

(1954) 03 MAD CK 0020

In the Madras High Court

Case No : Tax Revision Case No. 48 of 1953

Louis Dreyfus and Co. Ltd., Madras

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 18-03-1954

Acts Referred:

Madras General Sales Tax Act, 1939 — Section 2

Citation : AIR 1954 Mad 932 : (1954) 67 LW 481 : (1954) 2 MLJ 326

Hon'ble Judges : Satyanarayana Rao, J;Rajagopalan, J

Bench : Division Bench

Advocate : R. Narasimhachari, for the Appellant; Asst. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Rao, J.—The assessee. Messrs. Louis Dreyfus & Company Ltd., was assessed to sales-tax for the assessment year, 1948-

49, including in its turnover a sum of Rs. 5,53,746-5-6 which represents the value of Niger seeds shipped by the assessee to places outside the

territory of Indian Union in pursuance of contracts entered into by their London office.

2. The assessment was based upon explanation 2 to Section 2(h) of the Sales-tax Act, which was added by the Madras General Sales-tax

(Amending) Act, 1947 (Act 25 of 1947). The basis on which the tax was levied under this explanation was that the goods were actually in this

State at the time of the contracts of sale. If the assessment had to be made after the Constitution came into force, probably the assessee would

have been exempt from the payment of the tax under Article 286 of the Constitution. But, as the assessment year was before that date, the

Department & the Tribunal upheld the assessment under the new explanation, explanation 2 to Section 2(h), which was added by the Amending Act of 1947.

3. Before the amendment, tax could not have been imposed unless the sale was completed within the State of Madras, that is, unless the ownership

in the goods had passed to the buyer within the State as is now finally decided by the Supreme Court in Poppatlal Shah Vs. The State of Madras, .

4. The argument now before us was two-fold. In the first place, it was contended that this provision is repugnant to the provisions of the Sale of

Goods Act, and therefore, should not prevail, as the previous sanction of the Governor General was not obtained for enacting the amendment, that

was introduced in 1947. The second argument, which is also another aspect of the first point, was that the impugned provision is repugnant to the

Sale of Goods Act, and u/s 107(2) of the Government of India Act, the Sale of Goods Act should prevail over the Provincial Law, in the absence

of the assent of the Governor General.

5. The legislative power of the State Legislature to enact the law was derived from item 48 of the Provincial List, List No. 2 of the 7th schedule to

the Government of India Act of 1935, read with Section 100 of the Government of India Act. Under this entry, the Provincial Legislature is

empowered to make laws, in respect of "taxes on the sale of goods and on advertisements". The expression "sale of goods" is a composite

expression consisting of several important elements in the transaction of sale. The bargain or the agreement of sale, the delivery of goods, the

passing of the property etc., form its essential elements. The Sales-tax Act, which was enacted for the purpose of a levy of a general tax on the

sale of goods in the state of Madras, could take any of the elements, which go to constitute the same, as establishing sufficient nexus with the

territory to justify imposition of the tax.

Before the amendment in the absence of any separate provision establishing the nexus, it was assumed that the place where the property in the

goods passes was the place at which the tax could be levied. If this was outside the State, the tax could not be levied. In order to get over this

situation, the state legislature in 1947 introduced explanation 2 to Section 2 (h) of the Sales-tax Act, whereunder it is open to the State to justify

the imposition of the levy of the Sales-tax if the goods were actually in the State at the time of the contract of sale. That is, the situation of the

goods at the time of the contract of sale was taken as establishing sufficient nexus to justify the imposition of the tax.

6. Does this provision in any way affect, alter or modify any of the provisions of the Sale of Goods Act is the question to be considered. Under the

Sale of Goods Act, it must be remembered that there is no provision fixing the situs of sale. The provisions of the Sale of Goods Act only related

to the time when the property in the goods passes from the seller to the buyer. The Sections beginning with Section 18 of the Sale of Goods Act

and ending with Section 23 related to the transfer of the property in the goods between the seller and the buyer and they do not fix the locality at

which the property in the goods passes. It is undoubted that the property in the goods must necessarily pass at some place, but none of the

provisions of the Sale of Goods Act deals with that aspect of the matter, and they are concerned only in laying down certain rules for the

determination of the time when the property in the goods passes from the seller to the buyer.

As observed by the Supreme Court in " The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others, .

Neither the Sale of Goods Act, nor the common law relating to the sale of goods has anything to say as to what the situs of sale is, though certain

rules have been laid down for ascertaining the intention of the contracting parties as to when or under what conditions the property in the goods is

to pass to the buyer.

In view of this, the argument, that the provision in explanation 2 to Section 2(h) of the Sales-tax Act of 1947 is repugnant to the provisions of the

Sale of Goods Act, must be repelled, and this would be sufficient to dispose of the case. But as the learned counsel had rested his case also on the

ground that it contravenes Section 107 of the Government of India Act, assuming that there is a difference regarding the situs between the

provisions of the Sales-tax Act, and the provisions in the Sale of Goods Act, it is but proper to deal with that contention as well.

7. In enacting the provisions of the Sales-tax Act, the provincial Legislature had undoubted power under Entry 48 in List 2, and it was wholly

unnecessary for the Provincial Legislature to have had recourse to any items in the concurrent list, List No. 3. The relevant entry, it is stated, is the entry relating to Contracts, item No. 10.

Section 107 of the Government of India Act lays down:

(1) If any provision of a Provincial Law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to

any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then subject to the

provisions of this section, the Federal law, whether passed before or after the Provincial Law, or, as the case may be, the existing Indian law, shall

prevail and the provincial law, shall to the extent of the repugnancy, be void.

(2) "Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative list contains any provision repugnant to the

provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the

consideration of the Governor General or for the signification of His Majesty's pleasure has received the assent of the Governor General or of His

Majesty, the Provincial law shall in that province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with

respect to the same matter.

This assumes that both the Legislatures were exercising power to legislate under an entry relating to the same subject-matter. If the power of

legislation is derived from different entries, no question of repugnancy arises. This principle was, settled long ago by the Judicial Committee in

"Meghraj v. Allah Rakhia", AIR 1947 PC 72 CO, and also by the Federal Court in "Lakhi Narayan Das v. Province of Bihar", AIR 1950 FC 59

(D). In the Privy Council case, the Provincial Legislature enacted a law which was within the provincial list, and was within its exclusive power. The

argument was that the impugned Act was in conflict with certain provisions of the Civil Procedure Code, and other existing Indian law. It was

pointed out by their Lordships of the Judicial Committee that the impugned Act was by its very language confined exclusively to a subject within

the provincial list, and in respect of that the provincial Legislature was competent to enact a law. It was therefore unnecessary for the provincial

Legislature to invoke any of the powers included in the concurrent list. In such an

event, therefore, no question of repugnancy u/s 107 of the Government of India Act arose, and as pointed out by the Judicial Committee, it was unnecessary to consider the question of repugnancy.

The Federal Court in AIR 1950 FC 59 (D)". had also to deal with a similar question, and the conflict there was between item 1 in the provincial legislative list, Public Order, and Criminal Procedure, item 2 in the concurrent list. In dealing with this question, the Federal Court observed that in order to establish repugnancy within the meaning of Section 107 of the Government of India Act, it was necessary that the provisions of the impugned legislation and of an existing law must be in respect of the same subject-matter, and that subject-matter must be covered by one of the items in the concurrent list. If this condition is satisfied, the other question to be considered was whether in fact there was repugnancy between the two provisions. They applied the principle established by the decision of the Judicial Committee in the case above referred to.

As in the present case the power of the provincial legislature is derived exclusively from item 48 in the Provincial list, and as the Sale of Goods Act, or an existing law related to an item in the concurrent list, the subject-matters of the two enactments were entirely different, and therefore, the question of repugnancy u/s 107 of the Government of India Act does not arise. As we have pointed out above there is in fact no repugnancy between the provisions of the Sale of Goods Act, and the impugned provisions in the Sales-tax Act. The power of the legislature to enact law is undoubted in view of item 48 in the provincial legislative list and in form and substance it was a tax on the sale of goods.

8. For these reasons, we think that the decision of the Tribunal is correct and this petition must be dismissed with costs, Rs. 250.