
(1963) 03 PAT CK 0001
In the Patna High Court
Case No : Misc. Judicial No. 282 of 1961

Dulichand Hardwari Mull

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 22-03-1963

Acts Referred:

Constitution of India, 1950 — Article 286(1)

Citation : AIR 1963 Patna 359 : (1968) 22 STC 255

Hon'ble Judges : V. Ramaswami, C.J;N.L. Untwalia, J

Bench : Division Bench

Advocate : Rajeshwari Prasad and Akhouri Binode Sekhar Sinha, for the Appellant; Govt. Pleader and Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

1. In this case the petitioner Dulichand Harwari Mull is a firm which carried on business at Nirmali in the district of Saharsa. The petitioner firm is registered under the Bihar Sales Tax Act in the district of Darbhanga and bears registration certificate No. DR 68. For the period from the 1st of April, 1959, to the 30th of June, 1959, the petitioner was assessed to sales tax by the Superintendent of Sales Tax, Darbhanga Circle, on the 22nd February, 1960. The petitioner claimed before the Superintendent of Sales Tax that the sale of goods made to customers in Nepal to the extent of Rs. 50,015.55 nP. should be exempted from assessment of sales tax, but the claim of the petitioner was rejected by the Superintendent of Sales Tax. The relevant portion of the order of the Superintendent of Sales Tax reads as follows:-

"The dealer claimed that the despatches to the extent of Rs. 50,015.55 nP. made to Nepal parties should be allowed in full. It was found that the credit memos were prepared in the name of the Nepal parties. Bharisar receipts were in the name of the selling parties. Bhansar tax (Chungi) paid by the selling dealer does not find entry into his accounts. The goods having been sold in Bihar in the Indian Union, prices having been paid either in full or part thereof the title of the

goods passed in India in the hands of the purchasers. The delivery of the goods to the purchaser or his representatives is finalised in India without any conclusive evidence to establish that the dealer continued to be owner of the goods up to and beyond the time when the goods entered into the export or until after the goods cross the customs barrier to make the sale. The books of accounts do not show that the cost of transport or on custom duty borne by the selling dealer. I am, therefore, of the view that the sales are interstate sales and completed in India and transport, if any, to Nepal takes place under the direction of the purchaser. In view of the facts stated above, the transactions are liable to assessment under the Bihar Sales Tax Act, 1947. I therefore, assess to tax the despatches of Rs. 50,015,55 nP. made to Nepal parties, the details of which are as follows: -

At the rate of 2 np. ... Rs. 19,820/65np. At the rate of 4 np. ... Rs. 29,638/36np. At the rate of 7 np. ... Rs. 462/30np. Dharmadha etc. ... Rs. 94/24np. The sale of taxable goods at various rates is finally determined as below: At the rate of 2 np. ... Rs. 99,683/47np.+ Rs. 19,820/65np. or Rs. 1,19,454/12 np. At the rate of 2 np. ... Rs. 61,564/97np.+ Rs. 29,638/36np. or Rs. 91,203/33np. At the rate of 2 np. ... Rs. 820/75np.+Rs. 462/30 np.or Rs. 1,283/05

Allowing the statutory deduction at the rate of 2% u/s 5(2)(b), the taxable turnover comes to Rs. 1,17,065/-, Rs. 89,379/- and Rs. 1,258/- taxable at the rate of 2 nP., 4 nP. and 7 nP., respectively. Tax thereon is assessed at Rs. 2,341.30 nP., Rs. 3,575.16 nP. and Rs. 88.06 nP. or Rs 6,004.5-2 nP. only."

2. The petitioner has moved the High Court under Article 227 of the Constitution for setting aside the order of the Superintendent of Sales Tax on this point and for making a fresh assessment in accordance with law.

3. On behalf of the petitioner the argument is put forward that the Superintendent of Sales Tax had no legal authority to impose tax on the transaction of sale between the assessee and his customers in Nepal to the extent of Rs. 50,015/-and odd because of the constitutional bar imposed under Article 286(1)(b) of the Constitution, which is to the following effect: -

"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) 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.

Explanation. -- For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the" goods has by reason of such sale or

purchase passed in another State."

In our opinion the argument put forward on behalf of the petitioner is well founded and must be accepted as correct. Upon the facts found by the Superintendent of Sales Tax it is manifest that the petitioner is entitled to exemption from I payment of Sales Tax with regard to these transactions under the provisions of Article 286(1)(b) of the Constitution. In our opinion the present case is governed by the principle of law laid down by the Supreme Court in *State of Travancore-Cochin v. Bombay Co., Ltd., Alleppey* 1952 3 STC 434 : (AIR 1952 SC 366). It was pointed out by the Supreme Court in that case that sales and purchases which themselves occasion the export or import of goods, as the case may be, out of or into the territory of India come within the exemption of Article 286(1)(b) of the Constitution of India. In that case the Supreme Court rejected the view that the clause should be construed as limited in its operation only to sales and purchases effected during the transit of the goods. It was held in that case by all the learned Judges, in a unanimous judgment, that export sales of "commodities to foreign buyers on c. i. f, or f. o. b. terms would be exempt from sales tax under Article 286(1)(b) of the Constitution of India. At page 438 (of STC): (at pp. 367-368 of AIR) of the report Patanjali Sastri, C. J., has observed as follows in the course of his judgment:-

"We are clearly of opinion "that the sales here in question, which occasioned the export in each case, fall within the scope of the exemption under Article 286(1) (b). Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. 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. Assuming without deciding that the property in the goods in the present cases passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey as found by the Sales Tax Authorities, the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under Article 286(1)(b). That clause, indeed, assumes that the sale has taken place within the limits of the State and exempts it if it takes place in the course of the export of the goods concerned."

Applying the principle of this decision to the present case we are of the opinion that the petitioner is entitled to exemption to the extent of Rs. 50,015.55 nP. which is the total amount of the transactions made with the Nepal parties. It has been found by the Superintendent of Sales Tax in the assessment order in the first place that credit memos were prepared by the assessee in the name of the

Nepal parties. It has also been found that the custom duty was not paid by the petitioner and transport charges were also not paid by the petitioner, though the custom receipts show that the custom duty was paid by the petitioner. It has also been found by the Superintendent of Sales Tax that

"the delivery of the goods to the purchaser or his representative is finalised in India without any conclusive evidence to establish that the, dealer continued to be the owner of the goods up to and beyond the time when the goods entered into the export or until after the goods cross the customs barrier to make the sale."

It has also been found that the transport of the goods to Nepal took place under the direction of the purchaser. In our opinion the crucial findings in this case are that the credit memos were prepared in the name of the Nepal parties and the goods were actually exported to Nepal in pursuance of the contract of sale between the parties. It is manifest that the material facts of this case are parallel to those of the Supreme Court decision in 1952 3 STC 434 pat : AIR 1952 SC 366 and the principle of that decision must govern the present case also. It follows, therefore, that the assessee in the present case is entitled to exemption of the value of the goods sold to Nepal parties to the extent claimed by it and the Superintendent of Sales Tax is not entitled, as a matter of law, to include this amount in the order of assessment.

4. On behalf of the respondents stress was laid by the learned Government Pleader in the course of his argument upon the circumstance that the delivery of goods was made by the petitioner to Nepal parties in Nirmali within the territory of India. It is true that the Superintendent of Sales Tax has given a finding that delivery of the goods to the purchaser was finalised in India. In our opinion this is not a conclusive test for the determination of the question whether the sale made by the petitioner to Nepal parties was a sale in the course of the export or the goods within the meaning of Article 286(1)(b) of the Constitution. This view is supported by the decision of the Supreme Court in 1952 3 STC 434 pat : (AIR 1952 SC 366), to which we have already made reference. In that case also there was delivery of the goods to foreign buyers on c. i. f. or f. o. b. contracts, and even so it was held by the Supreme Court that the case fell within the exemption granted by Article 286(1)(b) of the Constitution.

It was also argued by the learned Government Pleader that in the Supreme Court case 1952 3 STC 434 pat : AIR 1952 SC 366, the delivery of the goods was made by the assessee to a common carrier for transport out of the country by land or sea. It was, therefore, submitted by the learned Government Pleader that unless there was delivery of the goods by the assessee to a common carrier for transport out of India, there could be no exemption of sales tax under Article 286(1)(b) of the Constitution. We do not think that there is any substance in this argument. It is true that in the case reported in [1952] STC 434 pat : AIR 1952 SC 366 there was delivery of the goods to a common carrier for transport out of the country, but this fact is not part of the ratio decidendi of that case. It appears

in the present case that there is no rail connection between Nirmali and Nepal border and the common means of transport is a bullock-cart over a distance of about 25 miles and the goods are despatched by means of bullock-cart over this distance. In our opinion, the delivery of goods to a common carrier is not a material circumstance.

The true test is whether the sale and the 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 for transport out of the country by land or sea.

In other words, the true test is whether the sale occasions the export, and whether the sale and the resultant export form parts of a single and integrated transaction. As we have already stated, the present case comes within the principle laid down by the Supreme Court in [1952] 3 STC 434 pat : AIR 1952 SC 366. It follows, therefore, that the petitioner is entitled to exemption from sales tax to the extent of Rs. 50,015.55 nP. claimed by it, being the value of the goods exported by it to Nepal parties.

5. Acting, therefore, in exercise of our authority under Article 227 of the Constitution, we set aside the order of assessment of the Superintendent of Sales Tax, dated the 22nd February, 1960, and remand the case to him for making a fresh assessment of sales tax in accordance with law and in accordance with the directions given in this judgment.

6. We accordingly allow this application, but there will be no order as to costs.