(1965) 08 AHC CK 0038

In the Allahabad High Court

Case No : Misc. Case No. 102 of 1957

Commissioner of Sales Tax APPELLANT

Vs

Upper Doab Sugar Mills Ltd. RESPONDENT

Date of Decision : 26-08-1965

Acts Referred:
Constitution of India, 1950 — Article 286

Citation : (1966) 17 STC 19

Hon'ble Judges : M.C. Desai, C.J;S.C. Manchanda, J

Bench : Division Bench

Advocate : H.P. Gupta, for the Respondent

Judgement

M.C. Desai, C.J.—This is a statement of a case submitted by the Judge (Revisions) Sales Tax, U.P., inviting this Court to answer the question:-

Whether in the circumstances of the case the turnover of Rs. 11,34,162-9-0 was exempt from tax by virtue of the provisions of Article 286(1)(a) of the Constitution ?

2. The facts are as follows. The dealer is Upper Doab Sugar Mills, which produces and sells sugar. For the assessment year 1952-53 it sold sugar at the mills. The sugar was carried from the mills by transport agents to places outside the State of U.P. and consequently the Judge (Revisions) held that the sales took place outside the State. He, therefore, held that the turnover of the sales was exempt from taxation by Article 286(1)(a) of the Constitution. Article 286(1)(a) lays down that no State can impose a tax on the sale of goods where the sale takes place outside the State, and that for the purpose of that provision a sale is deemed to take place in the State where actual delivery of the goods takes place for consumption in it. A sale takes place outside the State desiring to tax it if it takes place in another State. If there is a sale and it takes place in another State it means that it takes place outside the State. The Explanation to the provision of Article 286(1)(a) explained what was meant by a sale taking place outside the

State, e.g., in another State. It laid down that a sale took place in another State only if actual delivery took place in the other State and for consumption there. Unless both the conditions, namely, actual delivery in the other State and consumption in the other State, were actually satisfied, it could not be said that the sale took place outside the State i.e., in another State. Article 286 contained a prohibition, it being on a State''s taxing a sale taking place in another State. So the onus lay upon the dealer to show that the sale that was taxed by the State had taken place in another State and he could discharge the onus only by showing that the actual delivery took place in another State and that the goods were to be consumed in that State. If he failed to show the existence of either of the two conditions he failed to show that the State had no power to tax the sale or that the tax was invalid. The Judge (Revisions) held in this case that the sales took place outside the State of U. P. simply because the sugar was exported outside the State. He did not go into the question whether it was to be consumed outside the State or not. Without finding that it was to be consumed outside the State, he held that the sales were exempted from taxation by Article 286(1)(a) and set aside the assessment order made by the Sales Tax Officer. Then at the instance of the Commissioner of Sales Tax he submitted this statement to this Court. The statement came before a Bench of this Court, of which one of us was a member, previously. The Bench found that the statement was incomplete because it did not mention whether the assessee had instructed the transport agents to load the sugar in trucks and deliver it to the purchasers or the purchasers had instructed them to do so. It could not be said that the actual delivery was made outside the State merely because the sugar reached the purchasers outside the State. The sugar could reach the purchasers outside the State in spite of their taking delivery of it within the State ; if they took delivery at the mills and engaged transport agents to load it in their trucks and carry it across the border to their place of business it meant that the actual delivery was made within the State. The sugar was transported across the border to places in another State but that would be the act of the purchasers themselves, The place of delivery cannot depend upon what the purchaser does after taking delivery. If a purchaser takes delivery within the State it cannot be said that he takes delivery outside the State merely because after the delivery he transports it across the border to another State. Therefore, the finding ''of the Judge (Revisions) that the delivery took place outside the State merely because the sugar was transported from the State to another State was not correct. A further fact had to be found, it being that the transporting had been done by the assessee''s agents and not by the purchaser''s agents. It was a question of fact whether the transport agents acted as agents of the assessee or of the purchasers. As the statement did not mention this fact this Court called upon the Judge (Revisions) to submit a supplementary statement mentioning it.

3. On receipt of this order of this Court the Judge (Revisions) called upon the assessee and the Commissioner to produce evidence. The assessee produced an affidavit and no other evidence. After considering the affidavit and other material

on the record the Judge (Revisions) has now submitted a supplementary statement to the effect that the transport agents acted as agents of the purchasers and not of the assessee. This means that the actual delivery took place inside the State and not outside it. Actual delivery means actual delivery of the goods sold, whether to the purchaser himself or to his agent or servant, as distinguished from constructive delivery of the goods to the purchaser or his agent or servant through a receipt or other title deed. Here the sugar itself was actually delivered at the mills. Since it was delivered to the agents of the purchasers it was actual delivery to the purchasers. Since there is no other State in which the actual delivery took place, it cannot be said that there is another State in which the sales took place. In other words, the sales took place in this State. The Explanation to Article 286(1)(a) made it clear that a sale could not be said to have taken place in a State in which there was no actual delivery. As it could not be said that the sales took place in another State the bar imposed by Article 286(1)(a) did not apply and it could not be said that U. P. had no jurisdiction to tax the sale.

4. Sri H.P. Gupta contended that the Judge (Revisions) had no jurisdiction to record fresh evidence on receipt of the order of this Court asking for a supplementary statement. He is right; but in this case the Judge (Revisions) has not relied upon any evidence produced by the Sales Tax Commissioner on receipt of this Court''s order. As we said earlier, the Commissioner of Sales Tax did not produce any evidence at all and the finding of the Judge (Revisions) that the transport agents acted under instructions from the purchasers is not based upon any evidence produced by the Commissioner.

5. Sri H.P. Gupta then argued that the Judge (Revisions) relied upon the failure of the assessee to produce certain evidence and that since he could not receive any fresh evidence he also could not draw any adverse presumption from the assessee''s failure to produce additional evidence. This is also correct but there was an earlier failure from which the presumption could be drawn. It was the assessee''s duty to produce evidence in the first instance even before the Judge (Revisions) had decided the case. It was for the assessee to show that the transport agents had carried the sugar from the mills across the border to places outside the State under instructions from itself, and not the purchasers, and that consequently the actual delivery was effected by it outside the State. It had failed to produce this evidence and it was open to the Judge (Revisions) to draw an adverse presumption from this initial failure on his part. He was not prevented from drawing the presumption merely because he illegally gave the assessee a fresh opportunity of producing evidence and it failed again to do so.

6. One more contention of Sri H.P. Gupta was that unless it was found that the sugar was to be consumed in this State it could not be held that the sales took place in this State. As we said earlier, the question before us is not whether the sales took place in this State but whether they took place in another State. The ban was on taxing a sale taking place in another State and the Explanation

clearly prevents our finding that the sales in question took place in another State in the absence of actual delivery and consumption both being in another State. Once it is found that actual delivery did not take place in another State, the question whether the sugar was to be consumed in another State becomes redundant. Even if it was not to be consumed in another State the sales did not take place in another State, i.e., outside this State.

7. Lastly, Sri H.P. Gupta contended that the sales were without the sanction of the Government and so were illegal and could not be taxed. There is nothing in the statement of the case about this and the question that has been referred to us does not involve the questions whether the sales were valid or not and whether the turnover of an invalid sale can be taxed or not. These questions were not raised before the Judge (Revisions) and are not dealt with by him and no question, not arising out of the order of the Judge (Revisions), can be referred to us or can be answered by us.

8. In the result, our answer to the question is in the negative. We direct that a copy of the judgment shall be sent to the Judge (Revisions) Sales Tax, U.P., and the Commissioner of Sales Tax, U.P., as required by Section 11(6) under the seal of the Court and the signature of the Registrar. The Commissioner of Sales Tax shall get his costs of this reference which we assess at Rs. 200 from the assessee. Counsel''s fee is assessed at Rs. 200.