

E.P. Eapen Vs. State of Kerala

E.P. Eapen Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/723100

Court : Kerala

Decided On : Jun-14-1978

Reported in : [1979]43STC452(Ker)

Judge : V.P. Gopalan Nambiyar, C.J. and; M.P. Menon, J.

Appeal No. : O.P. Nos. 4206 and 4318 of 1972

Appellant : E.P. Eapen

Respondent : State of Kerala

Advocate for Def. : The Government Pleader

Advocate for Pet/Ap. : S. Easwara Iyer and; E. Subramoni, Adv.

Disposition : Petition dismissed

Judgement :

Gopalan Nambiyar, C.J.

1. These writ petitions attack the vires of Rule 6 framed under the General Sales Tax Act, 1125. The rule, as it stood at the relevant time, namely, the period with which these two writ petitions are concerned, was as follows :

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):

Provided that in respect of the tobacco in stock with a dealer at the close of business on the 11th day of December, 1950, the dealer shall, for the purpose of the levy of sales tax under item (ix) in Sub-section (2) of Section 3 and notwithstanding anything to the contrary be deemed to be a first dealer if he has an assessable turnover.

The validity of the rule has been attacked by counsel for the petitioner on two broad grounds : first, that it is violative of Article 14 of the Constitution and second, that the delegated authority conferred under the rule is in excess of the delegation contemplated by Section 3(2) of the Act.

2. In regard to the first of these contentions, the decisions regarding Article 14 are numerous which have explained the reasonable basis for a classification and also the wider power given to the legislature in the matter of classification for purpose of a taxing statute. In the light of the decisions and principles little material was placed before us. We have been unable to find any ground to hold that the section violates Article 14.

3. In order to understand the second of the contentions, namely, that the delegated power is in excess of what could have been delegated under the parent section of the Act, we may conveniently extract the provisions of Section 3(2) of the Act, which is as follows :

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 :
Description of the goods Rate of tax for every Indian rupee in the turnover relating to such goods
(i) Pure silk cloth other than that Eight naye paise woven on handloom.
(ii) ** **
(iii) All hosiery goods other than Eight naye paise those made wholly of cotton.

The section, as we understand, allows tax to be levied at such single point in the series of sales by successive dealers as may be prescribed by the rules. The function and province of the rule therefore is to specify the single point in the series of sales at which the tax can be fastened. It appears to us that the rule has discharged its functions and done no more. The rule states that tax shall be fastened on the person who, in the State, is the first dealer in the goods, who is not exempt from taxation under Section 3(3) of the Act. The scope of the rule was explained in a Division Bench ruling of this Court, of which one of us was a member, in *E.J. Mathew v. State of Kerala* [1966] 17 S.T.C. 25. What the Division Bench stated was :

A reading of Rule 6 which was fixing a point of taxation for the additional tax under Section 3(3) 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 sale 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. It follows that the petition should fail and that it is unnecessary to consider whether the amendments effected to the General Sales Tax Act, 1125, by the Travancore-Cochin General Sales Tax (Amendment) Act, 1957, and by the General Sales Tax (Amendment and Validation) Act, 1962, subsequent to the Constitution (Sixth Amendment) Act, 1956, are invalid and of no effect as contended by counsel for the petitioner.

The decision was carried in appeal to the Supreme Court-vide *E. J. Mathew v. State of Kerala* [1970] 25 S.T.C. 15 (S.C.). Nothing was said by the Supreme Court against the position of the scope and purpose of the rule as given by the Division Bench. The decision was sustained.

4. We are of the opinion that Rule 6 does not travel beyond the scope of the power delegated by Section 3(2) of the Act and cannot be attacked as being in excess of the power conferred by the said section.

We dismiss these writ petitions. No order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com