

STATE OF KERALA

v.

RAMASWAMI IYER & SONS

February 11, 1966

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

*Travancore-Cochin General Sales Tax Act (11 of 1125 M.E.)—Suit to recover excess tax paid—Jurisdiction of civil court if barred.*

Part of Sales-tax paid by the respondent was assessed upon the amount which it collected from its customers as sales-tax and which was included in its net turnover. A suit by the respondent for refund of that part of the sales-tax which was charged on the sales-tax collected by the respondent on the basis that it was not lawfully due under the Travancore-Cochin General Sales Tax Act, 1950, was decreed by the trial court and the decree was confirmed by the High Court.

In appeal to this Court, it was contended that the civil court had no jurisdiction to try the suit.

**HELD :** By constituting appropriate authorities under the Act and creating a hierarchy of authorities to deal with the problem of levying tax as contemplated by the Act, the jurisdiction of the civil court to entertain the suit was excluded by necessary implication. [586 G]

Jurisdiction of the civil court to try the suit was not barred by s. 23A ousting the jurisdiction of the civil court, because that section which was not retrospective in operation was incorporated into the Act after the suit was filed. But the jurisdiction of the civil court may be excluded by express enactment or by necessary intendment arising from the scheme of the Act. The Travancore-Cochin Sales Tax Act is a complete code dealing with the levy, assessment, collection and refund of tax. It authorises investment of power in a hierarchy of authorities to administer the Act. For the purpose of making assessment of tax, the authorities have power to decide all questions arising before them, and the orders of the appellate authorities, subject to the exercise of revisional jurisdiction by the Board of Revenue, were declared final. The liability to pay tax arose under and by virtue of the provisions of the Act and the quantum of liability was determined under the Act alone. Further, at the material time, there was no express provision in the Act, which obliged the taxing authority to exclude from the computation of the taxable turnover the amount of sales-tax collected by the dealer. Hence, it could not be said that by assessing sales-tax on such amount, the taxing authority had infringed a prohibition imposed by the statute upon him. Therefore, the principle in *Secretary of State for India v. Mask and Co.* L.R. 67 I.A. 222, that civil courts have jurisdiction to examine a case where the provisions of the statute have been infringed did not apply in the instant case. [583 F; 584 C; 585 H-586 B; 589 B]

*Provincial Government of Madras v. J. S. Basappa*, [1964] 5 S.C.R. 517; 15 S.T.C. 144 (S.C.), overruled.

*Kamala Mills v. State of Bombay*, [1966] 1 S.C.R. 64, followed.

*George Oaks v. State of Madras*, [1962] 2 S.C.R. 570; A.I.R. 1962 S.C. 1037 and *K. S Venkataraman v. State of Madras*, [1966] 2 S.C.R. 229, referred to.

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1104 of 1964.

Appeal by special leave from the judgment and decree dated the October 7, 1963 of the Kerala High Court in A.S. No. 190 of 1959.

B *C. K. Daphtary, Attorney-General* and *A. G. Pudissery*, for the appellants.

*T. N. Subbramania Iyer* and *M. R. K. Pillai*, for the respondent.

The Judgment of the Court was delivered by

C **Shah, J.** For the period August 16, 1950 to March 31, 1951 the respondents were assessed to sales-tax under the Travancore-Cochin General Sales-tax Act, 1950, by the assessing authority, Moovattupuzha, on a turnover of Rs. 14,04,732/7/6 which included Rs. 49,318/7/4 collected by the respondents from their constituents as tax on their sale transactions. The respondents paid the tax assessed and commenced an action in the Court of the District Judge, Parur, for a decree for Rs. 7,577/9/1 claiming that the amount was in excess of tax lawfully due from them under the Act. The Court of First Instance decreed the claim for Rs. 7,477/9/1 with interest and proportionate costs, and the High Court of Kerala confirmed that decree.

E In this appeal with special leave, on behalf of the State of Kerala the principal ground which falls to be determined is whether the jurisdiction of the Civil Court to try the suit is excluded. Section 23-A of the Travancore-Cochin General Sales-tax Act 11 of 1125 M. E. provides that :

F “No suit or other civil proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act.”

G But this express bar on which counsel for the State relied did not exclude the jurisdiction of the civil court, for s. 23-A was incorporated in the Travancore-Cochin General Sales-tax Act by Act 18 of 1955 after the suit was instituted by the respondents, and by s. 23-A as incorporated the jurisdiction of the civil court to try a suit properly instituted before it was enacted is not ousted.

H [Counsel for the respondents submitted that in the absence of an express provision in the Act excluding the jurisdiction of the civil court, the courts below were right in holding that the suit was maintainable, and in support of that contention, he relied upon the decision of this Court in *The Provincial Government of Madras (Now Andhra Pradesh) v. J.S. Basappa* (1). In *Basappa's* case (1), the

(1) [1964] 5 S.C.R. 517 : 15 S.T.C. 144.

assessee who was taxed in respect of certain sales which took place outside the taxing State, sued the State for a decree for refund of the amounts paid by him on the plea that the transactions in respect of which the tax was levied were not taxable under the law. This Court held that without a provision like s. 18-A of the Madras General Sales-tax Act, 1939, the jurisdiction to entertain the suit was not taken away, specially where the action of the authorities was "wholly outside the law". It was observed in that case that finality attached to orders passed in appeal by the Act was a finality for the purposes of the Act and "did not make valid an action which was not warranted by the Act, as for example, the levy of tax on a commodity which was not taxed at all or was exempt."

But the jurisdiction of the civil court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the Legislature sets up a special tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of the civil court would be deemed excluded by implication. In *Raleigh Investment Company Ltd. v. Governor-General in Council*(<sup>1</sup>) the Judicial Committee in dealing with the question whether the jurisdiction of the civil court to entertain a suit for refund of income-tax may be deemed to be excluded, apart from the express exclusion prescribed by s. 67 of the Income-tax Act, by the scheme of the Income-tax Act, observed :

".....the scheme of the Act (the Income-tax Act) is to set up a particular machinery by the use of which alone total income assessable for income-tax is to be ascertained. The income-tax exigible is determined by reference to the total income so ascertained, and only by reference to such total income. Under the Act (s. 45) there arises a duty to pay the amount of tax demanded on the basis of that assessment of total income. Jurisdiction to question the assessment otherwise than by use of the machinery expressly provided by the Act would appear to be inconsistent with the statutory obligation to pay arising by virtue of the assessment. The only doubt, indeed, in their Lordships' mind, is whether an express provision was necessary in order to exclude jurisdiction in a civil court to set aside or modify an assessment."

In delivering the judgment of the majority in *K.S. Venkataraman & Co. (P) Ltd. v. State of Madras*(<sup>2</sup>), Subba Rao, J., observed :

"If a statute imposes a liability and creates an effective machinery for deciding questions of law or fact arising in regard to that liability, it may, by necessary implication, bar the maintainability of a civil suit in respect of the said liability. A statute may also confer exclusive jurisdic-

(1) L.R. 74 I.A. 50.

(2) [1966] 1 S.C.R. 229.

A tion on the authorities constituting the said machinery to decide finally a jurisdictional fact thereby excluding by necessary implication the jurisdiction of a civil court in that regard.”

B In a case recently decided by this Court *Kamala Mills Ltd. v. State of Bombay* (1) exclusion of the jurisdiction of the civil court to entertain and decide suits for refund of tax paid fell to be determined. In that case a dealer was assessed to tax under the Bombay Sales-tax Act 5 of 1946 in respect of “outside sales” which by virtue of the ban imposed by Art. 286 of the Constitution were not taxable. The dealer sued to recover the tax paid by him. This Court held that where the Sales-tax Officer by misconceiving the nature of the transactions brings to tax transactions in respect of which the State has no authority to legislate for levying tax because of the ban imposed by Art. 286 of the Constitution, the validity of the order of assessment of tax cannot be reopened in a suit for refund of tax paid. The Bombay Sales-tax Act 5 of 1946, it is true, contained s. 20 which in terms enacted that an assessment shall not be called in question in any civil court, but the court in *Kamala Mills* case(1) held that the jurisdiction of the civil court to entertain a suit for tax assessed under the Act was excluded expressly, and by the clear implication of the Act as well.

E The assessing authority invested with power under the Travancore-Cochin General Sales-tax Act is constituted by the Act a tribunal, which within the limits of its authority is competent to decide all questions of fact and law arising before him in the course of proceedings for assessment, and of his own jurisdiction as well. The Act sets up machinery for levy, assessment, and collection of tax. By s. 3 of the Act charge is imposed, subject to exemptions prescribed by ss. 4, 5 and 6 upon every dealer to pay tax on his total turnover of each year. Duty to pay the tax is imposed by s. 11(2) of the Act. Section 12 sets up the procedure of the assessing authority in making assessments and s. 13 deals with recovery of tax. A tax-payer aggrieved by an order of assessment may appeal under s. 14 against the order of assessment, and the decision of the appellate authority is by cl. (4) subject to the power of revision conferred by s. 15 expressly declared final. Section 15 as it stood at the relevant time provided for the exercise of revisional jurisdiction by the Board of Revenue against the order of the taxing authorities—original as well as appellate. By s. 24 power is conferred upon the State Government to frame rules, setting up machinery for determination of the net chargeable turnover, for refund of tax collected in excess of true liability and for other incidental matters. The Act is therefore a complete code dealing with the levy, assessment and collection and refund of tax.

(1) [1966] 1 S.C.R. 64 : A.I.R. 1965 S.C. 1942.

It authorises investment of power in a hierarchy of authorities to administer the Act. For the purpose of making assessment of tax, the authorities have power to decide all questions arising before them, and the orders of the appellate authorities subject to the exercise of revisional jurisdiction under s. 15 are declared final. Liability to pay tax arises under and by virtue of the provisions of the Act, and the quantum of liability may be determined under the Act alone.

It is true that in *Kamala Mills'* case<sup>(1)</sup> reliance was placed on behalf of the claimant upon *Basappa's* case<sup>(2)</sup>, and the following observations were made by the Court :

"In *Provincial Government of Madras (Now Andhra Pradesh) v. J. S. Basappa* it was held by this Court that the finality attached to orders passed in appeal by section 11(4) of the Madras General Sales-Tax Act (IX of 1939) was a finality for the purposes of the said Act and did not make valid an action which was not warranted by the Act, as for example, the levy of tax on a commodity which was not taxable at all or was exempt. We ought to add that this decision was based on the fact that the said Act at the relevant time did not contain section 18A which came into force on May 15, 1951; and it was section 18A which was construed by this Court in *Firm of Illuri Subbaya Chetty & Sons* [(1964) 1 SCR 752]."

In *Basappa's* case<sup>(2)</sup> the taxpayer sought in an action for refund of tax paid, a decree on the plea that the transactions in respect of which tax was levied were "outside sales", and it was held that in the absence of express exclusion of the jurisdiction of the civil court, the action for refund of tax was maintainable. But the nature of the transactions taxed in the *Kamala Mills'* case<sup>(1)</sup> was not different. In the judgment in *Kamala Mills'* case<sup>(1)</sup> it was pointed out that the jurisdiction of the civil court to entertain a suit for refund of tax paid in compliance with an order of assessment may be excluded either expressly or by necessary implication, and as the scheme of the Bombay Sales Tax Act, 1946, indicated that a complete machinery was set up by constituting appropriate authorities under the Act, and creating a hierarchy of authorities to deal with the problem of levying tax as contemplated by the Act, jurisdiction of the civil court to entertain the suit was excluded by implication as well as by express enactment. That is clear from the following observations in the *Kamala Mills'* case<sup>(1)</sup>:

"Whether or not a return is correct; whether or not transactions which are not mentioned in the return, but about which the appropriate authority has knowledge, fall

(1) [1966] 1 S.C.R. 64.

(2) [1964] 5 S.C.R. 517.

A within the mischief of the charging section; what is the true and real extent of the transactions which are assessable; all these and other allied questions have to be determined by the appropriate authorities themselves; and so, we find it impossible to accept Mr. Sastri's argument that the finding of the appropriate authority that a particular transaction is taxable under the provisions of the Act, is a finding on a collateral fact which gives the appropriate authority jurisdiction to take a further step and make the actual order of assessment."

C The action of the taxing authority in *Basappa's* case<sup>(1)</sup> in taxing transactions which he erroneously held were taxable was no more outside the Act, than the action of the taxing authority in *Kamala Mills'* case<sup>(2)</sup>. If it be granted that the jurisdiction of the civil court may be excluded by express enactment or by necessary intendment arising from the scheme of the Act, *Basappa's* case<sup>(1)</sup> must be regarded as wrongly decided.

D It is true that even if the jurisdiction of the civil court is excluded, where the provisions of the statute have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure, the civil courts have jurisdiction to examine those cases : *Secretary of State for India v. Mask & Company*<sup>(2)</sup>. Counsel for the respondents urged that the case of the respondents fall within that exception, since the Sales-tax Officer in imposing tax-liability acted in defiance of the mandatory provisions of the Act and in support of the argument he placed reliance upon r. 7 of the Rules framed under the Act and the definition of "turnover" under the Act. Under the Act sales-tax is charged for the year at the prescribed rates on the total turnover of the dealer. The Government of Travancore-Cochin promulgated rules in exercise of powers under s. 24 of the Travancore-Cochin General Sales Tax Act, and r. 7 dealt with computation of "net turnover". In r. 7(1) by cls. (a) to (k) certain exemptions admissible in the computation of the net turnover were set out. By notification No. SRI-1643-51-RD dated March 31, 1951 it was directed that with effect from April 1, 1951, the following clause shall be added :

G "(1) all amounts of sales-tax collected by the dealer."

H By this amendment in the computation of the taxable turnover, the amounts of sales tax collected by the dealer were not to be included. But this amendment was to have effect only from April 1, 1951, and in the proceeding in this appeal tax-liability for the assessment period ending March 31, 1951 fell to be determined.

(1) [1964] 5 S. C. R. 517.

(2) [1966] I S. C. R. 64.

(3) L. R. 67 I. A. 222.

The exemption was therefore inoperative in the computation of taxable turnover for the assessment year in question. A

Counsel for the respondents however contended that the effect of the amendment was merely to clarify what was implicit in the content of the expression "turnover". By s. 2(k) "turnover" means—insofar as the definition is relevant—"the aggregate amount for which goods are either bought by or sold by a dealer, whether for cash or for deferred payment or other valuable consideration . . . . . " "Turnover" being the aggregate amount for which goods are bought or sold, and normally the aggregate amount would include such amount as the purchaser pays to the dealer for the goods, the expression "aggregate amount for which goods are . . . . sold" within the meaning of "turnover" in s. 2(k) would include the amount of sales-tax received by the dealer. There is no provision in the Act which may by implication suggest that from the connotation of the expression "turnover" the sales tax collected in the year of assessment ending March 31, 1951 was to be excluded. Exclusion prescribed by cl. (1) of r. 7(1) enacted with effect from April 1, 1951 is not clarificatory, but prescribes an additional head in the computation of net turnover. B C D

This Court in *George Oaks (Private) Ltd. v. State of Madras*<sup>(1)</sup> in dealing with the question whether sales tax charged by the dealer may be excluded within the meaning of the expression "turnover" as used in the Madras General Sales-Tax Act, 1939, observed: E

"Under the definition of turnover the aggregate amount for which goods are bought or sold is taxable. This aggregate amount "includes the tax as part of the price paid by the buyer. The amount goes into the common till of the dealer till he pays the tax. It is money which he keeps using for his business till he pays it over to Government. Indeed, he may turn it over again and again till he finally hands it to Government. There is thus nothing anomalous in the law treating it as part of the amount on which tax must be paid by him. This conception of a turnover is not new. It is found in England and America and there is no reason to think that when the legislatures in India defined 'turnover' to include tax also, they were striking out into something quite unknown and unheard of before." F G

Counsel for the respondents contended that these observations made in interpreting the terms of the Madras General Sales tax (Definition of Turnover and Validation of Assessments) Act, 1954, have no bearing on the interpretation of the expression "turnover" as used in the Travancore-Cochin General Sales tax Act. But the H

(1) [1962] 2 S.C.R. 570 : A. I. R. 1962 S. C. 1037.

**A** observations made by the Court were not made in the context of any special statute.

**B** There was in the Travancore-Cochin General Sales-tax Act at the material time no express provision which obliged the taxing authority to exclude from the computation of taxable turnover the amount of sales-tax collected by the dealer. The argument of counsel for the respondents that the taxing authority has infringed a prohibition imposed upon him has therefore no substance.

The appeal is therefore allowed and the suit is dismissed. There will be no order as to costs throughout.

*Appeal allowed.*