

1968

Present: H. N. G. Fernando, C.J.

ILLEPERUMA SONS LTD., Petitioner, and GOVERNMENT
AGENT, GALLE, Respondent

*S. C. Applications 394 and 395 of 1967—M. C. Galle,
50170/B and 50174/B*

Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249), as amended by Finance Act No. 2 of 1963—Sections 2 (1), 2 (7), 4 (1)—Alteration of rates of tax—Order made by Minister—Requirement that it should be laid before House of Representatives within the specified period—Effect of non-compliance—Interpretation of statutes—Delegated legislation—Procedure.

Where rates of tax prescribed in the First Schedule to the Heavy Oil Motor Vehicles Taxation Ordinance, as amended by the Finance Act, No. 2 of 1963, are varied by the Minister by Order published in the *Gazette* in terms of sub-section (7) of section 2 of that Ordinance, the provisions of paragraph (b) of sub-section (7) requiring the Order to be laid before the House of Representatives within the specified period are mandatory and must be complied with in order to give validity to the Taxation Order.

Podi Appuhamy v. The Government Agent, Kegalla (70 N. L. R. 544) not followed.

APPLICATIONS to set aside two orders of the Magistrate's Court, Galle.

C. Ranganathan, Q.C., with *M. T. M. Sivardeen*, for the Petitioner.

N. Tittawella, Crown Counsel, for the Respondent.

Cur. adv. vult.

May 17, 1968. H. N. G. FERNANDO, C.J.—

A certificate under Section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249) was issued by the Government Agent, Galle, on 12th August 1967 certifying that tax amounting to Rs. 6,192 was due under the Ordinance, in respect of a motor vehicle (No. 22 Sri 1961) owned by the present petitioner, for certain periods commencing from 1st June 1964 and ending on 31st December 1965. Another certificate so issued and dated 14th August 1967 was in respect of another vehicle (22 Sri 8511) for certain periods between 1st May 1963 and 31st December 1965. In each of these cases the learned Magistrate of Galle made order in terms of s. 4 (1) of the Ordinance for the recovery of the specified amounts in the same manner as a fine imposed by the Court.

In these two applications the petitioner has challenged the validity of the Certificate on grounds to which I will immediately refer.

Section 2 (1) of the Ordinance provides that the tax in respect of Heavy Oil Motor Vehicles shall be paid in accordance with the rates prescribed in the First Schedule to the Ordinance. The Finance Act No. 2 of 1963 amended s. 2 of the Ordinance by inserting therein a new sub-section (7) which reads as follows :—

“ (7) (a) The rates prescribed in the First Schedule to this Ordinance may, from time to time, be varied by the Minister of Finance by Order published in the *Gazette*.

(b) Every Order made under paragraph (a) of this subsection shall come into force on the date of its publication in the *Gazette* or on such later date as may be specified in the Order, and shall be brought before the House of Representatives within a period of one month from the date of the publication of such Order in the *Gazette*, or if no meeting of the House of Representatives is held within such period, at the first meeting of that House held after the expiry of such period, by a motion that such Order shall be approved. There shall be set out in a schedule to any such motion the text of the Order to which the motion refers.

(c) Any Order made under paragraph (a) of this subsection which the House of Representatives refuses to approve shall, with effect from the date of such refusal, be deemed to be revoked but without prejudice to the validity of anything done thereunder. Notification of the date on which any such order is deemed to be revoked shall be published in the *Gazette*. ”

In pursuance of the provisions of the new sub-section (7) an Order was made by the Minister of Finance setting out a new Schedule of the rates of tax in variation of the rates previously contained in the Schedule to the Ordinance, and this Order was published in *Gazette* No. 13,620 of 29th April 1963. Accordingly the tax due in respect of the two vehicles involved in these applications has been calculated at the rates specified in that Order. But the contention raised on behalf of the petitioner has been that the Order is invalid and of no effect on the ground of non-compliance with the provisions of paragraph (b) of the new sub-section (7). This paragraph (b) requires that the Order be brought before the House of Representatives “ within a period of one month from the date of the publication of such Order in the *Gazette*, or if no meeting of the House is held within such period, at the first meeting of that House held after the expiry of such period, by a motion that such Order shall be approved.’ ”

In the case of the present Order therefore a motion for approval should have been moved in the House before 29th May 1963 if a meeting took place before that date or else at the first meeting which took place thereafter. Owing, however, to what must obviously have been gross official negligence, the motion for approval was not moved in the House until 20th August 1964. Counsel for the petitioner has argued that

because a motion for approval was not passed in the House within the time specified in paragraph (b) the Order was fully inoperative, or at the least that the Order became operative only on the date of the approval of the House and not earlier.

Crown Counsel, however, has referred to a judgment of Alles J., in S. C. 635/67 M. C. Kegalla Case No. 59559 delivered on 11th November 1967¹, holding that the provisions of the new paragraph (b) of the new section are not mandatory, and that by virtue of the motion passed in the House on 20th August 1964, the Order remains valid as from the date of its first publication in the *Gazette*.

I regret that I am unable to agree with that judgment. It is a fundamental principle of British Constitutional Law that the subject cannot be taxed except directly by Statute enacted by Parliament, or alternatively by Resolution of the House of Commons passed by virtue of enabling power in a Statute. The new sub-section (7) of Section 2 of Cap. 249 provides for this alternative method which is prescribed in the Revenue Protection Ordinance (Cap. 250) and is often utilised in the case of the imposition or variation of customs duties.

Provisions of the nature contained in the sub-section (7), which gives statutory force to a taxation Order prior to its being approved by the House of Representatives is considered to be expedient only because it is sometimes necessary to prevent speculative dealings and other similar transactions which might take place in the interval between the time when notice of a motion or resolution is given in Parliament and the time when the motion or resolution is actually passed. But a *sine qua non* for such temporary validity of a Taxation Order is that the Minister responsible must perform the obligation which he owes to Parliament to bring the Order before the House of Representatives for approval.

Paragraph (c) of the new sub-section no doubt provides that even if the House refuses to approve a Taxation Order and the Order thereby becomes revoked, the levy of the taxes prior to the time of such revocation will be valid. But this validity flows, in my opinion, from the fact that the law is observed and that Parliament is duly invited to consider whether or not to approve the Order. But in a case where the order is not brought before Parliament at all or where as in this case the order is brought before Parliament long after the prescribed time, paragraph (c) is of no avail. The simple reason I have for this conclusion is that paragraph (c) does not contemplate either any omission or any delay in moving the requisite motion for approval.

I hold for these reasons that the failure to comply with the provisions of paragraph (b) of the new sub-section (7) had the consequence that the Order as published in the *Gazette* of 29th April 1963 had no validity as such.

¹ (1967) 70 N. L. R. 544.

Different considerations however arise by reason of the fact that the House of Representatives did approve the new rates of tax by the motion passed on 20th August 1964. The method of taxation provided for in the new sub-section is—

- (a) that an Order is made by the Minister fixing rates of tax, and
- (b) that the House of Representatives passes a motion approving the rates of tax.

The Minister's Order is temporary and provisional. But the motion in the House is intended both to validate the Minister's Order and to approve the new rates of tax permanently. The House of Representatives having thus approved the new rates of tax permanently by the motion passed on 20th August 1964, the constitutional requirement that taxation must be approved in the House has been satisfied. In these circumstances the Court must be slow to hold that the proceedings in the House were a nullity. Accordingly I hold that the new Schedule of rates became valid and operative as from the date of the passing of the motion of approval, i.e., as from 20th August 1964.

The orders made by the Magistrate in these two cases for the recovery of these certified amounts as fines and for the issue of distress warrants for the recovery are set aside.

I must note however that the Government Agent may yet be entitled to recover, by means of the issue of fresh Certificates, tax for the period ending on 20th August 1964 at the rates specified in the original Schedule to Cap. 249, and to recover tax for the periods subsequent to 20th August 1964 at the new rates. But even if he is so entitled, such recoveries cannot be made by virtue of the certificates issued on 12th and 14th August 1967, because in these Certificates tax for at least part of the entire period was levied at rates which were not valid prior to 20th August 1964.

Orders set aside.