
(1961) 01 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No's. 277 and 289 of 1960

Kishan Prasad and Co. Ltd.

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 10-01-1961

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 11, 14, 2

Citation : (1961) 2 ILR (P&H) 461 : (1961) 12 STC 711

Hon'ble Judges : Bishan Narain, J

Bench : Single Bench

**Advocate : Sarvshri Shastri, F.C. Mital and Ganga Parshad, for the Appellant;
H.S. Doabia, Additional Advocate-General, for the Respondent**

Final Decision : Dismissed

Judgement

Bishan Narain, J.—The Assessing Authority appointed and the East Punjab General Sales Tax Act, 1948, issued two separate notices on 8th February, 1960, to Messrs Kishan Prasad & Co , Ltd., Ambala, and to Messrs Rup Chand & Co., Ambala, respectively under Sections 11 and 14 of the said Act, calling upon them to furnish returns for the period commencing on 1st April, 1956, and ending with 31st March, 1957. Both these firms have filed two separate petitions, C. W. 277 of 1960 and C. W. 289 of 1960, under Article 226 of the Constitution challenging the validity of these notices on the ground that their business was not covered by the definition of "sale" given in Section 2(h) of this Act. As the points raised in both these petitions are same, it will be convenient to decide them by this judgment.

2. Both these firms carry on the business of hire-purchase of motor trucks at Ambala. The terms on which this hire-purchase is carried on by the petitioning firms are given in their respective petitions. These terms appear to be of similar nature. The petitioners' case is that they are not dealers within Section 2(d) of the Sales Tax Act inasmuch as they do not sell or purchase any goods in the

State of Punjab and further that Explanation (1) of Section 2(h) of the said Act is invalid, as it does not fall within the scope of item 54 of List 2 of the 7th Schedule of the Constitution of India.

3. It is conceded by the respondents that the petitioners carry on the business of hire-purchase of motor trucks in the State of Punjab and also that the notices under Sections 11 and 14 of the Act have been issued to these firms on the basis of Explanation (1) of Section 2(h) of the Act. The terms on which this business is carried on are, however, not admitted.

4. In view of these pleadings it is first, necessary to determine the exact scope of Explanation (1) of Section 2(h) of the Act.

5. Now admittedly the State of Punjab has levied tax on sales of goods under item 54 of List 2 of the 7th Schedule of the Constitution of India. This item reads, "taxes on sales of goods and on advertisements". This item in these very words was found in List 2, Item 48, of the Government of India Act, 1935. The scope of the expression "sale of goods" in the 1935 Act was discussed by the Supreme Court in *The Sales Tax Officer, Pilibhit Vs. Budh Prakash Jai Prakash, Their Lordships* observed :-

The position therefore is that a liability to be assessed to sales tax can arise only if there is a completed sale under which price is paid or is payable and not when there is: only an agreement to sell, which can only result in a claim for damages. It would be contrary to all principles to hold that damages for breach of contract are liable to be assessed to sales tax on the ground that they are in the same position as sale price,

The power conferred under Entry 48 to impose a tax on the sale of goods can therefore be exercised only when there is a sale under which there is a transfer of property in the goods, and not when there is a mere agreement to sell. The State Legislature cannot, by enlarging the definition of "sale" as including forward contracts, arrogate to itself a power which is not conferred upon it by the Constitution Act

6. A similar view has been taken by the Supreme Court in *The State of Madras Vs. Gannon Dunkerley and Co., (Madras) Ltd.*, wherein it has been observed that the expression "sale of goods" in Entry 48 cannot be construed in its popular sense and that it must be interpreted in the sense, which the expression bears in the Indian Sale of Goods Act, 1930.

Section 2(h) of the Punjab General Sales Tax Act, 1948, as it stands now, defines "sale" in these words :-

"Sale" means any transfer of property in goods...for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation.-(1) A transfer of goods on hire-purchase or other instalment system

of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale.

7. We are not concerned in the present case with the amendments made in this definition by the East Punjab General Sales Tax (Amendment) Act, 1959, and the Punjab General Sales Tax (Amendment) Act, 1960. The contention raised on behalf of the petitioning firms is that this explanation extends the scope of the expression "sale of goods" and brings within the scope of this definition "transactions" which are not completed contracts or sale and under which there is no transfer of property in goods. According to the petitioning firms such an enlargement of "sale" is in excess of the power conferred under item 54 on the State Legislature and is, therefore, ultra vires of the Constitution.

8. Now this explanation deals with "transfer of goods". This expression in its ordinary legal sense means that the owner of the thing delivers it to another person with the intention of passing his rights therein to the latter. It appears to me that in the context of the present statute, this expression has substantially the same meaning as "passing of property". Therefore this explanation relates only to those transactions in which property in the goods has passed whether the transaction is called or considered as a "hire-purchase contract or other instalment system of payment". In this explanation, the hire-purchase agreement is dealt with in so far as it relates to the system of payment on the assumption that the agreement transfers and passes property in the goods, which are the subject-matter of the agreement. Reference to a seller retaining title to the goods as receipt is analogous to the vendor's lien and does not in any way affect the condition that the transaction must result in passing the property. I am of the opinion that this explanation is applicable only to transactions, in which there is a transfer of property in the goods.

9. Even if there be any ambiguity in this construction of the explanation and even if it be possible to construe this explanation so as to include transactions, which are not transactions of sales, I would construe it so as to limit its application to transactions under which property in the goods has been transferred. There is a presumption that the Legislature when enacting a statute acts within the powers conferred on it by the Constitution, and that construction of the statute should be accepted as correct, which would make it valid and constitutional and a construction, which makes it invalid and unconstitutional, must be avoided, if at all possible. Therefore this explanation applies only to cases of sale where the agreement is that of hire-purchase or the agreement has adopted some other instalment system of payment.

10. It was, however, argued on behalf of the petitioning firms that the hire-purchase agreements are well known to law and in such agreements, property in the goods does not pass, and there is no binding obligation on the part of the hirer to purchase the goods and, therefore, when this explanation brings such agreements within the purview of sales tax then it is invalid. In support of this argument, the learned counsel referred me to *Helby v. Matthews and Ors.* [1895]

A.C. 471, and *Alexander Knox McEntire and John Arthur Maconchy v. Crossely Brothers Limited* [1895] A.C. 457. I am unable to accept the contention that agreements called the hire-purchase agreements never provide for transfer of property in the goods. The nature of these agreements is described at page 510 of Volume 19 of Halsbury's Laws of England (Simonds Edition) in these words:-

At common law the term "hire-purchase" properly applies only to contracts of hire conferring an option to purchase, but it is often used to describe contracts which are in reality agreements to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments have been paid. The distinction between these two types of hire-purchase contract is, however, a most important one, because under the latter type of contract there is a binding obligation on the hirer to buy and the hirer can therefore pass a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the true owner.

11. It is clear that the Legislature in the explanation under consideration has referred to the second type of hire-purchase contracts described in the Laws of England. Such contracts amount to sale and, therefore, it is not possible to say that this explanation extends the scope of the expression "sale" to contracts, which in law do not amount to contracts of sale.

12. For these reasons I am of the opinion that explanation (i) of Section 2(h) of the Punjab General Sales Tax Act, 1948, is valid and constitutional.

13. The learned counsel then argued that in the present case the nature of hire-purchase contracts is such as not to amount to "sales" within Section 2(h) of the Act and, therefore, notices issued to the petitioning firms are invalid. In support of this contention, the learned counsel invited my attention to the allegations made in the two petitions and also produced a printed copy of the hire-purchase contracts, which, it is alleged, are used by the petitioners in the course of their hire-purchase business in the Punjab. The nature of the contracts as described by the petitioners is not accepted as correct by the respondents. It is urged on behalf of the respondents that it is for the assessing authority to examine and scrutinise the nature of the petitioners' business and to construe the terms of the agreements entered into by the petitioners during the relevant period in accordance with the procedure laid down in the Sales Tax Act and it is not for this Court to do so in the present proceedings. There is substance in this contention of the respondents. As observed in *Indian Iron and Steel Company Limited v. The Officer on Special Duty (Central Circle), Punjab* [1959] 10 S.T.C. : "It has been repeatedly held that a writ should not be ... employed to secure the adjudication of a disputed right for which such proceeding affords a remedy equally adequate and complete". These observations fully apply to the present case. The dispute raised in these petitions on the merits of the nature of the business carried on by the petitioners is not so clear cut that I should decide the present dispute in the interest of justice. The controversy raised should be determined under the Punjab General Sales Tax Act, 1948, in accordance with law. I, therefore, refrain

from deciding the nature of the transactions carried on by the petitioning firms.

14. The result is that both these petitions fail and I dismiss them with costs. Counsel's fee Rs. 100 in each case.