
(1956) 02 AHC CK 0016
In the Allahabad High Court
Case No : Writ Petition No. 154 of 1955

Khubi Ram Brij Kumar

APPELLANT

Vs

Sales Tax Officer, Ghaziabad

RESPONDENT

Date of Decision : 09-02-1956

Acts Referred:

Constitution of India, 1950 — Article 286, 286(1), 286(2)
Uttar Pradesh Sales Tax Act, 1948 — Section 3A, 3A(1)
Uttar Pradesh Sales Tax Rules, 1948 — Rule 2

Citation : AIR 1956 All 445 : (1956) 7 STC 813

Hon'ble Judges : Mootham, C.J; Agarwala, J

Bench : Division Bench

Advocate : Gyan Prakash, for the Appellant; N.D. Pant, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is a petition under Article 226 of the Constitution. The petitioner is a firm carrying on the wholesale cloth business in the town of Pilkhuwa in the district of Meerut. The respondent is a Sales-tax Officer, Ghaziabad.

2. For the purpose of its business the petitioner purchased cloth from dealers and other persons in the Uttar Pradesh and also from dealers outside this State. In the case of cloth acquired from outside the State the usual practice was for the dealers to despatch the cloth to the petitioner by railway. The consignors at the same time despatched to a bank at Pilkhuwa the relative railway receipts drawn in favour of "self", together with Hundis in respect of the price of the consignment, and upon the petitioner returning the Hundis the bank endorsed the railway receipts in favour of the petitioner who then took delivery of the consignments.

In some cases the consignors sent the goods to the petitioner at Pilkhuwa by motor truck, the price of these goods being paid by the petitioner at the time of delivery.

3. In respect of the assessment year 1952-53 the respondent Sales-tax Officer determined the turnover of the petitioner at Rs. 4,05,086-14-0 of which Rs. 3,81,657-1-6 was the turnover of imported cotton cloth, and he assessed the firm to sales tax in the sum of Rs. 12,306-15-0. In respect of the assessment year 1953-54 the respondent determined the petitioner's net turnover at Rs. 4,08,631-6-9 which included Rs. 3,98,631-6-9 in respect of imported cloth, and he assessed the tax at Rs. 12,613-6-9.

The petitioner has appealed from both orders of assessment to the Judge (Appeals) Sales Tax and both appeals are still pending, but it is stated that the respondent is pressing the petitioner for payment of so much of the tax demanded as is still outstanding and has instituted proceedings against the firm u/s 14, U. P. Sales Tax Act.

4. In this petition the petitioner raises the question of his liability to sales tax in respect of sales of imported cloth; his contention being first, that the sales of such cloth made by the firm to retail dealers were in the course of inter-State trade and exempt from tax under Article 286(2) of the Constitution; secondly, that the petitioner is not an importer within the meaning of Notification No. St. 117/X-923-1948, dated 8-6-1948; alternatively that the definition of importer in Rule 2 of the Rules made under the U. P. Sales Tax Act is "ultra vires;" and, finally, that the above mentioned Notification dated 8-6-1948, is invalid as it is repugnant to Section 3-A of the Act.

5. The first of the petitioner's contentions raises an important question of constitutional law. Article 286, so far as is material for the present purpose, reads as follows:

"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) 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.

(2) 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:"

In the case of -- " State of Travancore-cochin and Others Vs. Shanmugha Vilas

Cashew Nut Factory and Others, one of the questions considered by the Supreme Court was whether the last purchase of goods made by an exporter for the purpose of exporting them to implement orders already received from a foreign buyer, or expected to be received subsequently in the course of business, and the first sale by an importer to fulfil orders pursuant to which the goods were imported, or orders expected to be received after the import, fell within the scope of Article 286(1)(b) the Court (Das, J., dissenting) was of opinion that the last purchase made by the exporter was an act preparatory to the export and was not so integrated with the exportation that it could be regarded as done "in the course of" the latter; & that the first sale of goods imported was a distinct local transaction effected after the importation of the goods into the country had been completed and having no integral relation with it.

6. Now in our opinion the expression "in the course of" must be given the same meaning in Clause (2) of Article 286 as it has in Sub-clause (b) of Clause (1) and it was not suggested in argument that any difference existed. It would appear therefore to follow from the decision in the -- "Shanmugha Vilas Cashewnut case (A)", that the first sale by a wholesale dealer of goods brought by him into this State from another State is not a transaction "in the course of" inter-state trade or commerce and is accordingly not exempt from liability to sales tax.

7. It is however contended by the petitioner that as a consequence of the later decision of the Supreme Court in -- "The Bengal Immunity Company Limited Vs. The State of Bihar and Others, "Shanmugha Vilas Cashewnut case (A)", is no longer an authority which this Court must necessarily follow; and this is so, it is said, because the Supreme Court in the former case gave its approval to the dissenting judgment of Das, J., in the latter. It is therefore necessary to examine the dissenting judgment of Das J. and the ambit of the judgment in the Bengal Immunity Co."s case (B).

8. In his judgment in the -- "Shanmugha Vilas Cashewnut case (A)", Das J. expressed his dissent from the majority view with regard to the meaning to be ascribed to the phrase "in the course of" occurring in Clause (1) (b) of Article 286, and he also expressed his dissent from the majority view taken by the Supreme Court in the earlier case of "The The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, that Clause (2) of Article 286 does not affect the power of the State in which goods are actually delivered for consumption to tax inter-State sales or purchases of the kind mentioned in the Explanation to Clause (1), as the effect of the Explanation was to take such transactions of sale out of the ban imposed by Article 286(2).

On the first of these matters the learned Judge was of the opinion that the last purchase by an exporter and the first sale by an importer must be regarded as being in the course of exportation or importation as the case may be while as regards the second matter Das J. was of opinion that Article 286 wholly prohibited taxation of inter-State trade and commerce unless and until Parliament by law otherwise provided. In his view the action embodied in the

Explanation could not be extended to any purpose other than the purpose of Clause (1) (a), that is the taking away of the taxing power of all States in whose territories the sale or purchase is deemed to take place.

9. NOW it is important to appreciate what the case of -- "Bengal Immunity Co. Ltd. v. State of Bihar", (B), decided. In that case the Supreme Court reversed its earlier decision in -- "State of Bombay v. United Motors (India) Ltd., (C)", and it adopted the view expressed by Das J. in his dissenting opinion in the -- "Shanmugha Vilas Cashewnut case (A)", that except in so far as Parliament may by law provide otherwise can impose or authorise the imposition of any tax on sales or purchases when such sales or purchases take place in the course of inter-State trade or commerce and irrespective of whether such sales or purchases do or do not fall within the explanation.

That Court did not in this case, nor was it necessary for it to do so, enter upon a discussion as to what is meant by inter-State trade or commerce or by the phrase "in the course of", as it was common ground that the sales Or purchases made by the appellant company which were sought to be taxed by the State of Bihar took place in the course of inter-State trade or commerce.

The Supreme Court, therefore, in the "Bengal Immunity Co."s case (B)", accepted the dissenting opinion of Das J. on one only of the two matters on which that learned judge had, in the "Shanmugha Vilas Cashewnut case (A)", expressed his disagreement with the prevailing view. It accepted the opinion of Das J. with regard to the effect of the Explanation to Clause (1) of Article 286 but it did not express any opinion on the question of the meaning of the words "in the course of" or whether those words included the last purchase made by an exporter on the first sale made by an importer.

10. We are therefore of opinion that the -- "Shanmugha Vilas Cashewnut case (A)", continues to be authority for the proposition that the first sale by an importer is not a sale "in the course of" importation, and that we are bound to hold on a parity of reasoning, that the first sale by a wholesale dealer of goods brought into a State from elsewhere in India is not a transaction in the course of inter-State trade or commerce. We are therefore of opinion that the first submission is not well founded.

11. The second contention of the petitioner raises the question of the validity of Sub-rule (d1) of Rule 2 of the Rules made under the Act. The sub-rule reads thus :

"(d1) "importer" means, as respects" goods imported into U. P. from any other State in India:

(a) in a case where the goods are not imported for the purpose of re-sale in the same condition as they were imported by the person who imported them, the dealer in such other State, who made the sale as a direct result of which the goods are imported into Uttar Pradesh;

(b) in a case where the goods are imported for the purpose of re-sale in the same condition as they were imported by the person who imported them, the dealer who makes the first sale after the sale as a direct result of which the goods were imported into Uttar Pradesh; and

(c) in a case where the goods are imported into Uttar Pradesh otherwise than as a direct result of a sale, the dealer who makes the first sale after such import."

12. It is not suggested that Clause (a) of this sub-rule has application in the present case, but it is contended that the petitioner is not an importer within the meaning of either Clause (b) or Clause (c), & that these clauses are invalid as repugnant to Article 286.

13. The importance of Clauses (b) and (c) lies not in the fact that they are, in form, definitions of "importer" but because they extend the meaning of the term "dealer", and under the Act it is the dealer who is liable to pay the tax. On the view we take as to the restricted meaning which must be given to the words "in the course of" in Article 286(2) we can see no sufficient reason to hold that either clause is invalid, for in either case the first sale after importation would not be an integral part of the importation.

As it is not disputed that the first sales after the importation (whether that be under Clause (b) or Clause. (c)) were made by the petitioner it appears to us that the firm is an importer within the meaning of these clauses. This contention must therefore be rejected.

14. Finally, it is argued that the Notification of 8-6-1948, is invalid as being at variance with Section 3A of the Act as it now stands.

15. The first paragraph of the Notification provides that the proceeds of sale of certain goods "shall not be included in the turnover of any dealer" except at the point in the series of sales by successive dealers as is mentioned in the Schedule to the Notification. At the time this Notification was published Sub-section (1) of Section 3A read thus:

"3-A(1). Notwithstanding anything contained in Section 3, the Provincial Government may, by notification in the official Gazette, declare that the proceeds of sale of any goods or class of goods" shall not be included in the turnover of any dealer except at such single point in the series of sales by successive dealers as may be prescribed," and at that time mere clearly was no inconsistency between the first paragraph of the Notification and this sub-section. Section 3A was however amended in 1950 by the U. P. Sales Tax (Amendment) Act of that year and thereafter Sub-section (1) provided that

"3-A(1). Notwithstanding anything contained in Section 3, the Provincial Government may, by notification in the official Gazette declare that the turnover in respect of any goods" or class of goods "shall not be liable to tax" except at such single point in-the series of sales by successive dealers as may be prescribed."

16. The position therefore now is that where as under the Notification the proceeds of certain sales have not to be included in the dealer's turn-over, the amended Sub-section (1) requires that they be included although they will not be liable to tax.

It is however conceded that whether the Notification be in its Present form or be couched in the same terms as Sub-section (1) of the Act the liability of the petitioner to tax would not be affected; in other words the petitioner is not prejudiced by the discrepancy which now exists between the Notification and the section, and we accordingly see no sufficient reason to accede to the petitioner's prayer that the Notification be quashed.

17. In the result therefore this petition is dismissed with costs, which we assess at Rs. 300/-.