

The Cochin State Power and Light Corporation Ltd. Vs The State of Kerala and another

Court: High Court Of Kerala

Date of Decision: July 17, 1969

Acts Referred: Constitution of India, 1950 " Article 286(1)

Citation: (1969) KLJ 799

Hon'ble Judges: M.U. Isaac, J

Bench: Single Bench

Advocate: K.V. Suryanarayana Iyer and M.N. Venkitachalam, for the Appellant; V.K.K. Menon, M. Ramachandran and C.J. Balakrishnan for Respondent 2, for the Respondent

Judgement

M.U. Isaac, J.

The petitioner is a licensee supplying electric energy within the Municipal limits of Ernakulam and a few adjoining areas, including Palluruthi. For the above purpose, the petitioner buys energy from the Kerala State Electricity Board, except for the supply in Palluruthi

area, where the Electricity Board has no supply point. For this area, the petitioner buys electrical energy from the second respondent, the Cochin

Electric Company Ltd., who is the licensee for Mattancherry area. The Kerala Electricity Duty Act, 1963 (hereinafter referred to as the Act)

imposes a duty on the sale and consumption of electrical energy in the State of Kerala. Sections 3 and 4 of the Act contain the charging provisions.

Section 3 imposes a duty on the electrical energy sold by a licensee, while section 4 imposes a duty on the energy consumed by a person. Section

5 of the Act provides that every licensee shall collect and pay to the Government the duty payable by the consumer u/s 4. Admittedly, the

petitioner is liable to the duty payable u/s 3 as licensee in respect of the energy purchased from the second respondent and sold to the consumers.

The only dispute in this case is whether the petitioner is liable to the duty payable u/s 4 as a consumer in respect of the same energy. The petitioner

objected to the collection of the said duty; but all the same, the second respondent has been collecting and paying to to the first respondent the

State of Kerala, it is stated that for the period commencing from May 1963 to September, 1967, a sum of Rs. 18,734.49 was collected by the

second respondent on the above account and paid to the 1st respondent. This Original Petition has been filed for a writ of prohibition or

mandamus directing the respondents to forbear from collecting the aforesaid duty from the petitioner, and also to direct the first respondent to

refund to the petitioner the aforesaid amount which was unauthorisedly collected, as stated above. I shall now read section 4 of the Act. Omitting

its proviso which is not relevant to the controversy in this case.

4. Levy of Electricity Duty on consumers:--

Every consumer belonging to any of the classes specified in column (2) of the schedule shall pay every month to the Government in the prescribed

manner a duty calculated at the rate specified against that class in column (3) thereof: Provided.....

The term ""consumer"" is defined in section 2(a) of the Act; and it is as follows:

2. Definitions:--

In this Act, unless the context otherwise requires,--

(a) ""consumer"" includes a local authority, company or other person to whom energy is supplied by a licensee on payment of charges or otherwise,

and a licensee or other person who consumes energy generated by himself, but does not include a licensee to whom energy is supplied by the State

Electricity Board for supply to others.

Explanation:- Where a licensee to whom energy is supplied by the Kerala State electricity Board for supply to others, himself consumes any part of

the energy, he shall be deemed to be a consumer in respect of energy so consumed except energy lost in distribution:

The question for decision is whether the petitioner, who is a licensee and who buys electric energy from another licensee for supply to consumers in

terms of its licence is itself a consumer within the meaning of the above definition, in respect of the energy so purchased by the petitioner. If it is a

consumer"", it is liable for the duty u/s ; otherwise, it is not.

2. The term ""consumer"" has been given an inclusive definition. Chamber's Twentieth Century Dictionary gives the following meaning to the word

consumer":--

one who consumes as opposed to produces, one who uses an article produced.

The word ""consume"" is given the meanings, ""to destroy by wasting, fire, evaporation, etc; to use up; to devour; to waste or spend; to exhaust"".

This word has come up for judicial consideration in the Supreme Court in a number of cases. In State of Travancore-cochin and Others Vs.

Shanmugha Vilas Cashew Nut Factory and Others, Das J. in discussing the question whether cashew-nut purchased outside the State of

Travancore-Cochin and brought into that State and converted into cashew Kernal and cashew-nut oil would be delivery ""for the purpose of

consumption in the State within the ambit of Explanation to Art. 286 (1) of the Constitution, as it originally stood, stated as follows:

The raw cashew-nuts, after they reach the respondents, are put through a process and new articles of commerce, namely, cashew-nut oil and

edible cashew-nut kernels, are obtained. It follows, therefore, that the raw cashew-nut is consumed by the respondents in the sense I have

mentioned.

The above passage was quoted with approval by the Supreme Court in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra)*

and Others, . In that case, the question arose whether beedi tobacco purchased outside the State of Bombay, brought into that State, converted

as bidi patts for immediate use in the manufacture of bidis, and despatched to merchants outside the State, can be said to be a case in which the

goods have been delivered in the State of Bombay"" for the purpose of consumption in that State"" within the meaning of the aforesaid explanation to

Art. 286 (1) of the Constitution. There is a very instructive discussion in that decision regarding the meaning of the word ""consumption""; and the

Court said;

It must, therefore, be held on the facts of this case that when tobacco was delivered in the State of Bombay for the purpose of changing it into a

commercially different article, viz., bidi patti, the delivery was for the purpose of consumption.

The word ""consumption"" again came up for consideration in the decision of the Supreme Court in *Burmah Shell Oil Storage and Distributing Co.*

India Ltd. Vs. The Belgaum Borough Municipality, . In that case, the question arose whether the *Burmah-Shell Co.*, was liable to pay octroi in

respect of goods bought and sold by the company within the octroi limits of Belgaum Municipality and consumed inside as well as outside the said

limits by persons other than the company u/s 73 of the Bombay Municipal Boroughs Act, 1925. The relevant provision of that Act stated that the

Municipality may impose--

an octroi on animals or goods or both brought within the octroi limits for consumption use or sale therein.

The contention was that in order to attract the levy under the above provision, the bringing of the goods within the octroi limits must be for

consumption or use by the person who brings them, or for sale by a person other than the one who brings them within the said limits. The argument

was rejected by the Supreme Court. There is an instructive discussion regarding the ambit of the meaning of the word ""consumption"" in the above

decision.

3. In the first two cases, the question was whether the delivery of the goods in a State as a result of sale or purchases was for the purpose of

consumption in that State. In the third case, the question was whether the bringing of the goods to a place was for consumption therein. It was

immaterial in all these cases who consumed the goods; and what was relevant was whether the bringing of the goods into a State or area was for

the purpose of consumption within that State or area by any person. In the case before me, the question for consideration is whether a licensee

who buys electric energy and sells it to consumers within the area is himself consumer of the said energy. The aforesaid decisions do not render

much assistance in resolving the above question. Going by the ordinary meaning of the word "consumer" such a person is not a consumer. A

person who buys or sells goods is a dealer, and not a consumer of the goods. Buying for the purpose of selling connotes the opposite of

consuming. I shall now consider whether the petitioner is a "consumer" within the meaning of the inclusive definition given to that term in the Act,

The term "licensee" is also defined in the Act; and the petitioner is admittedly a "licensee". According to the definition given to "consumer", it

includes in the first instance a local authority, company or other person to whom energy is supplied by a licensee. Secondly, it includes a licensee or

other person who consume energy generated by himself. This is qualified by stating that "consumer" does not include a licensee to whom energy

is supplied by the State Electricity Board for supply to others. It is argued on behalf of the first respondent that a person who does not fall within

the ambit of the above qualification would be a consumer. In other words, "consumer" includes a licensee to whom energy is supplied by any

person other than the State Electricity Board for supply to others; and only licensees who take their supply from the State Electricity Board are

excluded from the definition. It was further contended that the above qualification would not otherwise serve any purpose. It is true that in

interpreting a statutory provision, all words used therein should be given their natural meaning, and nothing should be omitted or treated as

redundant, unless such an interpretation would lead to absurd results or defeat the patent intention of the legislature. But at the same time it is

impossible to construe a statement of exclusion of one thing as amounting to inclusion of everything else. A statement that a licensee "does not

include a licensee to whom energy is supplied by the State Electricity Board for supply to others" means only what it states. It does not mean that a

licensee would include all other persons. This is what it has not stated. It is also an elementary canon of interpretation that tax liability cannot be

imposed by implication. "In the taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity

about a tax"" (Vide: Cape Brandy Syndicate v. Inland Revenue Commissioners--1921 (1) K. D. 64 at p. 71). The statement contained in the

definition of ""consumer"" by way of qualification to the effect that consumer ""does not include a licensee to whom energy is supplied by the State

Electricity Board for supply to others"" does not in my view add anything to the definition. It may be that it was added by way of abundant caution.

At any rate, it can mean, as I already stated, only what it says, and not something more than what it has said or something that it has not said. The

Explanation to the section is an explanation to the above qualification; and it does not in any manner enlarge the ambit of the definition.

In the result, I come to the conclusion that the petitioner is not a ""consumer"" as defined in the Act; and it is not, therefore, liable for the duty u/s 4 of

the Act. Accordingly, I declare that the petitioner is not liable for the duty u/s 4 of the Act. Accordingly, I declare that the petitioner is not liable for

the duty u/s 4 of the Act in respect of electric energy purchased by it from the second respondent for supply to consumers in Palluruthy area; and I

prohibit the respondents from collecting the said duty from the petitioner. The petitioner has also sought for a writ of mandamus or other direction

for refund of all amounts collected by the first respondent as duty u/s 4 with effect from May, 1963. This Original Petition was filed on 28-11-

1967. It has been well-established by the decisions of the Supreme Court that it is open for the High Court to issue a writ for refund of amount

collected by a State within three years prior to the date of filing of the petition by way of tax without authority of law. Accordingly, I direct the first

respondent to refund to the petitioner all amounts recovered from the petitioner directly or through the second respondent from and after 28-11-

1964 account of duty u/s 4 of the Act in respect of electric energy supplied by the second respondent to the petitioner for supply to its consumers

in the Palluruthi area. The first respondent will pay the costs of the petitioner. Counsel's fee Rs. 250/-.