

New Traders Vs. State of Kerala

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Court : Kerala

Decided On : Oct-05-2000

Reported in : [2001]123STC82(Ker)

Judge : S. Sankarasubban and; A. Lekshmikutty, JJ.

Acts : Kerala General Sales Tax Act, 1963 - Sections 45A; [Kerala Provisional Collection of Revenues Act, 1985](#) - Sections 3 and 5; [Finance Act, 1998](#)

Appeal No. : T.R.C. Nos. 132, 135 and 136 of 2000 and O.P. Nos. 23056 of 1999 and 9492 and 20150 of 2000

Appellant : New Traders

Respondent : State of Kerala

Advocate for Def. : V.V. Ahsokan, Special Government Pleader

Advocate for Pet/Ap. : N. Muraleedharan Nair, Adv.

Judgement :

S. Sankarasubban, J.

1. In all these cases, a common question arises and hence, they are heard together and disposed of by a common judgment. T.R.C. Nos. 132, 135 and 136 of 2000 relate to the assessment period April, 1998, May, 1998 and July, 1998

respectively. In O.P. No. 23056 of 1999, the challenge is against exhibit P11 order by which the assessing officer rejected the petitioners' contention for exemption for tax liability. In O.P. No. 9492 of 2000, the challenge is against Section 45A notice of the Kerala General Sales Tax Act, 1963. In O.P. No. 20150 of 2000, the challenge is against exhibits P. 3 to P. 7.

2. In all these cases, the question involved is the same and the controversy relates to the period from April 1, 1998 to July 29, 1998. Until March 31, 1998, the point of levy of tax on coffee was under entry 36(a) of the First Schedule to the Kerala General Sales Tax Act, 1963, that is at the point of first purchase in the State. Entry 36(a) of the First Schedule to the Kerala General Sales Tax Act, 1963 that is at the point of first purchase in the State. Entry 36(a) as stood prior to March 31, 1998 reads thus :

Sl. No.

Description of goods

Point of levy

Rate of tax

36.

Coffee but not including coffee drink and French coffee (a) purchased within the State

At the point of first purchase in the State by a dealer who is liable to tax under section 5.

4%.'

By the Finance Bill of 1998, it was proposed to change the point of levy in respect of coffee to the last purchase point in the State. A declaration was made under the [Kerala Provisional Collection of Revenues Act, 1985](#). The 1998 Finance Bill was made as an Act on July 29, 1998. But when the Finance Bill became the Act the point of levy of tax in respect of coffee was again brought back to the point of first

purchase in the State. The Finance Act was made into force with effect from April 1, 1998.

3. Petitioners in the above cases who are the first point purchasers of coffee raised the issue contending that the Finance Bill, though a Bill, of course has the force of law in view of the declaration issued under the [Kerala Provisional Collection of Revenues Act, 1985](#), and consequently no tax can be levied from them by virtue of the [Finance Act, 1998](#). Petitioners have not challenged the retrospective effect given to the [Finance Act, 1998](#). According to them, since they have not collected tax in respect of the purchase during the period between April 1, 1998 to July 29, 1998, it is unjust on the part of the State to demand tax from the petitioners in respect of the period in question. There cannot be any doubt that in so far as the Finance Act authorises levy at the first point of sale, petitioners cannot contend that the Act cannot be enforced against them. As already stated they have also not challenged the respective nature of the Finance Act. The contention urged by them is that a declaration was published under Section 3 of the [Kerala Provisional Collection of Revenues Act, 1985](#) by virtue of which, the provision in the Finance Bill, 1998 by which, the purchase tax at the last point of sale with regard to the coffee was levied. Hence, according to them, during the time when the declaration was in force, they could not collect tax when the first purchase was made in the State. On the other hand, tax was collected at the point of last purchase in the State. According to us, the contention of the petitioners cannot be accepted.

4. The [Kerala Provisional Collection of Revenues Act, 1985](#), (Act 10 of 1985), is an Act to provide for the immediate effect for a limited period of provisions in Bills for giving effect to budget proposals. The preamble to the Act says that whereas the proposals relating to imposition or increase of taxes, duties, cesses, fees and other revenues in the budget speech for each financial year have to be given effect to with effect from the commencement of the financial year to which those proposals relate. Section 3 is the section by which the Government is enabled to provide for the imposition or increase of any tax, duty, cess, fee or other revenue when, a bill is introduced in Legislative Assembly. As per Section 4, a declared provision shall have the force of law on the 1st day of April, following the date on

which the Bill containing it is introduced in the Legislative Assembly. Under Section 4(2), a declared provision contained in a Bill shall cease to have the force of law under the provisions of this Act (a) when it comes into operation as an enactment with or without amendment. Section 5 says that where a declared provision comes into operation as an enactment in an amended form before the expiry of the period referred to in Clause (c) of Sub-section (2) of Section 4, refunds shall be made of all taxes, duties, cesses, fees and other revenues collected which would not have been collected if the provision adopted in the enactment has been the declared provision. Clause 5(2) states that where a declared provision ceases to have the force of law under Clause (b) or Clause (c) of Sub-section (2) of Section 4, refunds shall be made of all taxes, duties, cesses, fees and other revenues collected which would not have been collected if the declaration in respect of it had not been made.

5. According to us, the petitioners cannot claim any benefit under the [Kerala Provisional Collection of Revenues Act, 1985](#). It is true that when a declaration was made under the Act, tax used to be collected in the last point of purchase. But by Section 5, this amount had to be refunded. Since the bill has been amended and the old entry has been restored, the petitioners cannot argue that because it was collected from some other persons for the relevant period, it cannot be collected from them. It goes without saying that in so far as the Finance Act is a valid piece of legislation, the petitioners have to pay tax as per the Finance Act. In *Metro Trading Syndicate v. State of Kerala* [1994] 94 STC 95, this Court held that the legislation, in giving retrospectivity to the Finance Act, 1987, was in no way unreasonable, nor did it make any inroads into the dealer's fundamental or other rights. This Court relied on two decisions of the Supreme Court, viz., *Rai Ramkrishna v. State of Bihar* : [1963]50ITR171(SC) and *Khyerbari Tea Co. Ltd. v. State of Assam* : [1964]5SCR975 . The Supreme Court in *Entertainment Tax Officer v. Ambae Picture Palace* [1995] 96 STC 338, has held as follows : 'If the Parliament or the State Legislatures have competence to legislate, they can do so prospectively as well as retrospectively and taxation laws are no exception to this power.....the legislative power conferred on the appropriate Legislatures to enact laws in respect of topics covered by the several entries in the three lists can be exercised both prospectively and retrospectively.' In *Rai Ramkrishna v. State of*

Bihar : [1963]50ITR171(SC) , a Constitution Bench of the Supreme Court held as follows :

"The power of taxing the people and their property is an essential attribute of the Government and Government may legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the Legislature can be taxed by the Legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature.'

Again the Bench observed thus :

'Where the Legislature can make a valid law, it can provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions'.'

6. In one case, O.P. No. 9492 of 2000 notice has been issued under Section 45A of the Kerala General Sales Tax Act, 1963, for exemption of penalty. In the facts and circumstances of the case, we are of the view that because of the confusion that existed, the petitioners did not pay the tax. Hence, we quash that notice calling for penalty. We give one month time to the petitioners to pay the tax due for the above period. If the amount is not paid within one month, the authorities can take steps for the recovery of the amount including penalty.

In the above view of the matter, the petitioners cannot contend that there cannot be retrospective application.

The tax revision cases and original petitions are disposed of as above.

Order on C.M.W.P. No. 2138 of 2000 in T.R.C. No. 132 of 2000 dismissed.