

State of Kerala and Another

Vs

P. K. Syed Akbar Sahib

Civil Appeal No. 736 of 1974

(M.P. Thakkar, K.N. Singh, N.D. Ojha JJ)

19.01.1988

ORDER

This appeal by the appellant-State is directed against an order of rejection passed by the High Court in Review Petition No. 59/71 in O.P. No. 390/67 on the June 8, 1973. By the said petition the State had sought review of the judgment rendered by the High Court in O.P. No. 390 of 1967 on January 1, 1969 holding that the Travancore Tobacco Act 1 of 1087 M.E. was invalid and ordering the refund of a sum of Rs. 30,500 collected as licence fees under the said Act during the years 1952 to 1957. The review petition was instituted by the appellant by reason of the fact that Validation Act 9 of 1964 whereby the Travancore Tobacco Act 1 of 1087 M.E. was validated Division Bench of the High Court subsequently. On the date on which the High Court rendered its judgment in O.P. 390 of 1967 (i.e. on January 1, 1969) the Validation Act being Act 9 of 1964 was already in force. The learned Single Judge had upheld the vires of the said Act but the Division Bench of the Kerala High Court had taken the view that the Validation Act was ultra vires. From the judgment of the High Court an appeal by way of special leave had been filed in this Court. The Supreme Court allowed the appeal and remanded the matter to the High Court for a fresh decision in the light of the observations made in the judgment of this Court. The Division Bench of the High Court which heard the matter in the light of the observations made by this Court upon remand, took the view that the Validation Act was not ultra vires. It is in this background that the appellant-State was obliged to invoke the jurisdiction of the High Court to review its earlier order dated January 1, 1969 ordering the refund of a sum of Rs. 30,500 collected from the respondent as licence fee during the years 1952-57. The High Court has taken the view that the review was not competent. Having considered the judgment rendered by the High Court, we are of the view that in the background of the aforesaid facts, the High Court was not justified in refusing to entertain the review petition on super-technical considerations which were ill-founded. The High Court was in error in taking the view that the review petition was not maintainable notwithstanding the fact that the validity of the Act had been subsequently upheld by the court whereas the judgment sought to be reviewed was based on the premise that the Validation Act was ultra vires. In our considered opinion the High Court should have entertained the application for review. Accordingly, we allow this appeal, and set aside the order refusing to entertain the review petition passed by the High Court. Instead of remanding the matter to the High Court, in the circumstances of the case, we set aside the order of the High Court, allow the review petition, and direct that the order passed by the High Court in O.P. No. 390/67 ordering refund of the tax collected from the respondent during the years 1952-57 be set aside. We order accordingly. As a result of the present order, the State will not be required to refund the aforesaid amount. The appeal is allowed accordingly. There will be no order regarding costs.

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