

(1960) 07 AP CK 0012
In the Andhra Pradesh High Court
Case No : L.P.A. No. 28 of 1959

Devurapalli Apparao and Others

APPELLANT

Vs

The State of Madras (Now Andhra Pradesh)

RESPONDENT

Date of Decision : 04-07-1960

Acts Referred:

Constitution of India, 1950 — Article 286
Government of India Act, 1935 — Section 140

Citation : (1960) 11 STC 577

Hon'ble Judges : Chandra Reddy, C.J; Sharfuddin Ahmed, J

Bench : Division Bench

Advocate : K.B. Krishnamurthy, for the Appellant; The Second Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C J.

1. This appeal, under Clause 15 of the Letters Patent is against the judgment of Umamaheswaram, J., in Appeal No. 1066 of 1953.

2. This arises out of the assessment made by the Sales Tax Department on a turnover of Rs. 3,30,303-10-11 relating to the period from 1st April, 1949, to 25th January, 1950. During this period, the asses-see, whose legal representatives are the appellants, exported copra to merchants in the United Kingdom and other European countries. Exemption was claimed in regard to this turnover on the ground that they did not constitute sales within the meaning of Section 2(h) of the Madras General Sales Tax Act (IX of 1939). It was contended by the appellants that as the sales took place outside India there was no scope for invoking the Madras General Sales Tax Act. This plea did not find favour with the department with the result that this turnover was brought to tax. This was confirmed on appeal by the Commissioner of Commercial Taxes.

3. Questioning the validity of this assessment, the appellants filed a suit in the

Subordinate Judge's Court, Kakinada (O.S. No. 111 of 1951) for a declaration that the assessment to sales tax for that period was ultra vires and for an injunction restraining the respondent Government from collecting the same.

4. The suit was dismissed by the Subordinate Judge in the view that the sales which took place prior to 26th January, 1950, fell within the scope of Section 2(h) of the Sales Tax Act, since the goods sold were actually in the State of Madras at the time when the contract of sale was made and it was, therefore, competent for the Department to assess such sales.

5. An appeal preferred against that judgment was dismissed by Umamaheswaram, J., who concurred in the opinion of the Subordinate Judge. The decision of the learned Judge is challenged before us in this Letters Patent Appeal.

6. The main contention advanced by Sri K.B. Krishnamurthy in support of this appeal is that the tax levied by the Department is indirectly an export duty and the power to impose such an export duty is vested exclusively in the Central Government, which power is derived u/s 140 of the Government of India Act, 1935, read with entry 44 of List 1 of the Seventh Schedule. His argument is that the tax levied by the Sales Tax Department on these sales is indirectly an export duty and, consequently, it is outside the purview of the Madras General Sales Tax Act.

7. We do not think we can give any weight to this argument. The sales tax is in no sense a tax on goods exported outside a territory. As pointed out by the Bench of the Madras High Court in *Murugan & Co. v. The State of Madras* (1954) 2 M.L.J. 682

The sales tax is a tax on the transaction of sale. It is in no sense a tax on goods exported outside the territory. "The sphere of the two taxes are entirely different and it is impossible to consider the sales tax in substance or in effect as a tax on goods by reason of the taxable event of export.

8. We find it difficult to agree with the learned counsel for the appellants that the tax on these sales is in the nature of export duty which falls within the ambit of entry 44, List 1, of the Seventh Schedule to the Government of India Act, 1935. It is strenuously contended by the learned counsel that such sales as these should be regarded as exports and, therefore, cannot be subjected to tax. As substantiating this theory, he called in aid the following passage from the judgment of the Supreme Court in *State of Travancore-Cochin v. The Bombay Company Ltd.* 1952 S.C.J. 527 at 530.

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.

9. We do not think that this passage renders any assistance to the appellants. There, the learned Judges were denning an export sale. They did not lay down that a sale occasioning export was an export and was, therefore, attracted by entry 44 of List 1. On the other hand, the remarks of the learned Judges in the following paragraphs furnish an answer to the argument now advanced by Sri Krishnamurthy. Says the learned Chief Justice at page 531:

It might well be argued, in the absence of a provision like Clause (b) prohibiting in terms the levy of tax on the sale or purchase of goods where such sales and purchases are effected through the machinery of export and import, that both the powers of taxation, though exclusively vested in the Union and the States respectively, could be exercised in respect of the same sale by export or purchase by import, the sales tax and the export duty being regarded as essentially of a different character. A similar argument induced the Federal Court to hold in 1942 F.C.R. 90 (Federal Court) that both central excise duty and provincial sales tax could be validly imposed on the first sale of groundnut oil and cake by the manufacturer or producer as "the two taxes are economically two separate and distinct imposts." Lest similar reasoning should lead to the imposition of such cumulative burden on the export-import trade of this country which is of great importance to the nation's economy, the Constituent Assembly may well have thought it necessary to exempt in terms sales by export and purchases by import from sales tax by inserting Article 286(1)(b) in the Constitution.

10. In the light of these observations, it is futile to contend that tax on a sale which results in export of the goods to the foreign country partakes of the character of export duty. In this case, it is unnecessary for us to consider as to where exactly the title to the goods passed, having regard to Clause (a) of explanation 2 to Section 2(h) of the Madras General Sales Tax Act which was held to be valid in Poppatlal Shah v. State of Madras 1952 2 M.L.J. 593 . The validity of that provision cannot be questioned.

11. For these reasons, we are firmly of opinion that the tax was legally and validly levied by the Department and we do not agree that the law stated in Murugan & Co. v. State of Madras 1954 2 M.L.J. 682 is not sound. There can be little doubt that the law was correctly stated in that decision and it does not require any reconsideration.

12. In the result, the appeal is dismissed with costs.