KERALA HIGH COURT

V.K.M. Abdulsalam Rowther

Vs

State f Kerala

(M Ansari,C.J. M M Nair, J.)

21.07.1960

JUDGMENT

M.A. Ansari, C.J.

1. The revision petitioner is the dealer, whose gross turnover for the assessment year 1957-58 was Rs. 6,13,170-91, the net turnover of Rs. 2,68,794-07, and who claims for exemption on turnover of Rs. 3,44,376-84. The Sales Tax Officer, Ponkunnam, has disallowed exemption from tax on the turnover of Rs. 35,666, which is the stock value of pepper, ginger and turmeric, the assessee had on 31st March, 1958. The petitioner's claim for exemption rests on these stocks having been after that date sold to assessable dealers in the State. The appeal against the aforesaid claim being disallowed was filed before the Appellate Assistant Commissioner of Agricultural Income-tax and Sales Tax, Kottayam ; but the petitioner failed. The further appeal before the Sales Tax Appellate Tribunal has also been disallowed. Therefore the legal issue raised in the revision petition is "whether the taxing authorities have correctly disregarded sales beyond the assessment year when the notification levied the sales tax only on the last purchaser within the State, and satisfactory evidence has been led to show the revision petitioner not to be such last purchaser though after the relevant year?" The learned Advocate for the revision petitioner has urged that the notification having absolutely stated the sales tax to be leviable on the last purchases alone, and the revision petitioner having established his being not such a purchaser, the claim for exemption should not have been disallowed. It would be of advantage to state now the relevant legal provisions.

2. The General Sales Tax Act, No. XI of 1125, hereafter referred to as the Act, defines "year" by Section 2 (m), to mean "the financial year". Section 3 provides that every dealer shall pay for each year a tax on his total turnover for such year, and the tax shall be calculated at the rates specified in column (3) of Schedule I for every rupee in the turnover relating to the goods noted against them in column (2): thereof, and at the rate of two naye paise for every rupee in the turnover relating to all other goods. The tax would have been multiple, had not Section 5(vii) reduced the liability to what has come to be called "single point" tax, and it reads as follows :-

> "The sale of goods specified in column (2) of Schedule I shall be liable to tax under Section 3, Sub-section (1), only at such single point in the series of sales by successive dealers as may be specified by the Government by Notification in the Gazette; and, where

the taxable point so specified is a point of sale, the seller shall be liable for the tax on the turnover for which the goods are sold by him at such point, and where the taxable point so specified is a point of purchase, the buyer shall be liable for the tax on the turnover for which the goods are bought by him at such point.

The Government has specified the points in a Notification whose relevant extract runs as follows :-

* * * *

In exercise of the powers conferred by Clause (vii) of Section 5, of the General Sales Tax Act (Act XI of 1125), the Government of Kerala hereby specify the point mentioned in column 3 of the schedule, hereto appended, as the point liable to tax under Section 3 (i) on the goods mentioned in column 2.

S. No.	Description of goods	Taxable point
*	*	*
27.	Pepper	Last purchase in the State by a dealer who is not exempt from taxation under Section 3(3)
28.	Ginger	Do.
*	*	*
30.	Turmeric	Do.

3. The revision petitioner's Advocate relying on the words "last purchase in the State by a dealer", has urged that his client having established by satisfactory evidence not to be the last purchaser in the State, the liability to pay the tax on the stock of the aforesaid commodities would not arise, even though the sales by the petitioner be beyond the relevant assessment year. He argues that being the last purchaser would alone attract the tax, and on the taxpayer's showing that he was not such a purchaser, the liability to pay would not arise. We think the argument not to be correct. The consequences of making assessment year a unit are obvious, and there are many cases under the Indian Income-tax Act showing what such consequences are. One is that events before and after the assessment year are excluded for the purposes of levying the tax for the year. Lord Russell in Sir *S.M. Chitnavis v. The Commissioner of Income-tax, C.P. and Berar*[1] has stated the consequences in these words :- What are chargeable to income-tax in respect of a business are the profits and gains of a year.... For the purpose of computing yearly profits and gains each year is a separate self-contained period of time, in regard to which profits earned or losses sustained before its commencement are irrelevant. In *Commissioner of Income-tax v. Basant Rai Takhat Singh*[2] the assessees had claimed deduction for erection of buildings, not in respect of the year in which the income was sought to be assessed, but many years before and it was held that the assessee was not entitled to deduct the amount. The assessee in *Kikabhai Premchand v. Commissioner of Income-tax*[3] had during the relevant account year withdrawn some silver bars and shares from the business and settled them on certain trusts, in which he was the managing trustee. The Income-tax authorities had assessed the tax on the difference between the cost price of the silver bars and their market value at the date of their withdrawal from the business. The Supreme Court allowing the appeal has held as follows:-

For income-tax purposes, each year is a self-contained accounting period and the Income-tax authorities can only take into consideration income, profits and gains made in that year and they

are not concerned with potential profits which may be made in another year any more than they are concerned with losses which may occur in the future. In *Kishinchand Chellaram v. Commissioner of Income-tax*[4] it was held that an assessee cannot rely on subsequent events in order to escape taxation, which he is properly liable to pay, as far as the assessment year itself is concerned. In this connection Chagla, C. J., has observed as follows:- It is difficult to understand on what principle of taxation law can an assessee rely on a subsequent event in order to escape taxation which he is properly liable to pay as far as the assessment year itself is concerned. Therefore, the correct approach to this case is whether the sum of Rs. 30,000 represented the dividend income of the assessee as far as the assessment year 1945-46 is concerned, and to that the answer can only be one that on the facts established for that assessment year the dividend was properly paid by the company to the assessee and the assessee received it as his dividend income. Whatever rights the assessee may be entitled to by reason of the fact that subsequently he became liable to refund the dividend, those rights are outside the ambit of the particular assesment with which we are concerned. He may have relief under the Income-tax Act or he may not, but we are not concerned with the position that arose on the 4th of December, 1947, which would correspond with the assessment year 1948-49.

4. It follows that the tax under Section 3(1) of the Act being payable on the turnover of a fixed period, such unit should be self-contained for the purposes, and whatever happens before or after the assessment year would be excluded for assessing the liability. The petitioner's learned Advocate has urged that the words in column 3 of the Notification do not refer to the year and therefore the sales by his client would become relevant. One would not expect any reference to year in that column, because the opening part of the Notification refers to tax under Section 3(1), and so does Section 5 (vii) under which the Notification has been issued. Section 3(1), as we have already stated, makes the dealer liable to pay the tax on the turnover for each year, and the period of time is therefore fixed, within which the sales or purchases must take place. It further follows that the absence of any express limitation in column 3 does not help the petitioner.

5. The Advocate then argued that the intention of the authority is to notify the person who incurs the liability, and it would be incorrect to hold his client liable when the last purchaser by clear evidence is some other person. The answer is simple. "Last purchaser" in the context means such a person within the specified period, and that is the inevitable consequence of the assessment year being a unit. Were we to relax the rule, any cancellation of the last purchase after the assessment year would be avilable to prove the transaction not to be such. We do not think the Notification varies the general principles of annual taxation, and should the inevitable consequence of the principle be hardship to the taxpayer, he must bear it. For these reasons, the revision petition fails and we dismiss it with costs, Rs. 100.

Cases Referred.

1[1932] 6 I.T.C. 453
2[1933] 1 I.T.R. 197
3[1953] 24 I.T.R. 506
4[1956] 29 I.T.R. 993, at p. 1000