

(1967) 01 AHC CK 0022

In the Allahabad High Court

Case No : Misc. Sales Tax Case No. 137 of 1964

Damodar Dass Vishwanath

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 20-01-1967

Acts Referred:

Central Sales Tax Act, 1956 — Section 5
Constitution of India, 1950 — Article 286

Citation : (1968) 22 STC 60

Hon'ble Judges : M.H. Beg, J; Jagdish Sahai, J

Bench : Division Bench

Advocate : P.N. Bakshi, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This reference u/s 11(1) of the U.P. Sales Tax Act (hereinafter referred to as the Act) has been made by the Additional Judge (Revisions) Sales Tax, U.P., who has submitted a statement of the case and invited our opinion on the following questions of law :

(1) Whether under the circumstances and facts as stated above, the sales effected to Nepal buyers can be considered to be sales in the series of integrated activities, occasioning export of goods out of territory of India, and whether they are covered by Article 286(1)(b) of the Constitution ?

(2) Whether on the facts and circumstances as stated above the delivery of goods taken by the Nepal buyer on the last railway terminus in the State of U.P. (India) which was the only way of taking delivery amounts to actual delivery within the State and the resultant sale subject to tax under the U.P. Sales Tax Act?

2. The dealer in the present case is M/s. Damodar Dass Vishwanath of Farrukhabad (hereinafter referred to as the assessee). They deal in brass-ware

and scrap and carry on their business in the city of Farrukhabad. During the years 1956-57 and 1958-59 they claimed to have exported some goods to Nepal and claimed exemption for those sales on the ground that the sales have been made in the course of exports. The goods were sold to dealers who belong to the State of Nepal. The delivery of the goods was made at Nepalganj which is the railway terminus for Nepal. The Sales Tax Officer included the turnover in respect of the goods sold to Nepal dealers in the assessment order. The assessee's appeal for the year 1956-57 was dismissed by the Judge (Appeals) Sales Tax, but that for the year 1958-59 was allowed by him, the Judge (Appeals) Sales Tax, by remanding the case for reassessment after giving an opportunity to the assessee to furnish a certificate from the customs barriers. The Commissioner of Sales Tax filed a revision application against the order of the Judge (Appeals) Sales Tax made in connection with the assessment year 1958-59 and the assessee filed one in respect of the assessment order made for the year 1956-57. The Judge (Revisions) dismissed the revision application filed by the assessee but allowed the one filed by the Commissioner of Sales Tax.

3. Thereupon at the request of the assessee the two questions stated above were referred to this Court along with the statement of the case.

4. The statement of the case clearly mentions that the assessee had sold the goods to dealers who belong to the State of Nepal and that the delivery was given at Nepalganj which is within India. It has been further stated that the Nepal dealer was free to take the goods inside Nepal State or to sell them in Nepalganj which, as stated earlier, is a part of India. On the basis of the facts stated, especially the fact that the Nepal dealer had complete freedom to sell goods at Nepalganj it cannot be said that the assessee had made sales to the Nepal dealers in the course of exports. Article 286(1)(b) which was introduced in the Constitution by the Sixth Amendment reads thus:

286. (1) No law of a 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) ...

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

5. Section 5 of the Central Sales Tax Act enacts that "sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India." The assessee's case has been that the sales in question have occasioned export. We are unable to agree that on the basis of the facts stated it can be said that the sales had occasioned export. In view of the finding that the Nepal dealer was free to sell the goods at Nepalganj, i.e., within India, it is not possible to hold that the sales had occasioned export. The view that we are taking finds support from the observations made by the

learned Judges of the Supreme Court in *Ben Gorm Nilgiri Plantations Company, Coonoor and Others Vs. Sales Tax Officer, Special Circle, Ernakulam and Others*, which are as follows :

To constitute a sale in the course of export of goods out of the territory of India, common intention of the parties to the transaction to export the goods followed by actual export of the goods to a foreign destination is necessary. But intention to export and actual exportation are not sufficient to constitute a sale in the course of export, for a sale by export "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": *The State of Travancore-Cochin and Others Vs. The Bombay Co. Ltd.*, A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that there must be an intention on the part of both the buyer and the seller to export, there must be an obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export. And to occasion export there must exist such a bond between the contract of sale and the actual exportation, that each link is inextricably connected with the one immediately preceding it. Without such a bond, a transaction of sale cannot be called a sale in the course of export of goods out of the territory of India....

6. Mr. Pachauri contends that it is clearly mentioned in the statement of the case that the dealer of Nepal had taken the goods to that country and that Nepalganj is a terminus for Nepal, but in our opinion that circumstance is not enough to lead to the conclusion that the sales had occasioned export. It has not been established and the statement of the case does not show that the common intention of the parties to the transaction was to export. In fact it has been clearly stated in the statement of the case that the Nepal dealer was free to. sell goods in Nepalganj or to take them to Nepal. Consequently, there was no direct connection between the sale and the export and the activity of sale and that of the export were not so integrated that the connection between the two could not be voluntarily interrupted. In the absence of it being proved or stated that the intention of the seller as also of the buyer was to export the goods to Nepal and until the possibility of the goods being sold at Nepalganj in India had been excluded it is impossible to hold that the sales in question had occasioned the export. That being our view our answer to question No. (1) is in the negative

against the assesses and in favour of the department.

7. In View of what we have stated above, it is not really necessary to answer question No. (2). However, since the question has been referred to us our answer to the question is in the affirmative and in favour of the department and against the assessee.

8. The assessee shall pay to the department a sum of Rs. 100 by way of costs of this reference.