(1961) 07 KL CK 0016

In the High Court Of Kerala

Case No : Tax Revision Case No''s. 47 and 48 of 1960

M. Sudarsanan Iyengar and Sons — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 05-07-1961

Acts Referred:

Central Sales Tax Act, 1956 — Section 3
Constitution of India, 1950 — Article 286(2)

Citation : AIR 1962 Ker 66 : (1962) 13 STC 17

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

Bench : Division Bench

Advocate : P. Govindan Nair, P.K. Kurien, G. Balagangadharan Nair and K. Sukumaran, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has been assessed to sales tax under the General Sales Tax Act, 1125, by the Sales Tax Officer, I Circle, Quilon, in respect of the years 1956-57 and 1957-58. T. R. C. No. 47 of 1960 relates to 1956-57 and T. K. C. No. 48 of 1960 to 1957-58.

2. The controversy before us relates to certain sales between 1-4-1956 and 1-7-1957 which both the Department and the Appellate Tribunal refused to treat as inter-State sales and thus exempt from taxation, Paragraph 2 of the orders'' of the Appellate Assistant Commissioner in Sales Tax Appeal No. 75 of 1958 (T. R. C. No. 47 of 1960) and Sales Tax Appeal no. 398 of 1959 (T. ft. C. No. 48 of 1960) are identical in wording and reads as follows :

"The turnover disputed relates to sales effected to parties in Madras State. The mode of transaction is as follows. The parties place orders with, the appellant orally or through correspondence. The terms of sale are F. O. R. Quilon, Punalur, Edamon, (OR some other railway station in the State). Pursuant to these orders goods are booked by the appellant in railway wagons at the station mentioned. The railway receipts are obtained ''self'' in some cases, and in the name of the nonresident buyers in other cases. All expenses up to the loading on the wagons are met by the appellant. Railway freight is payable at the destination by the buyer. Railway receipts marked ''self'' are endorsed by the appellant to the non-resident buyer, and sent to them by post along with the invoices."

The question for determination is whether the sales taking place in the manner described above are inter-State sales as contended by the assesses or Only local sales as held by the Sales Tax Appellate Tribunal, Trivandrum, in its common order dated 18-3-1960 in Tribunal Appeal Nos. 455 and 456 of 1959.

3. Article 286(2) of the Constitution (omitting the proviso thereto) reads 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"

In view of the decision of the Supreme Court in (S) The Bengal Immunity Company Limited Vs. The State of Bihar and Others, , it must now be taken as settled law that in the absence of parliamentary legislation no State can tax a sale or purchase which takes place in the course of inter-State trade or commerce whether such transaction is covered or falls outside the explanation to Clause (1) (a) of Article 286 of the Constitution.

4. The decision was followed by the Constitution (Sixth Amendment) Act, 1956, and the Central Sales Tax Act, 1956. Section 3 of the latter Act provides :

"A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase;

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation 1. : Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2. Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State."

5. The sole question for determination is whether the F. O. R. sales with which we are concerned occasioned the movement of the goods from this State to the State of Madras and should hence be considered as sales in the course of inter-State trade or commerce. In State of Travancore-cochin and Others Vs.

Shanmugha Vilas Cashew Nut Factory and Others, the Supreme Court said:

"The word ''course'' etymologically denotes movement from one point to another, and the expression ''in the course of not only implies a period of time during which the movement is in progress but postulates also a connected relation";

and went on to point out that a sale in the course of export is a sale taking place not only during the activities directed to the end of exportation of the goods out of the country but also as Part of or connected with such activities, and that the time factor alone is not determinative.

6. According to the Government Pleader, in these F. O. R. contracts the title to the goods passed within the State of Kerala and the obligations of the seller were at an end with the delivery of the goods to the common carrier within this State and the sales should not hence be considered as sales occasioning the movement of the goods from this State to the State of Madras, or, in other words, as sales in the course of inter-State trade Or commerce. We are not prepared to agree.

7. The connection between the F. O. R. sales at a railway station in this State for a destination outside this State and the movement that follows the delivery to the common carrier is se intimate and real that we cannot but hold that the movement is occasioned, caused, or brought about, by the sale, and that the sales should be considered as sales in the course of inter-State trade or commerce. The position appears to us to be beyond controversy and we think it unnecessary to deal with all the decisions cited before us.

8. In State of Travancore Cochin v. Bombay Co., Ltd. Alleppey AIR 1952 SC 366 the implications of F. O. B. Contracts also came up for consideration. In that case the Supreme Court said :

"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 necesssity 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."

The phrase "integrated activities" used in AIR 1952 SC 366 was further considered and explained as follows in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, :

"The phrase ''integrated activities'' wag used in the previous decision to denote that ''such a sale'' i.e., a sale which occasions the export) ''cannot be dissociated from the export without which it cannot ho effectuated, and the sale and the resultant export form parts of a single transaction. It is in that sense that the two activities--the sale and the export; --were said to be integrated."

9. There is a full survey of the cases bearing on the subject in Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others, . In that case the Supreme Court after dealing with the decisions on the subject said:

"It follows that every sale or purchase preceding the export is not necessarily to be regarded as within the course of export. It must be inextricably bound up with the export, and a sale or purchase unconnected with the ultimate export as; an integral part thereof is not within the exemption. It may thus be taken as settled that sales or purchases for the purpose of export are not protect ed, unless the sales or purchases them selves occasion the expert and are an integral part of it"

10. In the light of what we have stated in paragraph 7 above these Tax Revision Cases have to be allowed and we do so with costs, advocate''s fee Rs. 200/- in both the cases together.