

34/1965

IN THE PRIVY COUNCIL

No. 17 of 1964

UNIVERSITY OF LONDON
LONDON
9 FEB 1965
23
LONDON

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N:

80973

JAMES WIJESURIYA

Appellant

- and -

H.R. AMIT, Government Agent Respondent

CASE FOR THE RESPONDENT

Record

10 1. This is an appeal from the Judgment and Order of the Supreme Court of Ceylon (H.N.G. Fernando J.) dated the 14th October 1963 dismissing the Appellant's appeal against a fine of Rs.472/- imposed on the Appellant by the Magistrates' Court, Matara, on the 8th November 1962. p.17 1.26

20 2. The principal question arising in this appeal is whether by the Heavy Oil Motor Vehicles Taxation (Amendment) Act No. 20 of 1961 the Appellant was retrospectively made liable for a tax on a motor vehicle owned by him which used Diesel oil, although he was not liable to pay the tax at the time when he used the oil. p.11 1.42

30 3. The Heavy Oil Motor Vehicles Taxation Ordinance No. 56 of 1935 (now Chapter 249 of the Legislative Enactments of Ceylon 1956 Revision) Section 2 imposed a tax on heavy oil motor vehicles which was to be determined in a prescribed manner. The vehicles to which the tax applied were those which used heavy oil as fuel; and the Ordinance originally defined "heavy oil" by Section 6 as oil not subject to import duty under the Customs Ordinance.

4. On the 13th July 1956, by a Gazette Notification of the 12th July 1956, Diesel oil became subject to import duty under the Customs Ordinance. The Appellant owned a vehicle which was a vehicle using Diesel oil. It is common ground that during the period relevant for the purpose of this appeal, namely, p.5 1.28

Record

during the months September to December 1959, no tax was at the time payable on the vehicle since Diesel oil, being then subject to import duty under the Customs Ordinance, was not a "heavy oil" within the definition of Section 6 of Chapter 249.

5. In 1961 the Amending Act No.20 of 1961 was passed which by Section 2(1) amended the definition of "heavy oil" in Section 6 of Chapter 249 to include "Diesel oil". Section 2(2) provided that this amendment should be deemed to come into effect on the 13th July 1956. A statement was made in the House of Representatives on the 4th April 1961 by the Leader of the House that the purpose of the Amending Bill was only to legalise past recoveries of the tax on Diesel oil and that there was no question of collecting the tax retrospectively. 10
- p.16 l.38
6. A notice was served on the Appellant by the Respondent on the 11th May 1962 under Section 4(2) of the Ordinance No.56 of 1935 (Chapter 249) as amended by Act No.20 of 1961, requiring him to pay the sum of Rs.472/- being heavy oil tax due on his motor vehicle No.22 SRI 854 for the period September to December 1959. On the 1st June 1962 the Respondent sent a letter to the Magistrate, Matara, to the effect that the Appellant had made default in paying the tax due on the vehicle under Chapter 249 as amended, together with a certificate under Section 4(1) of the Ordinance specifying the amount due as Rs.472/-. The Appellant was also charged with a breach of Section 5(1) of Chapter 249, but it appears that this charge was not dealt with by the Magistrate. 20
- p.1 l.10
- p.2 l.10
- p.3 l.1
- p.3 l.26
7. It was admitted by the Appellant that he was the registered owner of the vehicle in question for the period September 1959 to December 1959. It was however argued for the Appellant before the Magistrate that the tax could not be levied as the Ordinance (Chapter 249) was stated in the preamble to be one that imposed a tax on motor vehicles using uncustomed oil whereas Diesel oil was now customed oil; that the Ordinance applied only to vehicles registered under the Motor Car Ordinance (now repealed); and that the amending Act No.20 of 1961 had no retrospective effect as far as Section 4 of the principal ordinance was concerned. 30
- p.5 l.35
- p.7 l.22-30
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| | 8. The learned Magistrate held that the operative words of the Ordinance must prevail over the preamble; that the Ordinance (Chapter 249) must be read to apply to vehicles registered under the Motor Traffic Act; and that the amending Act No.20 of 1961 operated as if it had been enacted together with the main Ordinance and that it operated retrospectively in respect of the entire Ordinance. He accordingly fined the Appellant Rs.472/-. | <u>Record</u>
p.9 1.1
p.10 1.13-19
p.11 1.32-36 |
| 10 | 9. The Appellant appealed to the Supreme Court of Ceylon on the grounds <u>inter alia</u> that the Certificate under Section 4(1) of Chapter 249 could not be issued for the recovery of any arrears of tax; that the Appellant made no default within the meaning of Section 4 since no tax fell due on him in September - December 1959; and that there was no provision either in the principal enactment or the amending Act of 1961 requiring a defaulter to pay arrears of tax. | p.14 1.1-24 |
| 20 | 10. On the 14th October the Supreme Court dismissed the appeal but without costs, H.N.G. Fernando J. referring to the reasons given by him in the case of <u>Assenkudhoos Abdul Basir of Puttalam v. Government Agent, Puttalam</u> on the same date. In that case he stated that the effect of the amending Act of 1961 Section 2(2) was that as from the 13th July 1956 the definition of the term "heavy oil" must be held to have included Diesel oil and that the effect of the amending legislation was to render Diesel oil motor | p.17 1.36
p.16 1.22
p.16 1.33 |
| 30 | vehicles subject to the special tax for periods prior to the date of enactment of the amending Act. As the reading of the amending Act was clear, the statement made in the House of Representatives could not influence the construction of the Act. | p.16 1.38-48 |
| | 11. The Appellant was granted special leave to Appeal to Her Majesty in Council on the 26th March 1964. | p.27 1.1 |
| 40 | 12. The Respondent humbly submits that this appeal should be dismissed with costs for the following amongst other | |

R E A S O N S

1. BECAUSE the effect of Section 2 of Act No. 20 of 1961 is that the words "heavy oil" wherever they occur in Chapter 249 must be

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deemed to include Diesel oil as from the 13th July 1956.

2. BECAUSE the judgment of H.N.G. Fernando J. in Assenkudhoos Abdul Basir of Puttalam v. Government Agent, Puttalam is right for the reasons therein stated.
3. BECAUSE the judgment of the Magistrate, Matara, was right for the reasons therein stated.

DICK TAVERNE.

APPENDIX

HEAVY OIL MOTOR VEHICLES TAXATION
ORDINANCE

CHAPTER 249

HEAVY OIL MOTOR VEHICLES TAXATION

An Ordinance to impose a Tax on
Motor Vehicles using uncustomed Oil as Fuel

.....

2. (1) On and after the 1st day of January, 1936, the registered owner of a heavy oil motor vehicle shall be liable to pay in respect of that vehicle and in the manner hereinafter provided a tax determined in accordance with the rates prescribed in the First Schedule:

.....

(2) The tax due in respect of any heavy oil motor vehicle shall be paid in advance either annually or monthly at the kachcheri of the Government Agent having jurisdiction over the place set out in the certificate of registration of that vehicle as the place in which that behicle is usually kept. Where the tax is paid annually, it shall be deemed to be due on the first day of January and shall be paid on or before the seventh day of January of the year for which the tax is payable; and where the tax is paid monthly it shall be deemed to be due on the first day and shall be paid on or before the seventh day of the month for which the tax is payable.

(3) Where a heavy oil motor vehicle is registered in the course of any month of any year, tax shall be payable in respect of that vehicle for the whole of the month in the course of which that vehicle was registered and if the registration was effected after the seventh day of that month, the tax shall become due and shall be paid forthwith upon the registration of that vehicle.

.....

3. (2) When any tax imposed by this Ordinance on any heavy oil motor vehicle is paid at any kachcheri for the first time in any year, the Government Agent shall issue to the person making such payment a motor tax payment card (hereinafter referred to as a "payment card") in acknowledgment of the receipt of the tax so paid.

.....

4. (1) Where default is made in the payment of any tax due in respect of any heavy oil motor vehicle under the provisions of this Ordinance, it shall be lawful for the Government Agent to issue to the Magistrate having jurisdiction over the place where the registered owner of that vehicle is resident a certificate specifying the amount so due together with a statement to the effect that the notice required by subsection (2) has been duly served on that registered owner and that a period of seven days has elapsed since the date of service of that notice; and the Magistrate shall, upon receipt of such certificate and statement, forthwith direct the amount to be recovered as though it were a fine imposed by him on the registered owner of that vehicle; and such amount may be so recovered notwithstanding the fact that it exceeds the amount of fine which a Magistrate may impose in the exercise of his ordinary jurisdiction.

(2) Before issuing his certificate to the Magistrate under subsection (1), the Government Agent shall, by notice under his hand duly served on the registered owner who is in default, call upon such owner to pay the amount of the unpaid tax within a period of seven days reckoned from the date of service of such notice. Simultaneously with the issue of such notice, the Government Agent may by order under his hand direct any police officer to seize and sequester the heavy oil motor vehicle in respect of which the default has been made, and, upon such seizure, the licence issued in respect of that vehicle under the Motor Traffic Act, shall be deemed to be suspended and shall continue to be regarded as suspended until payment of the amount of unpaid tax or until that vehicle is sold by public auction as hereinafter provided.

.....

5. (1) No person shall possess or use a heavy oil motor vehicle in respect of which any tax due and payable under the provisions of this Ordinance has not been paid.

(2) Any person who possesses a heavy oil motor vehicle in contravention of the provisions of sub-section (1) shall be guilty of an offence and shall be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding six months or to both such fine and imprisonment.

.....

6. (1) This Ordinance shall be supplementary to the Motor Traffic Act, and shall be read and construed as one with that Act.

(2) In this Ordinance, unless the context otherwise requires -

.....

(c) "heavy oil" means crude petroleum, liquid fuel, gas oil, or any other oil, not subject to import duty under the provisions of the Customs Ordinance;

(d) "heavy oil motor vehicle" means any motor vehicle equipped with a compression-ignition or other engine which uses or is adapted to use any heavy oil as fuel;

HEAVY OIL MOTOR VEHICLES TAXATION (AMENDMENT) ACT

NO. 20 OF 1961

Section 2. (1) Section 6 of the Heavy Oil Motor Vehicles Taxation Ordinance, hereinafter referred to as the "principal enactment", is hereby amended, in sub-section (2) of that section, as follows :-

(a) by the substitution, in the definition of "heavy oil", for all the words from "or any other oil" to the end of that definition; of the words "or Diesel oil;"

.....

8.

(2) The amendment made in the principal enactment by paragraph (a) of sub-section (1) shall be deemed to have come into effect on the thirteenth day of July, 1956.

INTERPRETATION ORDINANCE

Section 6. (3) Whenever any written law repeals either in whole or part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected -

- (a) the past operation of or anything duly done or suffered under the repealed written law;
- (b) any offence committed, any right, liberty, or penalty acquired or incurred under the repealed written law.

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COURT OF CEYLON

BETWEEN:

JAMES WIJESURIYA Appellant

- and -

H.R. AMIT, Government Agent
Respondent

CASE FOR THE RESPONDENT

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