

L.9. MUHAMED KUTTY, K.B.—Export Import and Inter-State Sales - A Study in Tax Law—1989—Dr. N.S. Chandrasekharan

The study deals with the nature of sales tax, its coverage, the constitutional prohibitions, the restrictions on levy of sales tax in the case of export, import and inter-state sales and brings out the vital problems and suggests solutions.

The constitutional scheme of prohibition of tax on sale and purchase in the course of export and import is analysed with a historical perspective. The early development of law from the Travancore cases is analysed and critically evaluated.

The study reveals how the subsequent judicial decisions had at times pushed to the extreme the distinction drawn in the Travancore cases between a sale 'in the course of' export and one 'for the purpose of' export.

The development of the law relating to taxation of sale and purchase in the course of export and import after the sixth amendment to the Constitution and the enactment of the Central Salestax Act are examined and the fluctuating trends analysed and the validity of the principles evaluated. The effect of canalisation of export and import on the incidence of sales taxation, the development of the law and its impact on the export, import and domestic trade are subjected to close study.

Some legislative changes were brought about extending the scope of exemption to penultimate sale culminating in export. This was with a view to mitigating the hardship to the export trade. The discussion brings to light legislative loopholes. Further changes needed in the legislation are suggested with cogent reasons.

The tax liability on goods imported against actual users licence is studied. The impact of the present law on industrial development is analysed. A case is made out for extending the exemption to the first sale after import.

The problems connected with inter-State sale are examined from the very early stage of Explanation Sales. How far the evil of multiple taxation was set at naught by the introduction of Article 286 in the Constitution is examined.

An inquiry into the enactment of the constitutional provision is made and the judicial interpretation of the concept of inter-State sale discussed. The tests of sales occasioning inter-State movement and of sale effected by transfer of documents of title during the movement of goods from one State to another are examined elaborately along with the problems involved in effecting inter-State transactions through agents and branch offices. The study examines how the constitutional and the legislative provisions came to be interpreted at the hands of the judiciary and makes a reasonable plea for legislative changes including further extension of control in respect of more items consumer goods and raw materials.

The study examines the constitutional framework in its historical setting for translating into practice the freedom of trade and commerce. An empirical investigation made possible a realistic assessment of the impact of the existing law. The results of the study are analysed and suggestions made for progressive development of the law.