

1963

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

A. ABDUL BASIR, Petitioner, and THE GOVERNMENT AGENT,  
PUTTALAM, Respondent

*S. C. 484/62—Application for Revision in M. C. Puttalam, 13,711*

*Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249), as amended by Act No. 20 of 1961—Section 6—“Heavy oil”—Retrospective effect of the amending Act.*

A taxing statute may be amended so as to operate retrospectively. The effect, therefore, of the retrospective provision in section 2 (2) of the Heavy Oil Motor Vehicles Taxation (Amendment) Act, No. 20 of 1961, is to render diesel oil motor vehicles subject to the special tax for periods prior to the date of enactment of the amending Act.

**A**PPPLICATION to revise an order of the Magistrate's Court, Puttalam.

*H. W. Jayewardene, Q.C.*, with *S. C. Crossette-Thambiah*, for the Petitioner.

*H. L. de Silva*, Crown Counsel, for the Respondent.

*Cur. adv. vult.*

October 14, 1963. H. N. G. FERNANDO, J.—

The Heavy Oil Motor Vehicles Taxation Ordinance (now Chapter 249) imposes on what are called “Heavy oil motor vehicles” a tax determined in a prescribed manner. The vehicles to which the tax applies are those which use heavy oil as fuel, and the term “heavy oil” was originally defined in Section 6 of the Ordinance to mean any oil not subject to import duty under the Customs Ordinance. It is apparent therefore that originally the object of the Ordinance was to impose a tax on certain types of fuel as an alternative to the levy of import duty on those types.

In 1956, by *Gazette Notification* of 12th July of that year, diesel oil became subject to an import duty leviable under the Customs Ordinance and in consequence diesel oil ceased to be within the scope of the definition of “heavy oil” within the meaning of Chapter 249. Hence the petitioner in the present case who was the owner of a motor vehicle using diesel oil ceased from July 1956 to be liable to pay the tax imposed by that Chapter.

By an Amending Act No. 20 of 1961, Parliament amended the definition of “heavy oil” in order to bring diesel oil again within the scope of the definition, and this amendment was given retrospective effect as from 13th July, 1956. The present appellant who apparently had not paid the tax under Chapter 249, at least for the period December 1959 to

August 1961, was in September 1961 called upon in the prescribed manner to pay the tax for that period. There is no doubt that he is liable in respect of the period April 25th, 1961, to August 1961 to make the payment, for the Amending Act came into operation on April 25th, 1961. But there remains the question whether he is liable to make the payment for any period prior to April 25th, 1961.

The effect of the retrospective provision in Section 2 (2) of the Act No. 20 of 1961, is that, as from the 13th July, 1956, the definition of the term "heavy oil" must be held to have included diesel oil within its scope. This Court has recently had occasion in a very important context (*R. v. Liyanage et al.*<sup>1</sup>) to consider the sufficiency of language similar to that which occurs in Act No. 20 of 1961, and held that the language sufficed to create a penal offence retrospectively. A taxing statute does not require to be construed more strictly than a penal statute. I am compelled to hold therefore that the effect of the amending legislation was to render diesel oil motor vehicles subject to the special tax for periods prior to the date of enactment of the amending Act.

In the Magistrate's Court, Counsel read a statement made in the House of Representatives on the 4th of April 1961 by the Leader of the House, in which it was stated 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. Unfortunately this statement cannot influence our construction of the meaning of the amending legislation because on the face of the Act there is no room for doubt as to the meaning. But if in fact the Act has gone further in its effect than the Minister intended, perhaps this would be a case for *ex gratia* relief.

I would dismiss the application but without costs.

*Application dismissed.*

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