

# SUPREME COURT OF INDIA

Periyar and Pareekanni Rubbers

Vs.

State of Kerala

(S.Sinha and H.S.Bedi,JJ.)

07.03.2008

## JUDGMENT

**S.B. Sinha, J.**

Leave granted.

1. Appellant is a company registered under the Companies Act, 1956. It runs a distillery. It obtained a licence under the trade name of "Normandy Breweries and Distilleries" for manufacture of liquor under the Kerala Abkari Act (1 of 1077).
2. It was registered as a dealer both under the Kerala General Sales Tax Act (the Act) as also under the Central Sales Tax Act.
3. It demised the factory in favour of one "Eagle Distillery (P) Ltd." (Lessee) by a Deed of Lease dated 1<sup>st</sup> December, 1984, wherefor requisite approval was granted by the Government of Kerala on or about 27<sup>th</sup> April, 1985.
4. The Sales Tax Authorities were intimated thereabout by communications dated 4<sup>th</sup> May, 1985 and 30<sup>th</sup> May, 1985.

The said letters read as under:

"4.th May, 1985 I am writing this letter to inform you that I have leased out the Distillery unit in Cheemeni, Kasargod District to Eagle Distilleries Pvt. Ltd., having their registered office at Bangalore, Karnataka, for a period of 5 years from 1<sup>st</sup> December, 1984. The specific reason we have not renewed the registration this year, is this. We have asked Eagle Distilleries to take a new registration in their name. I am enclosing herewith a copy of the lease deed for your reference. Kindly acknowledge receipt of the same."

"30.th May, 1985 Further to our Regd. Ack. Due letter alongwith the copy of the lease deed which you have acknowledged on 7.5.85. We wish to inform you that our Distillery unit at Cheemeni known as "Normandy Breweries & Distilleries" Cheemeni

will not be in any way responsible for the tax due after the 1<sup>st</sup> December, 1984. For any tax dues after that date will have no claim over the assets and properties of Normandy Breweries & Distilleries. As these Supplies have been made by the lessees and they have collected the payments and they have only lease right on the unit subject to the lease conditions.

5. The 'lessee' applied for registration under the said Act. The process for registration, however, got delayed. It asked the appellant to allow it to use the old registration number. By communications of diverse dates the same was allowed. It is, however, stated that permission to use the registration number of the appellant had not been renewed after 31<sup>st</sup> December, 1985.

6. The 'lessee', however, continued to file returns in its own name. It did not deposit the amount of sales tax collected by it. It furthermore appears that the requisite forms for carrying out inter trade sale and intra trade sale, namely Forms 'C and 'D', which at the request of the appellant had been supplied by the revenue, were continued to be used by the 'lessee'. A notice for recovery of Sales Tax for the Assessment Years 1984-85, 1986-87 and 1987-88 was served upon the appellant.

7. Appellant filed a writ application questioning the legality and validity thereof. Before the High Court, however, its liability in regard to the payment of tax for the year 1984-1985 by the appellant was not pressed.

8. By a judgment and order dated 12<sup>th</sup> February, 1993, a learned Single Judge of the said Court in view of the rival contentions raised therein by the appellant and the 'lessee', as regards their respective liability, opined that the question as to who is liable for payment of tax relating to those two Assessment Years, when admittedly the business was carried out by the 'lessee' under the deed of lease, is a question which would arise for consideration before the assessing authority, when the final assessment is to be carried out. It was directed:

“12 1 accordingly quash Exts. P13 and P17 and the proceedings for recovery which have culminated in those proceedings. The assessing authority namely the 4<sup>th</sup> respondent is directed to complete the final assessment under the Kerala General Sales Tax Act, 1963; for the years 1986-87 and 1987-88 with notice to the first petitioner Company and to the 6<sup>th</sup> respondent.

Pursuant to or in furtherance of the said direction, a pre-assessment notice dated 16<sup>th</sup> November, 1993 was served both upon the appellant and the 'lessee' proposing to reject the returns and accounts as incorrect and incomplete and to finalise the assessment on the basis of the best judgment assessment as specified therein. The 'lessee' did not respond thereto. Cause was shown by the appellant. In the assessment proceeding only the appellant represented.

The assessing authority passed an order of assessment holding both the appellant as also 'the lessee' jointly and severally liable for the sales tax dues both under the Act as

also Central Sales Tax Act for the Assessment Years 1986-87 and 1987-88. Statutory appeals were preferred thereagainst and by a judgment and order dated 30<sup>th</sup> January, 1995 the appellate authority allowed the said appeals in so far as the appellant was concerned and directed recovery of the dues only from 'the lessee'. The Revenue preferred second appeals before the Tribunal. The Tribunal by its order dated 20<sup>th</sup> December, 2001 allowed the appeals of the Revenue. Revision applications filed thereagainst by the appellant before the High Court have been dismissed holding:

27. The question in such circumstances is as to whether the lessee can also be made liable. It is unnecessary for us to consider the same since the lessee has not questioned its liability fixed under the assessment orders dated 31.1.1984. In the above circumstances, we uphold the assessment orders as confirmed by the Appellate Tribunal for the years 1986-87 and 1987-88 both under the KGST Act and under the CST Act.

28. However, since the assessments against the lessee, M/s. Eagle Distillery (P) Ltd. have not been questioned by it and since it has become final, considering the peculiar facts and circumstances of this case, we direct the assessing authority to proceed first against the said company for realization of the arrears of sales tax due for these two under both the enactments. After exhausting the steps against the said company, if any amounts are outstanding towards sales tax dues for the aforesaid two years, the assessing authority is entitled to proceed against the petitioner and its assets. However, petitioner is directed to furnish sufficient security for the due payment of the dues in case the said amount cannot be recovered from the lessee as directed above, to the satisfaction of the assessing authority within a period of two months from the date of receipt of a copy of this judgment.”

9. Mr. Joseph Markose, learned Senior Counsel appearing on behalf of the appellant, would inter alia submit:

“i) That the assessing authority being aware of the fact that the distillery was being run by 'the lessee', no liability in respect thereof could have been fastened on the appellant.

ii) Assuming that it effected sales of the manufactured goods under the registered number of the appellant, it was liable for payment of Sales Tax only for the period from 7<sup>th</sup> November, 1985 to 31<sup>st</sup> December, 1985.

iii) The High Court committed a serious error in passing the impugned judgment relying on or on the basis of Section 19C of the Ac which had no application in the instant case, as it was brought to the statute book only with effect from 29<sup>th</sup> August, 1989 and had no retrospective effect.

iv) Liability to pay tax being upon 'a dealer' within the meaning of Section 2 Sub-section (8) of the Act, no assessment proceedings could have been initiated against the appellant.”

10. Mr. Y. Yashobant Das, learned Senior counsel appearing on behalf of the respondent-State, on the other hand, would submit:

“i) That a finding of fact having been arrived at by the Tribunal and that a fraud had been committed by the appellant and the lessee', the impugned judgment should not be interfered with.

ii) Appellant having allowed its alleged 'lessee' to use the registration number as also the prescribed forms 'C and 'D', which were supplied by the department to it on its asking, now it cannot turn round and contend that it was not liable to pay any tax.

iii) Since in the Writ Petition the subject matter of challenge was not the order of assessment but the liability as a garnishee, the impugned judgment is unassailable.

iv) Assuming Section 19C of the Act is not applicable, the pre-assessment notice as also the assessment proceedings having been conducted pursuant to the direction issued by the High Court in its judgment dated 12<sup>th</sup> February, 1993, the correctness whereof having not been questioned, the impugned order cannot be found fault with.”

11. We may not, for the purpose of the present case, consider the assessment orders as also the appellate orders. The Tribunal upon analysing the materials placed before the assessing authority, inter alia held:

“Thus the conduct of the parties lead to the inference that, the Lessee acted as an Agent of the Lessor and hence, the lessor is also responsible for the business conducted during that period. So, the assessment completed in the name of both Lessor and Lessee by fixing the liability jointly and severally is proper. Despite the fact that the Lessee had applied for the registration, it requested the department to keep in abeyance the said application for registration, which stood rejected with an observation that they could apply for registration afresh when they started business in the new name. Registration of the appellant thereafter continued without being cancelled.”

12. The High Court directed the assessing authority to issue notice and complete the final assessment by posing a question for its decision in regard to the liability of either the appellant or the Lessee.

13. The Lessee used the statutory forms as also the registration number of the appellant. In the aforementioned fact situation the Tribunal opined:

“13. Again relying on the letter dt. 20.3.89, purported to have been issued by the General Manager. Normandy Breweries and Distilleries Ltd. (Periyar & Pareekanni Rubber Ltd.) i.e. the lessor, and addressed to the Officer of the Assessing Authority, it was submitted by the learned State Representative who appeared for the Revenue that, even though there was a clear provision for termination of the lease deed when the lessee makes default for a continuous period of 4 months, the Lessor has not taken any action to terminate the lease deed till the rent arrears accumulated to Rs.30 lakhs i.e. the lessor was keeping silent for a period of 24 months as to accumulate the dues over Rs. 30 lakhs which an ordinary prudent man would not be under such circumstances. Thus, it is clearly established that the attempt made by the Lessor & Lessee was to defraud the Revenue by non-payment of tax which is legitimately due to the government. More-over, since the lease deed dt. 1.12.84 was terminated into toto, with effect from the very beginning, there is no lease deed and no relationship of Lessor & Lessee. In such a situation, the Lessor become liable for the tax due on the business done in the name of M/s. Normandy Breweries & Distilleries, Cheemaeni. Likewise, since the Lessee has admittedly conducted the business and collected tax, and has not remitted the same to the Government the Lessee becomes liable for the business conducted. Thus, at any rate, the Lessor and Lessee are jointly and severally liable for the tax which is legitimately due to the Government. So, the order of assessment has to be restored.”

It was furthermore held:

“26. Thus, since it has come out in evidence that, the application for Registration put in by the lessee was dismissed under the circumstances referred to above and the Registration of the lessor continued in force and that the lessor has without returning the delivery notes and the C forms issued in their favour to the department, thereby violated the Mandatory provisions under the Rules and permitted the lessee to continue to do the business in the trade name of the lessor themselves, we find that, here, the assessing authority was perfectly justified in finding that, the Lessor and Lessee were colluding with each other and were practicing fraud on the Government in order to evade payment of tax which is legitimately due to the Government.”

14. The Act was enacted to consolidate and amend the law relating to the levy of a general tax on the sale or purchase of goods in the State of Kerala. "Registered dealer" has been defined to mean a dealer registered under the Act.

15. Admittedly, taxes are leviable on sale of goods. Registration in the instant case was in the name of the registrant i.e. M/s. Periyar & Pareekanni Rubbers Ltd. Despite grant of a lease, the Lessee, admittedly for a long time used the registration number of the Lessor as also the statutory forms supplied by the revenue to it.

16. The liability to pay sales tax, not only is fastened upon the registered dealer within the meaning of the said Act and the Rules framed thereunder, but also on the agent or the transferee. A finding of fact has been arrived at that the transaction was a sham one and at all

material times, the appellant was acting as an agent of 'the lessee'. Appellant had a duty to surrender the unused delivery note on discontinuance of the business or cancellation of its certificate of registration or on its ceasing to be an assessee under Rule 33 A (3) of the Kerala General Sales Tax Rules and Rule 11(6) of the Central Sales Tax (Kerala) Rules, 1957. Appellant did not take any step for the termination of lease, although a right was conferred upon it in this behalf. As has been noticed by the High Court, the lease amount was not deposited for more than four months. Termination of the lease was effected by it only after a long time i.e. on 20<sup>th</sup> March, 1989, when the arrears of rent mounted to about Rs.30 lakhs.

17. Rule 51 mandates a dealer to send information as to when it ceases to continue its business for which it was registered. Registration of a dealer has a statutory purpose, viz. to carry out and achieve the object of the Act which primarily is levy and collection of tax. It also enables the State to fasten the tax liability on the parties which may be found liable therefor so as to enable it to realize the same.

18. In *M.A. Rahman and Ors. v. State of Andhra Pradesh and Ors*<sup>1</sup>. this Court opined:

“4. It will be clear from this analysis of the impugned provisions of the Act that the purpose and object of the Act to levy and collect tax for purposes of the general revenues of the State and the liability for payment is placed under Section 3 upon the person effecting the sale. He is required by Section 5 of the Act to keep books of account in the prescribed form and to submit to the Commercial Officer and to such other officers as may be prescribed, a return in such form, containing such particulars and at such intervals, as may be prescribed. Along with the return, under Section 6 he is required to pay the amount of tax due in respect of the motor spirit sold by him in retail during the proceeding month according to the return. In order therefore that the State may have a check on the person from whom the tax is due Section 4(1) provides for registration of dealers who carry on the business in motor spirit. Without such registration it would be impossible for the State to know the persons who are selling motor spirit and from whom the tax is due.

[See also *Pramod Foods Pvt. Ltd. v. State of Kerala*<sup>2</sup> ]”

19. Management of business may be handed over by the owner to another but the department must be made known thereabout. A fresh registration certificate must be applied for and granted. The business by the Lessee continued under the old name. It was done at the behest of the appellant. It, therefore, cannot now turn around and contend that it was not liable to pay any tax.

20. It may be true that Section 19C of the Act having come into effect from 29<sup>th</sup> August, 1989, could not be given any retrospective effect but then the legislature was not presumed to take into consideration a situation of the present nature. It is presumably for the said reason, the High Court evolved such a procedure which was acceptable to all the parties. Pursuant to or in furtherance of the direction of the High Court also, notices were issued. Appellant submitted itself to the jurisdiction of the assessing authority. Its liability was held to be joint

and several with that of 'the lessee'. It preferred an appeal thereagainst but it did not implead 'the lessee' as a party therein. In absence of 'the lessee' as a party to the said appeal, it was impermissible for the appellate authority to hold 'the lessee' alone liable for payment of tax. Even the Tribunal and the High Court could not have, in the said fact situation, issued any direction as to how the arrears of tax should be recovered.

21. Strong reliance has been placed by the learned Counsel for the appellant on the decision of this Court in *Lalji Haridas v. Income-tax Officer and Anr*<sup>3</sup>. wherein the question which arose for consideration was as to who amongst the two brothers was liable to pay tax. It was held:

“In cases where it appears to the income-tax authorities that certain income has been received during the relevant assessment year but it is not clear who has received that income and prima facie it appears that the income may have been received either by A or B or by both together, it would be open to the relevant income-tax authorities to determine the said question by taking appropriate proceedings both against A and B. That being so, we do not think that Mr. Nambiar would be justified in resisting the enquiry which is proposed to be held by respondent No. 1 in pursuance of the impugned notice issued by him against the appellant.”

22. Such a procedure in this case was also followed. Such a direction has been issued, whereupon the assessment orders have been passed. We at this stage, therefore, cannot direct the authority to reopen the proceedings once again, as was urged by the learned Counsel.

23. Reliance was also placed on the *Commissioner of Income-tax, Madhya Pradesh, Nagpur v. Hukam Chand Mohanlal*<sup>4</sup> wherein it was held:

“The assessee, in the present case, does not fall within any of those clauses. There is no specific provision in the Act under which it can be said that the assessee is a person by whom income tax is payable on the amount of Rs. 24,341/-which came to her by way of remission on account of what had transpired in the lifetime of her husband. The Act does not contain any provision making a successor in business or the legal representative of an assessee to whom an allowance has already been granted liable to tax under Section 41(1) in respect of the amount remitted and received by the successor or the legal representative.”

24. We have noticed hereinbefore that a finding of fact has been arrived at that for all intent and purport the appellant was the agent of 'the lessee'. Furthermore, a distinction must be borne in mind between the provisions of the Income Tax Act and Sales Tax Act. Sales tax is leviable on a sale. The manufacturer of the liquor is an assessee. It is a dealer within the meaning of the said Act. For the purpose of realisation of the sales tax, one who manages the business may not come to the front. Applying the doctrine of Crown Debt the assets of the unit could be attached or sold therefor. Crown Debt, as is well known, unless there is a statutory interdict, prevails over all other debts. It is based on the principle that public

interest prevail over the private individual. [See Halsbury's Laws of England Fourth Edition Volume 8 paras 1076 at pg. 666-667].

25. We have referred to the doctrine of Crown Debt not for its applicability directly but to emphasise its importance in common law. A statute, particularly a fiscal one, must be construed in such a manner so as to give effect thereto. Evasion of tax is looked down upon under our constitutional and statutory schemes.

26. Reliance has also been placed on *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Gopal Trading Company*<sup>4</sup>, wherein this Court, in a case involving the question as to whether despite establishing the fact that the purchaser of the goods at the relevant time had a valid certificate of registration and that he in fact had purchased the goods, whether the assessing authority must accept the form 25 declaration issued by him and make the assessment accordingly, opined that a fresh opportunity must be given to the assessee.

27. If the finding of fact arrived at by the Tribunal as affirmed by the High Court is correct, we would not take recourse to a construction which will defeat the purport and object of the Act.

28. Tax liability of the business concern is not in dispute. Correctness of the orders of assessment is also not under challenge. The Tribunal or for that matter the High Court were, therefore, not concerned with the liability fastened upon the dealer. The only question was as to what extent the appellant was liable therefor. It is impossible for the legislature to envisage all situations. Recourse to statutory interpretations therefor should be done in such a manner so as to give effect to the object and purport thereof. Doctrine of purposive construction should, for the said purpose, be taken recourse to. {See *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr*<sup>5</sup>. }

29. Ordinarily, we would have accepted the contention that prior to coming into force of Section 19C of the Act, there did not exist any provision in the Act to assess two persons by fastening joint and several liability. However, the superior courts and, in particular, this Court, would not come on the way of the revenue to recover arrears of tax, if it is otherwise permissible in law.

30. Apart from the finding of fact arrived at by the Tribunal, the appellant upon resumption of tenancy would become liable to pay tax, if it intends to carry on its business.

31. The Act provides for the mode and manner in which the revenue may be recovered. The property of the dealer, namely, one in whose name the registration stood, can be proceeded with. Its properties may be subjected to attachment and sale.

32. In that view of the matter, it is not a case where, this Court, while exercising its jurisdiction under Article 136 of the Constitution of India should interfere with the impugned judgment.

33. In *State of Karnataka and Anr. v. Shreyas Papers Pvt. Ltd. and Ors*<sup>6</sup>, this Court held that since there is a transfer of ownership of properties of the transferee, as noticed in terms of Section 100 of the Transfer of Property Act, the charged property may be sold.

34. We may observe that in law the appellant is liable to pay the amount of sales tax assessed by the assessing authority.

35. Appeals fail and are dismissed accordingly. There shall, however, be no order

**Judgment Referred.**

<sup>1</sup>*AIR 1961 SC 1471*

<sup>2</sup>*043 ITR 0387*

<sup>3</sup>*AIR 1971 SC 2591*

<sup>4</sup>*84 (1992) STC 294*

<sup>5</sup>*JT 2008 (1) SC 31*

<sup>6</sup>*JT 2008 (1) SC 31*