
(1960) 03 AP CK 0002

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 90 of 1958

Burmah Shell Oil Storage and Distributing Company of India
Ltd., Vizagapatnam by its Constituted Attorney A.P. Bhalla

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 25-03-1960

Acts Referred:

Constitution of India, 1950 — Article 286(1)

Citation : AIR 1960 AP 619 : (1960) 11 STC 533

Hon'ble Judges : P. Chandra Reddy, C.J.; Sanjeeva Row Nayudu, J

Bench : Division Bench

Advocate : T. Anantababu, for the Appellant; 2nd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sanjeeva Row Nayudu, J.—Two points have been taken by Mr. Anantha Babu, the learned Counsel for the assessee in this tax revision case :

1. Whether the sale of furnace oil and other petroleum products to the ocean-going ships directly from the bonded warehouse of Vizagapatnam port was a sale in the course of import or export within the meaning of the Article 286(1)(b) of the Constitution and as such exempt from the levy of sales tax under the article;
2. That the Deputy Commissioner of Commercial Taxes had no power or jurisdiction to revise the assessment already made by him on appeal as an appellate authority by subsequent exercise of revisional powers under the Madras General Sales Tax Act and the Hides framed thereunder.
2. Before dealing with the above questions, it would be necessary to state a few facts ;

The assessee, namely, the Burmah Shell Oil Storage and Distributing Company of India Limited, Vizagapatnam, hereinafter referred to as the petitioner, is a dealer

in petroleum products. In the course of the business, the petitioner was importing into India kerosene, furnace oil, petroleum and other petroleum products in large stocks for sale in India. As regards the turnover relating to the products so imported into India for sale and consumption there, there is no dispute as to the liability of the petitioner to pay sales-tax.

In addition to the above business, the petitioner was retaining certain of the petroleum products that had been imported into India in the bonded warehouse in the Vizagapatnam port area and selling the same to ocean-going vessels leaving Vizagapatnam port, and the turnover, of such sales for the assess men year in question 1953-54 amounted to Rs. 3,88,813-4-0. The Deputy Commissioner of Commercial Taxes, Kakinada, noticed that the assessment of sales-tax in respect of this turnover had previously not been made by a mistake, and accordingly in exercise of his powers of revision, revised the assessment, including therein this additional turnover.

It must be noticed in this connection that on the original assessment made by the Commercial Tax Officer an appeal had been preferred by the petitioner to the Deputy Commissioner of Commercial Taxes who had disposed of the appeal confirming the assessment made by the Commercial Tax Officer.

3. We shall consider the first question that is raised by the learned Counsel for the petitioner in this case. It is contended that when property is still in the process of import, no tax on the sale or purchase of such goods could be validly made, having regard to the language of Article 286(1)(b) of the Constitution. This Article is in the following words ;

286(1) No law of the State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place:

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India;

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

4. The contention of the learned counsel for the petitioner is, that the petitioner imports oils and other petroleum products from other countries into India for sale in India, the place of entry being the Vizagapatnam harbour. He points out that in regard to the stocks imported for sale and consumption in India, these stocks are moved across the customs barrier paying the necessary customs duty thereon, and thereafter the import is complete, and the petroleum products sold could be rightly subjected to sales tax. As a contrast to this, he wants us to hold that so far as those petroleum products, which are landed at the Vizagapatnam harbour, but are not intended for consumption in India, they are stocked in the bonded-warehouses, and they are supplied to ocean-going vessels under contracts with foreign firms controlling the movement of these vessels.

From this, he argues that as the goods in question had not crossed the customs barrier the import thereof cannot be said to have been completed, and as the same are sold to ocean-going vessels, those sales at any rate must be regarded as in the course of export, so that both when the oil etc. are imported and before they crossed the customs barrier they are exported, the sale of such products must be regarded as having been effected in the course of the import which had not been completed and in the course of the export which had already commenced. Hence according to him, Article 286 is a complete answer to any levy of sales tax in respect of these products. In support of his contention Mr. Ananta Babu placed reliance on the following observations in the decision reported in *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, :

"It would seem, therefore, logical to hold that the course of the export out of, or of the import into, the territory of India does not commence or terminate until the goods cross the customs frontier. It is, However, to be noted that the question of imposing sales tax on transfer of goods in the course of export would not often arise in practice for, where the goods are transported pursuant to a contract of sale already concluded with a foreign buyer and the shipping documents having been forwarded to him, any further sale of such goods by the Indian seller is impossible and where the export trade is conducted through representatives or branch offices, the sale by the latter of the exported goods usually takes place abroad and would not then be subjected to tax by the State of India, It is relation to import of goods from abroad that the question of exemption assumes practical importance".

The test propounded by their Lordships of the Supreme Court in determining whether the goods are still in the process of import or whether the importation is complete, is, that when the goods crossed the customs frontier the import is regarded as having terminated, "Customs frontiers" has been defined in the Notification under the Government of India Act 1935. The Government of India, which, under Item 19 of List I of the Government of India Act, 1935, possessed the power to define the customs frontiers, defined them by a Notification dated 1-4-1937 as follows ;

"The frontier, whether one or more than one whether sea or land, whether exterior or interior, of British India."

This power to define the customs frontiers is vested in the Parliament under Entry 41 of List I of the Constitution. But our attention has not been drawn to any subsequent notification of the Government of India or any Act of Parliament defining the customs frontiers of India in a manner different to the Notification already in force under the Government of India Act. So that, the customs frontier must be regarded as the same as the frontier of India and its frontier extends along the sea to a width of six miles, which, according to law has been declared as the territorial water belt.

So that, as soon as that frontier is crossed by the goods, the import within the meaning of the Supreme Court's decision must be regarded as complete. Applying this to the facts of the present case, the moment the oils and petroleum products crossed the outer limit of the territorial sea abutting the shores of Visakhapatnam, and they enter the territorial water limits of India, the goods must be regarded as having crossed the customs frontier, so that, the importation of the goods into India must then be regarded as complete and once the customs frontier is crossed, the exemption under Article 286(1)(b) of the Constitution will vanish as the goods must be regarded as having ceased to be in the course of the import, and any sale effected thereafter, whether in the limits of the territorial sea or on land, from out of a bonded warehouse, would be subject to sales tax, not being covered by the exemption under Article 286(1)(b) of the Constitution.

We also see no force in the contention that the sales in question already effected within the territorial limits of India must be regarded as in the course of the export as they were made to ocean going vessels. The ingredients that are involved in an export sale have been set out by their Lordships of the Supreme Court in *State of Travancore-Cochin v. Bombay Company Ltd. Alleppy* (1952) 3 STC 434 : AIR 1952 SC 366 This is what they stated :

"A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other."

Obviously these tests are not fulfilled in this case as the sales are effected in India to ocean going vessels, not as common carriers but to the vessels themselves for their own consumption. In other words, the sale of the furnace oil etc. to the ocean going ships takes place then and there for the consumption of the purchaser, There is, therefore, no question of any export at all involved in this case, the one and important condition required to make it an export sale being that the delivery of the goods should be effected to the common carrier for the purpose of delivery to the buyer at the other end in the foreign country. We see no difficulty in rejecting this contention of Mr. Ananta Babu the learned counsel for the petitioner.

5. The second point taken, as already stated, is that the Deputy Commissioner of Commercial Taxes, having dealt with an appeal against the assessment by the Commercial Tax Officer and having confirmed the same, is precluded from exercising his revisional powers, and enhancing the assessment. In this connection, the relevant provisions bearing on this question would require to be noticed. Section 11(1) of the Madras General Sales Tax Act 1939 is as follows :

"Any dealer objecting to an order passed or proceeding recorded under the provisions of this Act, may, within thirty days from the date on which the order or proceeding was served on him, appeal to such authority as may be prescribed.

x x x x x (2) The appeal shall be in the prescribed form and shall be verified in the prescribed manner.

(3) The appellate authority may, after giving the appellant an opportunity of being heard, pass such orders on the appeal as such authority may think fit.

(4) Every order passed in appeal under this section shall, subject to the provisions of Sections 12 to 12-C be final."

Section 12(1) deals with the powers of Authorities competent to pass orders in revision and is as follows:

"12(1) The Board of Revenue may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it under the provisions of this Act. including sub-section (2) of this section, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding and may pass such order in reference thereto as it thinks fit.

(2) powers of the nature referred to in sub-section (1) may also be exercised by the Deputy Commissioner of Commercial Taxes and the Commercial Tax Officer in the case of orders passed or proceedings recorded by authorities, officers or persons subordinate to them.

(3) In relation to an order of assessment passed under the Act, the powers conferred by sub-sections (1) and (2) shall be exercised;

(i) by the Commercial Tax Officer, only within a period of three years from the date on which the order was served on the assessee; and

(ii) by the Deputy Commissioner of Commercial Taxes and the Board of Revenue, only within a period of four years from the date on which the order was served on the assessee.

(4) No order shall be passed under sub-section (1) or (2) enhancing any assessment, unless an opportunity has been given to the assessee to show cause against the proposed enhancement. A reading of these provisions makes it clear that the powers exercisable on appeal u/s 11(3) are expressly made subject to the provisions of Section 12 to Section 12-C which includes the powers of revision vested in the Deputy Commissioner of Commercial Taxes. So that reading the two provisions together, the inference is irresistible that even when "powers were exercised u/s 11, such exercise of powers is subject to the exercise of revisional powers u/s 12, and while an appeal could only be preferred within a very short period of thirty days u/s 11(1), a considerably extended period of four years is provided for the exercise of revisional powers u/s 12 by the Deputy Commissioner of Commercial Taxes and the Board of Revenue; and

the only restriction in the matter of exercise or revisional powers by way of enhancing the assessment is the giving of a notice under sub-section 4 of Section 12, which has been complied with in this case.

On a consideration of the provisions of the Act, we are satisfied that even though the Deputy Commissioner of Commercial Taxes had confirmed the assessment on the appeal preferred by an assessee, he would still have the power of revision u/s 12(2) and so long as he complied with the requirements of notice under sub-section (4) of Section 12, any order of enhancement passed by him could not be attacked on grounds of jurisdiction. Moreover this question was not raised before the Tribunal or even in the Memorandum of Revision Petition.

6. There is therefore no substance in the objections taken by Mr. Ananta Babu, the learned counsel for the petitioner in this case. In the result, this petition fails and is dismissed with costs. Advocate's fee Rs. 200/-.