanation sales' are not within the purview of that rule and that the first sales specified is the first intra-State sale by a dealer like the petitioner who is not exempt from taxation under section 3(3) of the Act."

6. It is not necessary to discuss whether the above view expressed by the High Court is correct or not because we are of the opinion that the appellant has failed to show that the non-resident dealers or sellers from whom he had purchased tobacco could fall within the meaning of the following critical words of rule 6 : "by the person who in the State is the first dealer in such goods". No contention has been raised before us by the counsel for the appellant that rule 6 was not applicable. It has therefore only to be seen as to who would be a person who in the State would be the first dealer in such goods. It appears to us that the person to be the first dealer has to be in the State and not outside the State. This is the plain

and grammatical meaning which can be attributed to the words "by the person who in the State is the first dealer in such goods" and we have not been persuaded to depart from the normal canons of interpretation by giving any other meaning to these words. We also find it difficult to accede to the submission that the fiction under the explanation to article 286(1)(a) which determines the situs of a sale should be extended to "dealer" as given in the Act. Our attention was drawn by counsel for the appellant to a decision of this court in *V. O. Vakkan & Others v. The State of Madras* ([1955] 6 S.T.C. 647) in which it was found that a person who was residing outside the State of Madras was a "dealer" within the definition of the term in the Madras General Sales Tax Act. This finding, however, was based on the peculiar facts of that case inasmuch as the non-resident dealer had entered into most of the contracts with firms in Fort Cochin which was part of the Madras State and the goods were deliverable and actually delivered to the purchaser in that place. No such contention appears to have been advanced, in the present case, at any stage and for that reason no finding could be given by the departmental authorities about the magnitude of the transactions or contracts made by those dealers with persons in the erstwhile State of Travancore-Cochin. The appellant can hardly derive any assistance from the aforesaid decision of this court.

7. No other point has been raised before us, with the result that the appeals fail and are dismissed with costs. (One hearing fee).

8. Appeals dismissed.