CASE NO.:
Appeal (civil) 979-986 of 1999

PETITIONER:
State of Kerala

RESPONDENT:
Alex George & Another etc.

DATE OF JUDGMENT: 18/11/2004

BENCH:
S.N. VARIAVA, Dr. AR. LAKSHMANAN & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEALS No.987-1000 OF 1999.

KAPADIA, J.

This batch of civil appeals by special leave against the judgment and order of the Kerala High Court dated 28.8.1998 raises the question as to the true scope and operation of section 1(2) of the Kerala Finance Act, 18 of 1987 substituting schedule-I to the Kerala Plantations Tax Act, 1960 w.e.f. 1.7.1987.

Since the aforestated question arises in all the civil appeals, the same are taken up together and disposed of by this common judgment.

Since the facts in this batch of civil appeals are almost identical, we mention hereinbelow the facts of Civil Appeal No.983 of 1999.

E.K. Mathew & Brothers is a registered partnership firm carrying inter alia the business of planting tea in Alampally estate in Pasuppara in the State of Kerala. For the assessment year commencing from 1.4.1987, the firm was assessed under section 3 of the Kerala Plantations Tax Act, 1960 (hereinafter for the sake of brevity referred to as "the 1960 Act"). Under assessment order dated 6.9.1988, the said firm was assessed to tax @ Rs.130/- per hectare for the period from 1.4.1987 to 30.6.1987 and at the revised rate of Rs.350/- per hectare for the remaining nine months period from 1.7.1987 to 31.3.1988. The said assessment was made pursuant to the substitution of schedule-I to the said 1960 Act by the Kerala Finance Act, 18 of 1987 w.e.f. 1.7.1987. By the said amendment, the tariff in existence as on the first day of the financial year, viz. 1.4.1987 stood revised in the midst of the year w.e.f. 1.7.1987. Consequently, in terms of the demand notice, the assessee was asked to pay the tax at the rate of Rs.130/- per hectare for the period 1.4.1987 to 30.6.1987 and at the rate of Rs.350/- per hectare for the period 1.7.1987 to 31.3.1988.

Aggrieved, by the assessment order dated

6.9.1988, the said firm preferred an appeal before the Sub-Collector, Devicolam, Idukki district. By order dated 20.6.1989, the Sub-Collector, as an Appellate Authority, confirmed the assessment order dated 6.9.1988 and consequently dismissed the appeal.

Against the said order of dismissal, the said firm moved an application under section 9A of the 1960 Act requesting the Sub-Collector to refer the following question of law to the District Judge:
"Whether in the facts and circumstances of the case, plantation tax at the revised rate of Rs.350/- per hectare introduced by the Kerala Finance Act, 18 of 1987 w.e.f. 1.7.1987 was leviable for any part of the financial year 1987-88?"

In the meantime, by judgment and order dated 21.10.1988, in O.P. No.3610 of 1988 entitled M.J. Vijaya Padman v. The State of Kerala & another, the learned Single Judge of the High Court of Kerala held that the amended rates applied from the commencement of the financial year 1987-88 as the object of the said Act 18 of 1987 was to give effect to the budget proposals for that year. Consequently, the applicability of the levy was upheld and original petitions filed by the assessees stood dismissed.

Placing reliance on the above judgment of the High Court, the Sub-Collector dismissed the application for reference under section 9A filed by the said firm.

At this stage, it may be mentioned that prior to 21.10.1988, there was conflict of opinion in the decisions of the District Judges under section 9A.

In the case of Udayagiri Rubber Co. Ltd. v. State of Kerala, it was held, that, the plantation tax was assessable under section 3 at the rate prevalent on the first day of each financial year and that the same could not be altered during the year.

Consequent upon this difference of opinion, the assessees and the State, both being the aggrieved parties, came before the Division Bench by filing writ appeals and writ petitions respectively.

By the impugned judgment dated 28.8.1998, the Division Bench has held that the assessees were liable to be taxed for the assessment year 1987-88 on the basis of the rates specified in schedule-I as on 1.4.1987; that the revision in tariff in the middle of the assessment year would result in two assessments during the same year; that the substitution of the schedule w.e.f. 1.7.1987 cannot affect the assessment for assessment year 1987-88; that the liability to pay the tax got crystallized on Ist April each year as mentioned in section 3(2); and consequently, assessment as per the new schedule could be made only from the assessment year 1988-89. The appellant-State then applied to this Court and obtained special leave to appeal against the impugned judgment of the High Court.

Mr. John Mathew, learned advocate for the appellant herein submitted that revision in the rates under

the new schedule w.e.f. 1.7.1987 would not result in two assessments during the assessment year 1987-88; that the demand in question was for the differential tax and consequently, the question of two assessments during the same assessment year did not arise. He further contended that the object of enacting the State Finance Act, 18 of 1987 was to give effect to the budget proposals for the financial year 1987-88; that the effect of substituting schedule-I w.e.f. 1.7.1987 was to revise the rates of plantation tax during the financial year 1987-88 and that object would stand defeated if the revised rates were held to be applicable on and from financial year 1988-89. Learned Advocate submitted, that, in the circumstances the High Court had erred in holding that the revised rates were applicable only from assessment year 1988-89.

Mr. Jayant Bhushan, learned senior advocate appearing on behalf of the assessees, submitted that under section 3(1) of the said 1960 Act, exigibility to tax was with reference to the extent of the lands comprised in the plantation as on the first day of each financial year; that under section 3(2), the tax assessed is payable for each financial year till the extent of the holding is revised; that such revised tax is payable only from the financial year immediately following the revision and consequently, it was urged, that, the revised rates could apply from the assessment year 1988-89. It was urged that the scheme of the said Act rules out two assessments during the same year. In this connection, it was pointed out that the assessing authority has demanded the said tax at the rate of Rs.130/- per hectare for the period 1.4.1987 to 30.6.1987 and at the rate of Rs.350/- per hectare for the period 1.7.1987 to 31.3.1988 which indicated that the assessees were assessed twice during the same year which was not permissible under the said Act. In the circumstances, it was urged, that, no interference was called for as there was no merit in the civil appeals.

The basic point for determination is : whether in the present case, the revised schedule introduced in the 1960 Act, by the Finance Act, 18 of 1987, results in two assessments?

To answer the aforestated question, we need to examine the provisions of the said 1960 Act. The said Act is enacted to provide for the levy of an additional tax on plantations in the State of Kerala. Section 2(9) defines the expression "valuation date", in relation to the financial year for which an assessment is to be made to mean the first day of April of that year. Section 3(1) is the charging section. Under the said section, for every financial year, there shall be charged in respect of lands in the plantations, a tax at the rates specified in schedule-I. Under section 3(2), the tax assessed under the Act shall be payable for every financial year till the extent of plantation held by the assessee is revised. That, from the financial year, immediately following the revision, the tax assessed on the basis of such revision, shall be payable. Under section 3(3), the assessing authority may at any time, suo motu, revise the extent of plantation held by an assessee after hearing him. Under section 4(2), every assessee who, on the first day of the financial year holds two hectares or more of the lands in the plantation shall furnish to the assessing authority a

return before the first day of June of that year. Under section 5, the assessing authority is authorized to determine the extent of plantation and the assessment of plantation tax. Section 6A deals with the cases of plantations escaping assessment. Section 8 deals with the authority of the assessing authority to serve notice of demand. Section 9 provides for an appeal against the order of assessment. Section 9A provides for reference to the District Court. Sections 13 & 14 deal with recovery. Schedule-I refers to the rates of tax. Prior to 1.4.1987, it read as under:

RATES OF PLANTATION TAX

1 Where the aggregate extent of plantations held by a person does not exceed four hectares.	Nil
2 Where the aggregate extent of plantations held by a person exceeds four hectares but does not exceed eight hectares.	Seventy rupees per hectare on the extent of plantations in excess of four hectares.
3 Where the aggregate extent of plantations held by a person exceeds eight hectares but does not exceed twenty hectares.	Ninety rupees per hectare on the extent of plantations in excess of four hectares.
4 Where the aggregate extent of plantations held by a person exceeds twenty hectares.	One hundred and thirty rupees per hectare on the extent of plantations in excess of four hectares.

In exercise of the powers conferred by section 27 of the 1960 Act, the Government of Kerala has framed the Kerala Plantations (Additional Tax) Rules, 1960. Rule 16 provides for various forms prescribed for the purposes specified against them. For the purpose of deciding the present civil appeals, form-IA is relevant and it reads as under:

"FORM IA

[Notice of assessment under section 5/3(3) of the Kerala Plantation Tax Act, 1960 as amended by the Kerala Plantations (Additional Tax) Amendment Act, 1967]

To

\005\005\005\005

Whereas under the Kerala Plantation Tax Act, 1960 as amended by the Kerala Plantations (Additional Tax) Amendment Act, 1967 (19 of 1967) which has come into force on the Ist November, 1967, the rate of Plantation Tax has been raised from Rs.8 per acre to Rs.56 per hectare and the amount of tax fixed in the assessment already made under section 5/3(3) of the Kerala Plantations (Additional Tax) Act, 1960 and communicated to you as per notice of demand \005\005 No. \005 dated \005.. requires revision on the basis of the rate of Plantation tax fixed under the said Act as amended with effect from the financial year 1968-69 and whereas the details available in this office show that you hold Plantations to the extent shown below, it is hereby informed that you are assessed to pay Plantation Tax amounting to Rs..\005. under the said Act as amended by Act 19 of 1967.

Notice is hereby given that you may file objections, if any on the above assessment to the undersigned within fifteen days of receipt of this notice failing which the assessment shown above will be made absolute on the presumption that you have no objections to the above assessment."

Thus, the scheme of the Act read with rules framed thereunder indicates that section 3(1) is the charging section; that the subject of the charge is the extent of plantation held by an assessee on the first day of each financial year; that the tax is payable at the rates prescribed in schedule-I to the Act; that the tax assessed is payable for the financial year until the extent is revised; that even in the event of such revision, the tax assessed on the revised basis shall be payable only from the financial year immediately following such revision. This position is also made clear by form-IA quoted above under which the revision was given effect to from the next financial year 1968-69, though the rates stood revised by Amending Act 19 of 1967, which came into force on 1.11.1967 i.e. during the financial year 1967-68. Lastly, under the Act, the basis of the charge is the extent of the plantation (hereinafter referred to as "the assessable extent").

We may now examine the Kerala Finance Act, 18 of 1987, which received the Governor’s assent on 20.8.1987. The said Finance Act was passed to give effect to financial proposals of the Government for the financial year 1987-88. It appears that the presentation of the budget got delayed during the relevant year and accordingly the date of commencement, fixed under the said Act, was Ist day of July, 1987. By the said Finance Act, three distinct and separate Acts were amended, namely : the Kerala General Sales Tax Act, 15 of 1963; the Kerala Plantations Tax Act, 17 of 1960; and the Kerala Motor Vehicles Taxation Act, 19 of 1976. In this matter, we are concerned with the amendment to the 1960 Act. By the Finance Act, a revised schedule of rates was introduced in the said 1960 Act, which read as under:

RATES OF PLANTATION TAX		
1 a		
b	Where the aggregate extent of plantations (except conconut and arecanut plantations) held by a person does not exceed two hectares.	Nil
	Where the aggregate extent of coconut or arecanut plantations held by a person does not exceed four hectares.	Nil
2	Where the aggregate extent of plantations (other than coconut and arecanut) held by a person exceeds two hectares but does not exceed four hectares.	One hundred rupees per hectare on the extent of plantations in excess of two hectares.
3	Where the aggregate extent of plantations held by a person exceeds eight hectares.	
i)		
ii)	In the case of plantations other than coconut and arecanut.	
	In the case of coconut and arecanut plantations.	

One hundred and fifty rupees per hectare in excess of two hectares.		
One hundred and fifty rupees per hectare in excess of four hectares.		
4	Where the aggregate extent of plantations held by a person exceeds eight hectares but does not exceed fifteen hectares.	
i)		
ii)	In the case of plantations other than coconut and arecanut.	
	In the case of coconut and arecanut plantations.	
Two hundred rupees per hectare in excess of two hectares.		
Two hundred rupees per hectare in excess of four hectares.		
5	Where the aggregate extent of plantations held by a person exceeds fifteen hectares but does not exceed twenty-five hectares.	
i)		
ii)	In the case of plantations other than coconut and arecanut.	

In the case of coconut and arecanut plantations.	Two hundred and fifty rupees per hectare in excess of two hectares.	
	Two hundred and fifty rupees per hectare in excess of four hectares.	
6 Where the aggregate extent of plantations held by a person exceeds twenty-five hectares.		
i)		
ii) In the case of plantations other than coconut and arecanut.		
In the case of coconut and arecanut plantations.	Three hundred and fifty rupees per hectare in excess of two hectares.	
	Three hundred and fifty rupees per hectare in excess of four hectares.	

In order to appreciate the contentions of the rival parties, one must bear in mind the essential components entering into the concept of a tax.

In the case of M/s Govind Saran Ganga Saran v. Commissioner of Sales Tax & others reported in [AIR 1985 SC 1041], this Court has held that the first component in the concept of a tax is the character of imposition, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed and the fourth is the value to which the rate is applied for computing the tax liability.

In the case of M/s Goodyear India Ltd. v. State of Haryana & another reported in [AIR 1990 SC 781], it has been held that a taxable event is that which on its occurrence creates the liability to tax, which liability does not exist at later point of time. Even though the taxable event of a tax happens to be at a particular point of time, the levy and collection of such tax may be postponed, for administrative convenience, to a later date. Thus, in the context of the Central Excise Act, 1944, even though the taxable event is the manufacture of an excisable article, the duty is levied and collected at a later date for administrative convenience. Such later date is the date of removal of goods from the factory. As a corollary, the charging section cannot be limited or circumscribed by the machinery provisions of the Act. The machinery provisions cannot be interpreted so as to restrict the scope of the charging section. Liability to tax is distinct from quantification by assessment.

In the case of Kesoram Industries and Cotton Mills Ltd. v. The Commissioner of, Wealth Tax (Central), Calcutta reported in [AIR 1966 SC 1370], it has been held that the chargeability is independent of the passing of the Finance Act.

In the light of our above discussion, we have to examine the effect of the Finance Act, 18 of 1987 qua section 3 of the 1960 Act. The said Finance Act, 18 of 1987 was enacted to give effect to the budget proposals for the financial year 1987-88. To augment the revenues of the State, schedule-I to the 1960 Act was sought to be amended by revising the existing rate of plantation tax. In the present case, we are concerned with the content of the expression "revision". Revision simpliciter in the rate of tax is different from revision which alters the tariff structure and the tariff categories. Revision in the rate of tax simpliciter does not affect the assessable extent of the lands in the plantation. This category of revision in the rates does not come within the ambit of section 3(2) of the 1960 Act and consequently, such revisions do not require revision in the assessment of tax. However, in the present case, the revision brought upon by substitution of revised schedule not only effects revision in the rates, it also revises the tariff categories as well as the tariff structure and consequently, such a revision would fall within the ambit of section 3(2) of the 1960 Act. In the case of revision in the rates simpliciter, the assessable extent of the holding remains constant throughout the year, whereas in the case of revision in the tax structure, the assessable extent of the holding undergoes a change. In this case, the revised schedule increased the assessable extent of the holding. In the present case, the revised schedule altered the tariff categories. Therefore, the revision in question in this case squarely came within the ambit of section 3(2) of the 1960 Act and such a revision could be given effect to only in the next immediate financial year 1988-89. As stated above, chargeability is independent of the passing of the Finance Act. Therefore, one has to read the Finance Act in consonance with the provisions of the charging section. The function of the Finance Act primarily is to prescribe the rate of tax and the manner of calculation of tax; and it is not intended to incorporate the entire procedural and substantive law relating to tax. In the circumstances, we do not find merit in the

contention advanced on behalf of the appellant-State that the object of the Finance Act, 18 of 1987 was only to revise the rates of plantation tax.

We may reiterate that the State can always revise the rates in the middle of the financial year provided the assessable extent of the lands comprised in the plantation as on Ist April of each year is not altered.

In the case of The Karimtharuvi Tea Estate Ltd. v. The State of Kerala reported in [AIR 1966 SC 1385], it has been held that by the imposition of a different tariff in the course of the year, the incidence of the tax liability may be altered by the Legislature, but for effecting that alteration, the Legislature must devise machinery for computing it and if the Legislature has failed to do so, the Court cannot resort to a fiction which is not prescribed by the Legislature and seek to effectuate that alteration by the devising machinery not found in the enactment.

For the aforestated reasons, we answer the above question in favour of the assessees and against the department.

Before concluding, we may clarify, that, this judgment is confined only to insertion of schedule-I in the said 1960 Act by the Kerala Finance Act, 18 of 1987 and it will not apply to the amendments to other enactments, namely, the Kerala General Sales Tax Act, 1963 and the Kerala Motor Vehicles Taxation Act, 1976.

In the result, the appeals fail and are dismissed, with no order as to costs.