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STATE OF KERALA

v.

N. SAMI IYER TOBACCO MERCHANT

October 26, 1965

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[K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI, JJ.]

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Madras General Sales Tax Act, (9 of 1939) repealed in its application to Malabar Area (Kerala) Act 12 of 1957—Sales Tax on tobacco under Madras Act paid at purchase point—Whether in respect of same goods tax chargeable under Kerala Act at point of sale—Whether s. 3(5) of Madras Act continued to operate in favour of dealer—Effect of s. 4(c) of the General Clauses Act 1125 (M.E.).

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The respondent, a dealer, in the Malabar area, paid tax under the Madras General Sales Tax Act, 1939, on his purchases of tobacco during the period of April 1, 1957 to September 30, 1957 the tax on tobacco being leviable under that Act at the point of purchase. The proviso to s. 3(5) of the Act laid down that tax could not be levied again at the point of sale in respect of those goods on which it had been paid at the point of purchase. Malabar area was transferred by the operation of the States Reorganisation Act, 1956 from Madras State to the newly formed State of Kerala. By (Kerala) Act 12 of 1957 the Travancore-Cochin General Sales Tax Act, 1125 M.E. was made applicable to the whole state of Kerala. Act 12 of 1957, while repealing the Madras General Sales Tax Act in so far as it was applicable to Malabar area, made some transitional provisions for the said area providing that any registration or licence granted under the Madras Act would continue to have effect and that in calculating the total turnover for the financial year ending with 31st March, 1958, the turnover of a dealer under the Madras Act for the period upto September 30, 1957, would also be taken into account. Under the Kerala Act, tax on tobacco was chargeable at the point of sale. When the Sales Tax Authorities under the provisions of the Kerala Act sought to tax his total turnover for the period April 1, 1957 to March 31, 1958, the respondent protested that those goods on which he had already paid tax at the point of purchase under the Madras Act could not be taxed again at the point of sale. His plea was rejected by the Sales Tax authorities but was accepted in revision by the High Court. The Kerala State thereupon appealed to this Court.

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It was urged on behalf of the appellant that the respondent had no right not to be taxed except under the Madras Act. All he was entitled to was to take advantage of the proviso to s. 3(5) of that Act. But even so Act 12 of 1957 manifested a contrary intention within the meaning of s. 4(c) of the General Clauses Act, 1125 which corresponded to s. 6(c) of the Indian General Clauses Act.

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HELD : (i) By virtue of s. 4(c) of the General Clauses Act 1125 the dealer continued to be liable to taxation under the Madras Act in respect of the disputed turnover at the purchase point. For example, if for some reason he had not been assessed before Act 12 of 1957 came into force he would have been assessed under the Madras Act at the purchase point because a liability within the meaning of s. 4(c) would have been incurred by him. To this liability would be attached a right, the right not to be taxed in respect of any sale of goods which had been

taxed at the point of purchase under the Madras Act. The respondent's contention had therefore to be accepted. [365 E-G]

(ii) No intention could be discerned in Act 12 of 1957 to destroy the rights and liabilities acquired or incurred under the Madras Act. The registration under the Madras Act and the licences issued thereunder were preserved. If the Legislature had the intention to override the right attached to the liability under s. 3(5) of the Madras Act, it would have used more clear and precise words. [366 B]

State of Punjab v. Mohar Singh [1955] 1. S.C.R. 893, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 490 of 1964.

Appeal by special leave from the judgment and decree dated July 13, 1961 of the Kerala High Court in Tax Revision No. 44 of 1960.

V. A. Seyid Muhammad, Advocate-General, Kerala, and M. R. Krishna Pillai, for the appellant.

Arun B. Saharya and Sardar Bahadur, for the respondent.

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Kerala in Tax Revision Case No. 44 of 1960.

The respondent, N. Sami Iyer, hereinafter referred to as the assessee, is a dealer in tobacco. He objected to the assessment of the turnover of Rs. 7,757.54 for the assessment year 1957-58, *inter alia*, on the ground that the goods were the subject-matter of purchases which had already been assessed at the point of purchase in the hands of the assessee. He failed before the Sales Tax authorities, but in a revision the High Court accepted his contention and held that this turnover was not liable to tax.

In order to appreciate the contention of the appellant it is necessary to mention a few facts. During the period April 1, 1957 to September 30, 1957, the assessee was residing in Malabar and in this area the Madras General Sales Tax Act (9 of 1939) applied. Section 3(5) of this Act provides :

"The taxes under sub-sections (1), (1-A) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that—

A (i) In respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed;

B (ii) Where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (1) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him."

C It is common ground that tobacco was taxable at the purchase point under the Madras Act and that the turnover with which we are concerned had suffered taxation at that point under the Madras Act.

D The Travancore-Cochin General Sales Tax (Amendment) Act, 1957 (12 of 1957) came into force on October 1, 1957. This Act changed the short title of the Travancore-Cochin General Sales Tax Act, 1125 (11 of 1125) to the General Sales Tax Act, 1125, and extended it to the whole of the State of Kerala, including Malabar district. Section 14 of Act 12 of 1957 inserted s. 26A in Act 11 of 1125 which reads as follows :

E "26A. Transitory provisions.--(1) In the application of this Act to the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956, during the financial year ending with 31st March, 1958, the provisions of this Act shall be subject to the provisions contained in Schedule II.

F (2) The Government may from time to time by notification in the Gazette add to, alter or cancel Schedule II."

Schedule II is in the following terms :

G "1. Every registration effected and every licence issued under the Madras General Sales Tax Act, 1939 or the rules made thereunder in their application to the Malabar District referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (hereinafter referred to as the Malabar area), and in force at the commencement of the Travancore-Cochin General Sales Tax (Amendment) Act, 1957, shall be deemed to have been effected or issued under this Act or the rules made thereunder.

H 2. In calculating the total turnover for the financial year ending with 31st March 1958 of a dealer in the

Malabar area for purposes of sub-section (3) of section 3 of this Act, the turnover of the dealer under the Madras General Sales Tax Act, 1939 up to the commencement of the Travancore-Cochin General Sales Tax (Amendment) Act, 1957, shall also be taken into account. . . .”

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The effect of s. 26A and the Schedule, among other things, is that the dealer's registration and the licences are deemed to have been effected under this Act, and secondly, that the total turnover for the period April 1, 1957 to September 30, 1957, is to be taken into account under the General Sales Tax Act.

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Act 12 of 1957, by s. 15 *inter alia* repealed the Madras General Sales Tax Act, 1939, as in force in the Malabar District, referred to in sub-section (2) of section 3 of the States Reorganisation Act, 1956. Section 3(5) of the General Sales Tax Act, 1125, is in the same terms as s. 3(5) of the Madras General Sales Tax Act, reproduced above. Section 5(vii) of the General Sales Tax Act (corresponding to s. 5 of the Madras General Sales Tax Act) provides as follows :

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“The sale of goods specified in column (2) of schedule I shall be liable to tax under section 3, sub-section (1) only at such single point in the series of sales by successive dealers as may be specified by the Government by notification in the Gazette; and where the taxable point so specified is a point of sale, the seller shall be liable for the tax on the turnover for which the goods are sold by him at such point, and where the taxable point so specified is a point of purchase, the buyer shall be liable for the tax on the turnover for which the goods are brought by him at such point.”

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The description of item 2 in column (2) of Schedule I at the relevant time was “Tobacco other than Beedi Tobacco (Suka).”

In exercise of the powers conferred by section 5(vii) the Government issued a notification No. RI-10674/57/RD-2 dated September 28, 1957. The relevant portion of the notification reads as follows :

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“In exercise of the powers conferred by clause (vii) of section 5, of the General Sales Tax Act (Act XI of 1125) the Government of Kerala hereby specify the point mentioned in column 3 of the schedule, hereto appended as the point liable to tax under section 3(1) on the goods mentioned in column 2.

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SCHEDULE

Sr. No. (1)	Description of goods (2)	Taxable point (3)
2.	Tobacco other than Beedi Tobacco (Suka)	1st sale in the State by a dealer who is not exempt from taxation under section 3 (3).

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The result of the above notification is that whereas previously the taxable point in respect of tobacco was the point of first purchase under the Madras Act, now the taxable point is the first sale in the State.

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The learned Advocate-General, who appeared on behalf of the appellant, has raised two points before us : first, that in this case there was no right, much less a vested right, not to be taxed except under the Madras General Sales Tax Act; the right if at all was to take advantage of the provisions of the repealed Act, namely, the proviso to s. 3(5) of the Madras Act. Secondly, he says that even if there was such a right, Act 12 of 1957 manifests a contrary and

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different intention within the meaning of s. 4(c) of the General Clauses Act, 1125, and the disputed turnover is liable to taxation under Act 12 of 1957. We may mention that s. 4(c) of the General Clauses Act, 1125, corresponds to s. 6(c) of the Indian General Clauses Act. It appears to us that by virtue of s. 4(c) the dealer continued to be liable to taxation under the Madras General Sales

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Tax Act in respect of the disputed turnover at the purchase point. For example, if for some reason he had not been assessed before Act 12 of 1957 came into force, he would have been assessed under the Madras Act at the purchase point because a liability within the meaning of s. 4(c) would have been incurred by him. To this liability would be attached a right; the right being that he would not be liable to be taxed in respect of any sale of goods which had been the subject-matter of a purchase and taxation under the Madras Act. In other words, he was liable to be assessed under the Madras Act in respect of the purchase of goods but he had also a right not to be taxed again in respect of any sale of the same goods effected by him. Therefore, we repel the first argument of the learned Advocate-General.

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The next question that arises is whether Act 12 of 1957 manifests a different intention. As observed by this Court in *State of Punjab v. Mohar Singh*⁽¹⁾, "when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of

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(1) [1955] I S.C.R. 893.

enquiry would be not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them." We cannot discern any intention in Act 12 of 1957 to destroy the rights and liabilities acquired or incurred under the Madras General Sales Tax Act. The second schedule reproduced above shows that the intention was to preserve old rights such as registration and licences issued under the old Act. In our opinion, if the Legislature had the intention to override the right attached to the liability under s. 3(5) of the Madras General Sales Tax Act, it would have used more clear and precise words .

In the result we agree with the High Court that the turn-over of Rs. 7,754.54 is not liable to taxation. The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.