

(1958) 01 PAT CK 0012

In the Patna High Court

Case No : Misc. Judl. Case No. 540 of 1955

Mahadeo Ram Bali Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 22-01-1958

Acts Referred:

Bihar Sales Tax Act, 1947 — Section 4
Constitution of India, 1950 — Article 286(1), 286(2)

Citation : AIR 1959 Patna 30 : (1958) 9 STC 173

Hon'ble Judges : V. Ramaswami, C.J; R.K. Choudhary, J

Bench : Division Bench

Advocate : Kanhaiyaji and Awadh Bihari Prasad, for the Appellant; The Govt. Pleader, for the Respondent

Judgement

1. In this case the Board of Revenue has submitted a statement of case u/s 25 (3) of the Bihar Sales Tax Act on the following question of law :

"Whether in the facts and circumstances of the case, the sale of shellac can be taxed as sale or purchase in the course of inter-State trade or commerce?"

After hearing learned counsel for the parties we are satisfied that the question should be re-framed in the following manner so as to bring out the real point in controversy between the parties,

"Whether in the facts and circumstances of the case, the sale of shellac to the extent of Rs. 3,90,289-12-6 could be validly taxed in view of the provision of Article 286(1)(b) of the Constitution?"

2. The claim put forward by the assessee was that contracts for the sale of shellac to the extent of Rs. 3,90,289-12-6 had been made by his brokers with firms like Messrs. Ralli Brothers, East Indian Commercial Corporation Limited, and others, and that the assessee had despatched shellac to those firms in execution of those contracts. It is also claimed on behalf of the assessee that these firms had in their turn exported the goods to foreign countries. It was,

therefore, contended that the sales were made in the course of export outside India and so the transactions should not be assessed to tax in view of the prohibition contained in Article 286(1)(b) of the Constitution. The claim was rejected by the Sales Tax Officer and also on appeal by the Deputy Commissioner of Sales Tax. The assessee took the matter in revision to the Board of Revenue, but his application was unsuccessful.

3. In support of this reference the argument of learned counsel for the assessee is that the sale of shellac was exempt from taxation because it was a sale in the course of export of goods outside the territory of India within the meanings of Article 286(1)(b) of the Constitution, as it stood before the amendment. We do not accept this contention as right. The expression "in the course of" in Article 286(1)(b) postulates that the transaction of sale must be an integral part of the activity of exporting the goods out of the country.

We think that in order to attract the exception under Article 286(1)(b) it is necessary for the assessee to show that the sale took place not only during the activities directed towards the export of the goods out of the country, but also that the sale was a part of the activities of such export. That was the test applied by the Supreme Court in *State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others*, , and it was held by the Supreme Court in that case that the purchase of goods for the purpose of export was only an act preparatory to their export and not an act done in the course of export of goods.

It appears that the respondents in that case had purchased raw cashew nuts within the State of Travancore-Cochin from the neighbouring States for the purpose of refining them and exporting them to America. One of the questions which were debated in that case was whether the respondents were exempted from taxation under Article 286(1)(b) with regard to the purchases made in the local markets of the State. The question was answered in the negative and it was held by the Supreme Court that as regards the purchases made in the local markets of the State, the respondents were not exempted under Article 286(1)(b) of the Constitution. The matter has been clearly put by the learned Chief Justice at page 61 of report (SCR) : (at p. 336 of AIR), as follows:

"The only question debated before us was whether in addition to the export-sale and import purchase, which were held in the previous decision to be covered by the exemption under Clause (1) (b), the following two categories of sale or purchase would also fall within the scope of that exemption : (1) The last purchase of goods made by the 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 the importer to fulfil orders pursuant to which the goods were imported or orders expected to be received after the import.

(2) Sales or purchases of goods effected within the State by transfer of shipping documents while the goods are in the course of transit.

As regards the first mentioned category, we are of opinion that the transactions are not within the protection of Clause (1) (b). What is exempted under the clause is the sale or purchase of goods taking place in the course of the import of the goods into or export of the goods out of the territory of India. It is obvious that the words "import into" and "export out of" in this context do not refer to the article or commodity imported or exported.

The reference to "the goods" and to "the territory of India" make it clear that the words "export out of and "import into" mean the exportation out of the country and importation into the country respectively. 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.

For instance, it has been held that the words "debts due to the bankrupt in the course of his trade" in Section 15 (5) of the English Bankruptcy Act 1869, do not extend to all debts due to the bankrupt during the period of his trading but include only debts connected with the trade (see *In re Pryce; Ex parte Rensburg* (1877) 4 Ch D 685 and *Williams on Bankruptcy*, 16th Edn. p. 307).

A sale in the course of export out of the country should similarly be understood in the context of Clause (1) (b) as meaning 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."

4. This view with regard to the interpretation of Article 286(1)(b) has been re-affirmed by the Supreme Court in a subsequent case, *State of Madras Vs. Gurviah Naidu and Co. Ltd. and Others*, . In view of the principle laid down in these decisions we hold that the provision of Article 286(1)(b) of the Constitution does not apply to this case and that the sale of shellac to the extent of Rs. 3,90,289-12-6 has been validly taxed by the revenue authorities.

5. It was then contended in the alternative by the learned counsel for the assessee that the sale of shellac would be exempt from taxation under Article 286(1)(a) of the Constitution. We are unable to accept this argument. The reason is that the assessee had claimed that the sale of shellac had been made to the firms of West Bengal not for the consumption of the shellac in that State but for export outside India,

It was not the case of the assessee, nor has it been found by the revenue authorities, that the shellac had been sold to the Calcutta firms for the purpose of delivery and consumption in the State of West Bengal. The factual foundation to support the alternative argument of the assessee is, therefore, wanting and we must, therefore, reject this argument.

6. Lastly, counsel for the assessee contended that the sales of shellac were exempt from taxation because of Article 286(2) of the Constitution, and it is, therefore, not liable to be taxed by the Bihar Government. There is no merit in

this argument, because the ban imposed by Article 286(2) of the Constitution has been surmounted by the President's Sales Tax Continuance Order of 1950, which is in the following terms :

"The Sales Tax Continuance Order, 1950.

In exercise of the powers conferred by the proviso to Clause (2) of Article 286 of the Constitution of India, the President is pleased to make the following order, namely :

1. (i) This order may be called the Sales Tax Continuance Order, 1950.

(ii) It shall come into force at once.

2. Any tax on the sale or purchase of goods-which was being lawfully levied by the Government of any State immediately before the commencement of the Constitution of India, shall until the thirty-first day of March, 1951, continue to be levied notwithstanding that the imposition of such tax is contrary to the provisions of Clause (2) of Article 286 of the said Constitution."

This order of the President authorised the imposition of sales tax contrary to the provisions of Article 286(2) of the Constitution with regard to the period from the 26th of January, 1950 to the 31st of March, 1951.

In a recent decision of a Division Bench of this High Court in Tobacco Manufacturers (India) Ltd. Vs. Commissioner of Sales Tax and Another, , it has also been held, that in the case of sale of goods despatched outside the State and consumed in States other than the State of first destination only one ban is attracted, namely, the ban imposed by Article 286(2), and not the ban imposed by the explanation to Article, 286(1)(a), and, therefore, sales falling under this category has only one hurdle to surmount, namely, the hurdle imposed by Article 286(2), and that, hurdle is surmounted by the President's Order and by Central Act No. 7 of 1956, for the period from the 26th January, 1950, to the 6th September, 1955. In view of the principle laid down in this decision there is no force in the argument put forward by the learned counsel for the assessee,

7. For the reasons we have expressed, we hold that in the facts and circumstances of this case the sale of shellac to the extent of Rs. 3,90,289-12-6 has been validly taxed, and the question of law referred by the Board of Revenue and as amended by us should be answered against the assessee and in favour of the State of Bihar. The assessee must pay the cost of this reference. Hearing fee Rs. 250.