(1957) 08 KL CK 0016

In the High Court Of Kerala

Case No : O.P. No. 9 of 1956 (E)

Kerala Arecanut Co. APPELLANT

Vs

State of Travancore-Cochin RESPONDENT

Date of Decision : 23-08-1957

Acts Referred:
Constitution of India, 1950 — Article 286(2)

Citation : AIR 1958 Ker 280 : (1957) 8 STC 817

Hon'ble Judges : K.T. Koshi, C.J;M.S. Menon, J

Bench : Division Bench

Advocate : M.K. Nambiar and S. Narayanan Potti, for the Appellant; K.V. Surianarayana Iyer, General and V. Rama Shenoi, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The petitioner, the Kerala Arecanut Company, Kokala, Trichur, is a registered firm consisting of three partners. The 1st respondent is the State of Travancore-Cochin, and the 2nd, the Sales Tax Officer, First Circle, Trichur.

2. Article 286(2) of the Constitution as it stood before the Sixth Amendment (excluding the proviso) read as follows:

"Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce"

and the contention urged on behalf of the petitioner is that the transactions with which we are concerned took place, "in the course of inter-State trade or commerce" and are as a result exempt from taxation under the Travancore-Cochin General Sales Tax Act, 1125.

3. The assessment order impugned is Ext. C, an order of the 2nd respondent

dated 24-11-1955. The order is not challenged on any ground other than the one mentioned above and it is hence unnecessary to consider any of the provisions of the Travancore-Cochin General Sales Tax Act, 1125, or the Travancore-Cochin General Sales Tax Rules, 1950, except to point out that under Rule 4 (2) (c) of the said rules the gross turnover of a dealer in are-canuts is the amount for which the goods are bought by him and that rule 5A provides:

"The tax shall be levied on the turnover of ....arecanuts ....under Section 3, Sub-section (1) when purchased by a person who in the State is the last dealer in such goods liable to tax and who is not exempt from taxation under the Act. Provided that the burden of proving that a transaction is not liable for taxation under this rule shall be on the dealer".

4. No Parliamentary legislation as contemplated by the opening words of Article 286(2) or any Presidential Order in pursuance of the proviso thereto also arises for consideration.

5. The petitioner acts as a commission agent both for the sellers and purchasers of arecanut. It is agreed that the following averments in the affidavit filed by the 2nd respondent may be taken as a correct description of the course of dealing in respect of the purchases effected by the petitioner on behalf of its non-resident principals;

"They (the petitioner firm) are commission agents with authority to purchase on behalf of their nonresident constituents. The statement that the nonresident purchasers or their representatives fix the price and directly purchase from the owners is wrong. The price is fixed and the purchase is made by the petitioners on behalf of the non-resident constituents. The petitioners also pay the price on behalf of the non-resident constituents. After the purchase, the petitioners take signed memos from the constituents confirming the purchase. Subsequently the goods are despatched to the purchasers by the petitioner. The bills sent to the purchasers contain the amounts spent by the petitioners on account of packing, postage, and other incidental and customary charges", (paragraph 2).

6. It is not contended that transportation across the State frontier, is a term of the contracts of sale and the question for determination is whether, in the absence of such a term the purchases can, be considered as purchases which took place "in the course of inter-State trade or commerce". We take the view that they cannot be so considered and the law on the subject is as laid down by Venkatarama Ayyar, J., in his dissenting judgment in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, :

"A sale could be said to be in the course of inter-State trade only if two conditions concur: (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade. Thus, if X, a merchant in State A goes to State B, purchases goods there and transports them into A, there is undoubtedly a movement of goods in inter-State commerce. But that is not under any contract of sale", (page 583 of STC): (p. 734 of AIR) .

It is agreed that if this is a correct statement of the law the petition must fail as the only difference between the illustration given in the Judgment and the facts of this case is that the purchase and transport are effected not directly by the non-resident buyer but through the agency of the petitioner.

7. To the same effect as the statement of Venkatarama Ayyar, J. is the following passage from Kottschaefer on Constitutional Law:

"The activities of buying and selling constitute inter-State commerce, if the contracts therefore conlemplate or necessarily involve the movement of goods in inter-State commerce", (page 229):

and from Hartman on State Taxation of Inter-state Commerce:

"The Court had refused immunity to the sale where the sales contract did not contemplate or require shipment from a point outside the State, although shipment was in fact so made to fill the contract. This doctrine was established by the Wiloil case (Wiloil Corporation v. Pennsylvania (1935) 294 U. S. 169 (B). (page 149).

8. The statement of Venkatarama Ayyar, J. has also been adopted as a correct statement of the Jaw by the Madras High Court in The Indian Coffee Board Vs. The State of Madras, and Ashok Leyland Ltd., Ennore, Madras Vs. The State of Madras, In the former case the court said:

"A sale completed by delivery within the State of Madras to the purchaser or his agent does not come within the scope of Article 286(2) even if the purchaser bought the goods with the intention of transporting them outside the State and did transport them outside the State. Unless both the conditions of (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale are satisfied, there can be no sale in the course of inter-State trade". (Head Note).

The relevant portion from the Head Note of the latter case is :

"The assessee company assembled motor cars in Madras State and sold these cars to dealers outside State. In respect of certain sales, the outside State dealers sent their drivers to the assessee''s factory who took delivery of the cars and transported them outside the State. The assessee contended that though the delivery of the cars was effected within the Madras State, as such delivery was for immediate transport of the cars sold outside the State, the sales were in the course of inter-State trade within the meaning of Article 286(2) of the Constitution and were therefore exempt from taxation. Held, that as the sales were completed and delivery was effected within the Madras State, the sales were liable to sales tax under the Madras Act. The stream of inter-State trader or commerce commenced only after the dealer as buyer took delivery of the goods, and the antecedent sale to him by the assessee was a distinct and closed transaction before that stream commenced".

9. The majority decision in (1955) 6 STC 446: The Bengal Immunity Company Limited Vs. The State of Bihar and Others, does not deal with the question. Das, Actg. C. J., said:

"It is not necessary, for the purposes of this appeal, to enter upon a discussion as to what is exactly meant by inter-state trade or commerce or by the phrase ''in the course of, for it is common ground that the sales or purchases made by the appellant company which are sought to be taxed by the State of Bihar actually took place in the course of inter-State trade or commerce".

According to Mr. Nambiar, learned counsel for the petitioner, however, the statement of Venkata,rama Ayyar, J., is opposed to the majority decision in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, and should hence be considered as of no effect. One of the groups of purchases in that case consisted of purchases of cashew-nuts from the State of Madras. The Travan-core-Cochin Advocate-General submitted that those purchases

"were made outside the State in the neighbouring districts of Madras, deliveries were effected through the ordinary commercial channels by employing commission agents who made the purchases and arranged for the deliveries at the respondents'' depots at Trichur or Quilon".

and the court said:

"If, as claimed by the Advocate-General, the purchases were effected by the employment of firms doing business as commission agents outside the State, and the deliveries were made through normal commercial channels, the transactions would partake of an inter-State character and fall under Clause (2)" (page 218 of STC): (p. 339 of AIR).

10. We are unable to read this statement as meaning that even if transportation across the State frontier was not part of the contracts of sale, those sales should nonetheless be considered as having taken place in the course of inter-State trade or commerce. An earlier passage in the same judgment will make the position clear:

"A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act done "in the course of the export of the goods out of the territory of India'', any more than the other two activities can be so regarded", (page 212 of STC): (p. 336 of AIR).

11. In (1953) 4 STC 205 : State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, Das, J., in his dissenting judgment quoted with approval the following passage from the judgment of Dixon, J., in Clements and Marshall Pty. Ltd. v. Field Peas Marketing Board (1947)

76 CLR 401 at p. 429 (F):

''We should consider the commercial significance of transactions and whether they form an integral part of a continuous flow or course of trade, which, apart from the theoretical legal possibilities, must commercially involve transfer from one State to another"

and in State of Bombay v. United Motors (India) Ltd. : The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, Bose, J., in his dissenting judgment said:

"A, a Bombay dealer, sells goods to B, a dealer in Madras, for consumption in Madras. I will assume that delivery is made to B himself in Bombay and that he carries the goods across in person. If that is the normal way in which trade and commerce in that particular line of goods flows across the boundary, then that would, in my opinion, be a sale in the course of inter-State trade and commerce despite the facts, including delivery, mentioned above. Ordinarily, goods of this nature are delivered to a carrier but that makes my point all the stronger. So long as the ban imposed by Clause (2) remains the situs of the sale and the place of delivery are not material provided the sale is caught up in the vortex of inter-State trade and commerce", (page 166 of STC): (p. 268 of AIR).

Learned counsel for the petitioner drew our attention to these passages and contended that they militate against the view taken by Venkatarama Ayyar, J., in (1955) 6 STC 446 The Bengal Immunity Company Limited Vs. The State of Bihar and Others, and by the Madras High Court in (1956) 7 STC (135: The Indian Coffee Board Vs. The State of Madras, : Ashok Leyland Ltd., Ennore, Madras Vs. The State of Madras,

12. We are unable to agree. As we understand the passages extracted above, they only mean that in interpreting a contract of sale its "commercial significance" and "the normal way in which trade and commerce in that particular line of goods flows across the boundary" should not be forgotten. In other words, what the passages do is to emphasise a mode of construction and a way of approach rather than postulate a rule to the effect that even if the contracts of sale do not require Or necessarily involve transportation across the State boundary, the sales should nonetheless be considered as taking place "in the course of inter-State trade or commerce".

13. In the light of what is stated above this petition has to be dismissed and it is hereby dismissed, though in the circumstances of the case without any order as to costs.