
(1983) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 42, 43, 44 and 45 of 1981

Madras Marine Co.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-10-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 5
Constitution of India, 1950 — Article 286, 286(1)

Citation : (1984) 56 STC 154

Hon'ble Judges : Amareshwari, J;A. Seetharam Reddy, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; The Government Pleader, for the Respondent

Judgement

Amareshwari, J.—The four revisions relate to the assessment years 1969-70, 1970-71, 1971-72 and 1972-73 and are preferred by the same assessee.

2. The common question that arises for consideration is whether the turnover representing sales of liquor imported by the assessee, and kept in the warehouse without payment of customs duty to foreign vessels for consumption during voyage after the vessel crosses the Indian border is exigible to tax under the Andhra Pradesh General Sales Tax Act.

3. The assessee, M/s. Madras Marine Co., Visakhapatnam, is a dealer in bonded stores and ship chandlers. They import liquor from outside India and supply them to foreign vessels. The business is transacted in the following manner. The goods imported are kept in a bounded warehouse under the supervision of customs authorities. No customs duty is paid. On receipt of orders from the ship's Master, bills are prepared and goods are realised. The Customs Officer accompanies the goods, keeps them in a locker of the ship under the customs seal with an understanding that the seals would be opened and goods made available for consumption only after the vessel travels beyond the territorial waters of India. On these facts, it was contended by the assessee that the sale

did not take place within the State and the sale was in the course of export and as such not exigible to tax. Both the contentions were repelled by all the three authorities including the Sales Tax Appellate Tribunal.

4. In these revisions, the principal contention of Mr. S. R. Ashok, the learned counsel for the petitioner, is that the word "export" should receive a wider connotation in that where goods are sent outside the country under a sale with a view to be used only after crossing the territorial barriers, it would constitute "export". He placed storing reliance on the meaning given in Black's Law Dictionary which are as follows :

- (1) to carry or to send abroad;
- (2) to send, take, or carry an article of trade or commerce out of the country;
- (3) to transport merchandise from one country to another in the course of trade; and
- (4) to carry out or convey goods by sea.

5. It is submitted that the second and fourth meanings would support his case though not the first and third, and where two constructions are possible, the benefit must go to the assessee. We do not think that the learned counsel is right in his submission. When any word has more than one meaning, the proper course is to accept the contextual meaning. We are here concerned with a tax law and the intention in exempting sales tax in the course of export is to promote trade and commerce between different countries. To constitute "export" there must be two places. One from which the goods are sent and the other in which they are received. This point is no longer open to debate in view of the authoritative decision of the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others*, . The relevant observation are as follows :

"While all exports involve a taking out of the country, all goods taken out of the country cannot be said to be exported. The test is that the goods must have a foreign destination where they can be said to be imported. It matters not that there is no valuable consideration from the receiver at the destination end. If the goods are exported and there is sale or purchase in the course of that export and the sale or purchase occasions the export to a foreign destination, the exemption is earned. Purchases made by philanthropists of goods in the course of export to foreign countries to alleviate distress there, may still be exempted, even though the sending of the goods was not a commercial venture but a charitable one. The crucial fact is the sending of the goods to a foreign destination where they would be received as imports."

6. Thus it is seen from this passage, that export constitutes receiving of the goods at the foreign destination. The principle enunciated in this case was followed in *Fairmacs Trading Company Vs. The State of Andhra Pradesh*, by a Division Bench of this Court. The facts in the above case are identical with facts

in the case on hand and we see no reason to differ with the view taken therein.

7. The learned counsel sought to distinguish *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others*, saying that it was a case pertaining to a period prior to the amendment of article 286 of the Constitution of India and the consequential provisions of the Central Sales Tax Act and a fresh look is needed in the light of section 5 of the Central Sales Tax Act.

8. Article 286(1) of the Constitutional reads :

"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."

9. Explanation to clause (1) was omitted by the Amendment Act of 1956 and clause 2 was introduced which is as follows :

"(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)."

10. We are not concerned with other clauses of article 286. Sub-clauses (a) and (b) of article 286 direct that not tax be levied by any State on a sale or purchase outside the State and no tax be imposed on a sale or purchase made in the course of export or import. Clause (2) of article 286 authorises Parliament to lay down the principles under which a sale or purchase can be said to take place, by law. In pursuance of this clause, section 5 of the Central Sales Tax Act enacts :

"5. When is a sale or purchase of goods said to take place in the course of import or export. - (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India."

11. The rest of the clauses are unnecessary for our discussion. This clause is in the nature of an explanation stating as to when a sale can be said to be in the course of export. It enunciates two circumstances : (1) when the sale occasions export and/or (2) when the sale is effected by transfer of documents of title after the goods have crossed the customs frontiers of India. Under the first category, the transaction must occasion export and what constitutes export in the context of "tax laws" was enunciated by the Supreme Court in *Burmah Shell Oil Storage and Distributing Co. of India, Ltd. and Another Vs. The Commercial Tax Officer and Others*, and followed by this Court in *Fairmacs Trading Company Vs. The State of Andhra Pradesh*, with which we agree. No change much less any significant change is brought about by the amendment of article 286 or section 5 of the Central Sales Tax Act. We have therefore no hesitation in ejecting this

contention.

12. It is next faintly hinted that goods sold to foreign ships are not exigible to sales tax as the ships are floating islands of the country whose flags they fly. We see no force in this submission. The concept of a floating island is only a metaphor and the same cannot be mistaken for a manifestation. We are not concerned with foreign ships on the high seas but merchant ships of other nations within the territorial waters of this country. The concept of a floating island cannot be invoked for avoiding taxation under any domestic enactment. In *Cunard Steamship Co. v. Mellon* 262 US 100 it is said :

"A merchant ship of one country, voluntarily entering the territorial limits of another, subjects herself to the jurisdiction of the latter. The jurisdiction attaches in virtue of her presence, just as with other objects within those limits. During her stay she is entitled to the protection of the laws of that place and correlatively, is bound to yield obedience to them. Of course, the local sovereign may, out of considerations of public policy, choose to forego the exertion of its jurisdiction, or to exert the same in only a limited way; but this is a matter resting solely in its discretion."

13. In *Caltex (India) Ltd. Vs. State of Kerala*, a Bench of the Kerala High Court took the same view.

14. In the result, the tax revision cases are dismissed. No costs. Advocate's fee Rs. 200 in each.

15. Mr. S. R. Ashok, the learned counsel for the petitioner, made an oral application for grant of leave to appeal to the Supreme Court. It is represented that in similar matters in the case of the very same assessee special leave was granted by the Supreme Court. We therefore grant leave in this case.