STATE OF KERALA

v.

COCHIN COAL CO. LTD., COCHIN

August 31, 1967

[K. N. WANCHOO, C.J., R. S. BACHAWAT, V. RAMASWAMI, G. K. MITTER AND K. S. HEGDE, JJ.]

Travancore-Cochin General Sales Tax Act (~~11 of 1949—M.E.~~ 1125), *s. 26—Inter-State sales during* 1955-56—*Sales within Travancore-Cochin State—If liable to sales-tax—Constitution of India*, 1950, *Art.* 286(2) *before the Sixth Amendment and Sales Tax Laws Validation Act* (7 *of* 1956)—*Effect of.*

Before the Constitution came into force, the Travancore-Cochin General Sales Tax Act, M.E. 1125, levied a tax on sale of goods and inter-State sales were not exempt from such taxation. By Act 12 of 1951, s. 26 was inserted in the Act to bring the Act into line with Art. 286 of the Constitution as it then stood, and imposed a ban on the levy of tax on inter-State sales after March 31, 1951, unless Parliament otherwise provided under Art. 286(2). On September 6, 1955, this Court held in *The Bengal Immunity Co. Ltd.* case, [1955]2 S.C.R. 603, that inter-State sales could not be taxed by a State, even if they were *inside* sales with respect to that State. This led to the passing, by Parliament, of the Sales Tax Laws Validation Act, 1956, for the purpose of validating the levy and collection of taxes on inside sales between April 1, 1951 and September 6, 1955. In *Sundararamier & Co.* case [1958] S.C.R. 1422 this Court decided that s. 22 of the Madras General Sales Tax Act, 1939—which was *in pari materia* with s. 26 of the Travancore-Cochin Act—operated to impose a tax, subject to authorisation by Parliament as provided in Art. 286(2); in other words it was a piece of legislation imposing tax *in praesenti* but with a condition annexed that it was to come into force *in futuro* as and when Parliament so provided; and this view was re-affirmed by this Court in the *Cochin Coal Co.'s* case [1961] 2 S.C.R. 219) with respect to s. 26 of the Travancore-Cochin Act. [418C; 422 B—F]

The respondent-assessee was a dealer, not resident in Travancore-Cochin State. It supplied coal to consumers within the State, the last of the transactions being on September 4, 1955.

On the question whether the inter-State sales during assessment year 1955-56, were taxable under the provisions of the Travancore-Cochin Act, the Sales Tax Appellate Tribunal and the High Court held in favour of the assessee.

In appeal by the State to this Court,

Held: The ban imposed by s. 26 of the Travancore-Cochin Act, having been lifted by the Sales Tax Laws Validation Act, sales-tax could be levied and collected by the State for the period covered by that Act. The Amendment to the section by Kerala Act 12 of 1957 did not fall to be considered in the present case inasmuch as the Amending Act was only prospective and did not operate to invalidate any levy of tax imposed before. The question as to whether the State of Kerala had legislative competence to amend s. 26 by Kerala Act 9 of 1962 which purported to validate, the levy and collection of taxes before September 6, 1955 is also irrelevant for the purpose of this appeal. [422G; 423A—D]

L/85SC I—(a)13

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 380 of 1966. A

Appeal by special leave from the judgment and order dated August 16, 1963 of the Kerala High Court in Tax Revision Case No. 17 of 1962.

S. V. Gupte, Solicitor-General and *A. G. Pudissery*, for the appellant. B

O. P. Malhotra, P. C. Bhartar and *O. C. Mathur*, for the respondent.

Sardar Bahadur, for the intervener.

The Judgment of the Court was delivered by C

Mitter, J. This appeal, by special leave, is from a judgment and order of the High Court of Kerala dated August 16, 1963 passed in Tax Revision Case No. 17 of 1962 filed by the respondent, Cochin Coal Co. Ltd. against the order of the Sales Tax Appellant Tribunal, Trivandrum.

The facts necessary for the disposal of this appeal are as follows. The respondent-assessee was a non-resident dealer (not resident in Travancore-Cochin) during the year 1955-56. The period we are concerned with here ends on September 4, 1955. It used to supply coal to consumers in Travancore Cochin State which later became Kerala. For the assessment year in question (1955-56) the assessee was asked to file statements showing its turnover of supplies of coal made to purchasers in the State of Kerala and in reply to the notice under s. 12(2)(b) of the Travancore Cochin General Sales Tax Act, it stated that the sales of coal to steamers arriving and berthed in Travancore Cochin State waters were not taxable because the goods were stored by the steamers for consumption on the high seas. The assessee however did not question its liability to pay tax in respect of supplies made to other consumers in the State of Kerala. On March 7, 1959 the Sales Tax Officer, Circle I, Mattancherry assessed the respondent on a turnover of Rs. 1,29,352/-. The respondent filed an appeal therefrom and the Assistant Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam allowed the appeal in part and reduced the turnover by omitting the portion of it after 6th September, 1955. In the result, the assessee's turnover was reduced to Rs. 69,407/-. There was a further appeal to the Kerala Sales Tax Appellate Tribunal. This was disposed of on January 2, 1962 in favour of the assessee. The Tribunal held that the sales being inter-State sales were, according to the decision of the Kerala High Court in T. R. Cs. 1, 2 and 3 of 1961 (reported in 14 Sales Tax Cases 850) not taxable. The Tribunal held that s. 26(1)(b) of the General Sales Tax Act, as amended by s. 13(ii) of Act 12 of 1957, prohibited the taxation of inter-State sales after March 31, 1951. The Deputy Commissioner of Agricultural Income Tax and Sales D E F G H

A Tax Central Zone, Ernakulam, went up to the High Court of Kerala under s. 15-B(1) of the Act. The question of law raised for decision by the High Court was,

> "Whether in the light of the amending Act 9 of 1962 the finding of the Tribunal is correct?"

B In rejecting the application, the High Court reasoned as follows:—

(1) Central Act 7 of 1956 was intended to validate State laws imposing or authorising the imposition of taxes on the sale or purchase of goods in the course of inter-State trade or commerce.

C (2) This Court has decided in the *State of Kerala and others* v. *The Cochin Coal Co., Ltd.*(1) that s. 26 of the General Sales Tax Act, 1125 imposed a tax on the sale or purchase of goods in the course of inter-State trade or commerce and taxation of such sales during the period between 1-4-1951 and 6-9-1955 was validated by the above Central Act.

D (3) S. 26 of the General Sales Tax Act, 1125 prior to its amendment by Act 12 of 1957 was *in pari materia* with s. 22 of the Madras General Sales Tax Act which came up for consideration in the case of *M. P. V. Sundararamier & Co. and others* v. *The State of Andhra Pradesh and another*(2). The Supreme Court held that s. 22 of the Madras Act "intended to authorise taxation E of sales falling within the Explanation, subject to authorisation by Parliament as provided in Art. 286(2)".

(4) Act 12 of 1957 raised the controversy as to whether Central Act 7 of 1956 could be considered as sabaging the levy of tax on inter-State sales after the amendment introduced in s. 26. According to the decision in T.R. Cs. 1, 2 and 3 of 1961 inter-State sales after 31st March, F 1951 were not taxable.

(5) The Constitution (Sixth Amendment) Act, 1956 made substantial changes as regards levy of tax in inter-State sales. As a result of the amendment of Art. 269 taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of G inter-State trade or commerce were to be levied and collected by the Government of India and it was for Parliament to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

(6) The Validating Act 9 of 1962 was enacted sub- H sequent to the Constitution (Sixth Amendment) Act which came into force on 11th September 1956. In

(1) [1961] 2 S.C.R. 219. (2) [1958] S.C.R. 1422.

view of the amendment of the Constitution in 1956 the Legislature of Kerala had not the competence to pass any legislation on the subject of inter-State sales whether prospective or retrospective or both in the year 1962 with the result that the State could not call in aid the provisions of Act 9 of 1962 to tax inter-State sales.

The appellant's case was argued by the learned Solicitor General. One E. J. Mathew was allowed to intervene in this matter. In our view, the High Court failed to construe the effect of the relevant statutes and apply the decisions of this Court rendered before they heard the matter. Proceeding chronologically, the legal position developed as follows.

Before the Constitution came into force, The Travancore Cochin State General Sales Tax Act, XI of 1125 levied a tax on sale of goods under s. 3 of the Act. The tax was to be paid by the dealer on his turnover in each year. There was then no question of any exemption of inter-State sales from taxation. S. 26 was inserted in the main Act by Act 12 of 1951 and it ran as follows:

"(1) Notwithstanding anything contained in this Act—

(a) a tax on the sale or purchase of goods shall not be imposed under this Act:

(i) where such sale or purchase takes place outside the State; or

(ii) where such sale or purchase takes place in the course of import of the goods into or export of the goods out of, the territory of India.

(b) a tax on the sale or purchase of any goods shall not, after the 31st day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide.

(2) The explanation to clause (1) of Art. 286 of the Constitution of India shall apply for the interpretation of sub-cl. (i) of cl. (a) of sub-section (1)".

This was to bring the Act into line with Art. 286 of the Constitution of India. Then came the judgment in the case of *The Bengal Immunity Company Ltd.* v. *The State of Bihar and others*(1) on September 6, 1955. There it was decided that the sales or purchases made by the appellant company in that case which were sought to be taxed by the State of Bihar actually took place in the course of inter-State trade or commerce and Parliament not having by law otherwise provided, no Bihar law could tax these sales or purchases although they fell within the Explanation to Art. 286(1) and other States could not tax the same by reason of both clause 1(a) read with the Explanation and cl. (2) of Art. 286. This led to

(1) [1955] 2 S.C.R. 603.

A the passing of Central Act 7 of 1956. The object of the Act was to validate laws of States imposing, or authorising the imposition of taxes on the sale or purchase of goods in the course of inter-State trade or commerce. S. 2 of the Act provided that:

> "Notwithstanding any judgment, decree or order of any court, no law of a State imposing, or authorising the im-
B position of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April 1951 and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade
C or commerce; and all such taxes levied or collected or purporting to have been validly levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law.
>
> * * * * * *"

A question here arises as to whether this statutory provision served to lift the ban imposed by s. 26 of the General Sales Tax Act.

D Then came the Constitution (Sixth Amendment) Act, 1956 on September 11, 1956. It made substantial and important changes in Art. 286 of the Constitution by deleting the Explanation to Art. 286(1) and by substituting new Art. 286(2) and 286(3). It also amended Art. 269. It inserted item 92A in the Union List of the Seventh Schedule and substituted a new entry 54 in place of the old one in the State List of the said Schedule. As a result of these
E amendments, taxes on the sale or purchase of goods other than newspapers, where such sale or purchase took place in the course of inter-State trade or commerce could be levied and collected by the Government of India which was empowered to assign the same to the States in terms of cl. (2) of Art. 269. Art. 269(3) empowered Parliament by law to formulate principles for determining
F when a sale or purchase of goods takes place in the course of inter-State trade or commerce. The new item 92A added to the Union List read:

> "Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

G The old entry 54 in the State List was substituted by a new entry reading:

> "Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I."

It would therefore appear that after the amendment of the Constitution in 1956 the State Legislatures were not competent to
H legislate in respect of taxes on the sale or purchase of goods other than newspapers which took place in the course of inter-State trade or commerce.

Next in order of date is the Travancore-Cochin General Sales Tax (Amendment) Act, 1957 (12 of 1957) which came into force on August 7, 1957. S. 13 of this Act introduced several changes in s. 26 of Act XI of 1125. In the first place, it substituted the word 'State' for the words "State of Travancore-Cochin", in sub-cl. (i) of cl. (a) of sub-s. (1) of s. 26. It also deleted the words:

> "except in so far as Parliament may by law otherwise provide"

in cl. (b) of sub-s. (1) and omitted sub-s. (2) of the section. By its terms the amendment was only prospective. It did not seek to disturb the position in law obtaining up to that date. It was argued before us that the State Legislature was not competent to legislate in this field after the Constitution (Sixth Amendment) Act.

On March 11, 1958 *Sundararamier & Co.'s case*(1) was decided by this Court. That case dealt with the competence of the States to levy tax on inter-State sales and to enact conditional legislation on the subject. The statute which came up for consideration was the Madras General Sales Tax Act, 1939 (Madras Act 9 of 1939) as adapted to Andhra read with s. 2 of the Sales Tax Laws Validation Act (7 of 1956). S. 22 of the Madras General Sales Tax Act was inserted in the statute by an Adaptation Order of the President issued on July 2, 1952 and cl. (a) thereof was substantially similar to s. 26(1)(a) of the Travancore-Cochin General Sales Tax Act XI of 1125. The effect of cl. (b) of s. 22 was that nothing in the Act (Madras Act) was to be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide after 31st March 1951 and the provisions of the Act were to be read and construed accordingly. There was an Explanation to this section which is a *verbatim* reproduction of the Explanation to Art. 286(1)(a). It was held by this Court (at page 1453) that:

> "Taken along with the admitted power of the States to impose tax on sales under Entry 54, the true scope of s. 22 is that it does impose a tax on the Explanation sales, but the imposition is to take effect only when Parliament lifts the ban. In other words, it is a piece of legislation imposing tax *in praesenti* but with a condition annexed that it is to come into force *in futuro* as and when Parliament so provides ..... It would clearly be within the competence of the Madras Legislature to enact a law imposing a tax on sales conditional on the ban enacted in Art. 286(2) being lifted by Parliamentary legislation, and that, in our opinion, is all that has been done in s. 22. The Madras Act defines the event on which the tax becomes payable and the person from whom and the

(1) [1958] S.C.R. 1422.

A rate at which it has to be levied and forms a complete code on the topic under consideration. It would have no immediate operation by reason of the ban imposed by Art. 286(2), but when once that is removed by a law of Parliament, there is no impediment to its being enforced. That satisfies all the requirements of a conditional legis-
B lation."

Discussing various authorities cited at the Bar this Court approved of the decision in *Mettur Industries Ltd.* v. *State of Madras*(1) and *Dial Das* v. *P. S. Talwalkar*(2) and held that s. 22 operated to impose a tax on sales falling within the Explanation subject to authorisation by Parliament as provided in Art. 286(2). At page
C 1463, the Court went on to observe:

"If it is competent to the legislatures of the States to enact a law imposing a tax on inter-State sales to take effect when Parliament so provides, there is nothing unconsitutional or illegal either in s. 22 of the Madras Act or in the corresponding provisions in the Acts of other States. If conditional legislation is valid, as we have held it is,
D then s. 22 is clearly *intra vires*, and the foundation on which this contention of the petitioners rests, disappears and it must fall to the ground."

The case of the *State of Kerala & Others* v. *The Cochin Coal Company Ltd*(3) was decided on October 31, 1960. There, the respondent who stocked bunker coal at Candla Island in the State
E of Madras sold the coal to steamers calling at the port of Cochin in the State of Travancore-Cochin and delivered it there. The respondent was assessed to sales tax on such sales for the years 1951-52 and 1952-53. The respondent contended *inter alia* that the sale being in the course of inter-State trade was covered by the ban contained in Art. 286(2) of the Constitution and was not taxable under the Travancore-Cochin General Sales Tax Act, 1125.
F The State contended that this claim for exemption was not available in view of the Sales Tax Laws Validation Act, 1956. The High Court held that the Validation Act could not avail the State because on their construction of s. 26 of the Act, no tax had been levied or was leviable on sales in the course of inter-State trade or commerce and that the Validation Act having validated only taxes already levied could not enable the State to levy tax which
G had not been imposed by the State Sales Tax Act. This Court rejected the view of the High Court (see 7 S.T.C. 731 at p. 738) and held that "the view of the learned Judges of the High Court regarding the construction of s. 26 of the Travancore-Cochin General Sales Tax Act must now be held to be incorrect in view of the decision of this Court in *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh*(4).
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(1) A.I.R. 1957 Mad. 362. (2) A.I.R. 1957 Bom. 71.
(3) [1961] 2 S.C.R. 219. (4) [1958] S.C.R. 1422.

The position which emerges from the above may be summarised below:— A

(1) The enactment of the Travancore-Cochin General Sales Tax Act as it stood prior to the coming into force of the Constitution, imposed a levy of sales tax on transactions of the nature disclosed in this case.

(2) S. 26 of the General Sales Tax Act, as amended in 1951, imposed a ban on the levy of tax after March 31, 1951 subject to any exception which Parliament may by law provide. B

(3) Central Act 7 of 1956 was enacted for the purpose of validating the levy and collection of taxes between 1-4-1951 and 6-9-1955 which would otherwise be invalid by reason of the decision in the *Bengal Immunity Co.'s case*(1). C

(4) In *Sundararamier's case*(2) it was held by this Court that s. 22 of the Madras General Sales Tax Act operated to impose a tax subject to authorisation by Parliament as provided in Art. 286 (2). Further, this Court did not agree with the view of the Kerala High Court in *Cochin Coal Co. Ltd.* v. *State of Travancore-Cochin*(3). D

(5) In the *State of Kerala & Others* v. *The Cochin Coal Co. Ltd.*(4) this Court overruled the decision of the Kerala High Court in the *Cochin Coal Co. Ltd.* v. *The State of Travancore-Cochin*(3) regarding the construction of s. 26 of the Travancore-Cochin General Sales Tax Act : further the assessee's claim to relief on the strength of Art. 286(2) of the Constitution was held not to be available to them after the coming into force of the Sales Tax Validation Act, 1956 (See [1961] 2 S.C.R. pp. 219, 223). E

The effect of this was that the levy of sales tax up to 4th September, 1955 being the last date with which we are concerned in this case, was valid. The validity and the scope of the amendment introduced in s. 26 of the Travancore-Cochin General Sales Tax Act by Act 12 of 1957 do not fall to be considered in this case inasmuch as the Act was only prospective and did not operate to invalidate any levy of tax imposed before. F

In this view of the matter, we are really not concerned to go into the question as to whether the State of Kerala had legislative competence to enact Act 9 of 1962 seeking thereby to amend s. 26 of the Travancore-Cochin General Sales Tax Act, 1125 by substituting the date 6th September, 1955 in place of 31st March 1951 and purporting to validate the levy and collection of taxes on sales and purchases falling within the purview of sub-s. (2A) of s. 26 of the principal Act as inserted by the Act of 1962. The ban G H

(1) [1955] 2 S.C.R. 603. (2) [1958] S.C.R. 1422.
(3) 7 S.T.C. 731. (4) [1961] 2 S.C.R. 219.

A imposed by s. 26 of the General Sales Tax Act, 1125 having been lifted by the Central Sales Tax Validating Act, 1956, the State was competent to collect all taxes in respect of sales in the course of inter-State trade and commerce up to September 5, 1955.

B In the result, we hold that sales tax was properly leviable by the State of Kerala on the transactions which formed the subject matter of this case up to the 4th September 1955; but the question raised in the application for revision was not correctly framed and should read as follows:

> "Whether in the light of the Sales Tax Laws Validation Act, 1956 (Central Act 7 of 1956) read with the Travan-
> C core-Cochin General Sales Tax Act as amended up to 1956, the finding of the Tribunal is correct?"

We amend the question accordingly. We allow the appeal and answer the question in the negative. The matter must now go back to the High Court and the High Court should remit the matter to the Appellate Tribunal with our opinion on the question as re-
D framed. In the circumstances of this case, we make no order as to costs.

V.P.S. *Appeal allowed.*