
(1959) 12 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous C.C No. 247 of 1956

Mohanlal Hargovind

APPELLANT

Vs

Commissioner, Sales-Tax

RESPONDENT

Date of Decision : 14-12-1959

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 23(1)

Citation : (1961) JLI 976

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen, for the Appellant; M. Adhikari Advocate General for the opponent, for the Respondent

Judgement

K.L. Pandey, J.—This is a reference u/s 23 (1) of the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter called the Act) by the Board of Revenue referring the following questions for the opinion of this Court:-

(i) Whether the transactions between the assessee and its agents and branches out of the Province were sales within the meaning of the Act ?

(ii) Whether the despatch of goods to the agents of the value of Rs. 80,06,-135/9/3 was liable to be taxed even though there was no transfer of property in the goods when were despatched ?

(iii) Whether the sales effected by the agents out of the Province could be deemed to have taken place within the Province even though the actual transfer of property to the consumer was out of it.?

(iv) Whether Explanation II to Section 2 (g) was ultra vires of the Provincial Legislature ?

(v) Whether there was evidence to support the finding of the Tribunal that Explanation II to Section 2 (g) was attracted in the circumstances of the present case ?

(vi) Whether the imposition of tax upon the assessee was in the nature of an excise duty rather than a tax on sale of goods ?

(vii) Whether the collection of duty on a turn over of Rs. 80,06.135/9/3 after the 26th of January 1950 was illegal by reason of Article 286 of the Constitution ?

(viii) Whether the assessee was entitled to exclusion from his taxable turn over of the amounts of freight paid at the destination by the consignees ?

(ix) Whether the Tribunal could in the exercise of its revisional jurisdiction remand the case to the Commissioner or should it have itself revised the order of assessment ?

2. The facts of the case may be briefly stated. The assessee is a large bidi manufacturing concern having its head office at Jabalpur and many branches and agents all over the country. The assessee sells bidis manufactured by it both inside and outside the State and also sends its bidis to replenish the stocks of its branches situate outside the State.

3. For the assessment period 1 June 1947 to 12 November 1947, the assessee showed in its return a gross turnover of Rs. 1,22,49,832/-11/9 and a taxable turnover of Rs. 13,52,504/-6/6 after claiming several deductions which included the following two items:-

(a) Rs. 80,06,135/9/3 being the value of goods exported out of the State to its agents and branches.

(b) Rs. 34,364/8/-representing the amount of freight paid for despatching the goods out of the State.

The Assistant Commissioner of Sales-Tax negatived the claim for deduction of these two items from the taxable turnover. That conclusion was affirmed in appeal by the Commissioner of Sales-Tax and in revision by the Board of Revenue, which however remanded the case to the Commissioner for elucidation of the scope of his finding and conclusion on another point which were obscure.

4. The Board of Revenue, agreeing with the Assistant Commissioner of Sales-Tax and the Commissioner of Sales-Tax, held that the transactions leading to the despatch of goods of the value of Rs. 80,06,135/9/3 were salts and that the amount of freight paid, namely, Rs. 34,364/8/-, was included in the price payable for the goods despatched to places outside the State.

5. The learned counsel for the assessee made the point that Explanation II to Section 2 (g) of the Act was ultra vires of the Provincial Legislature. As pointed out in *The Burhanpur Tapti Mills. Ltd. vs. The State of Madhya Pradesh* (Letters Patent Appeal No. 55 of 1958 decided on 27th November 1959), to which one of us (Pandey J.) was a party, it is somewhat odd that the constitutional validity of a definition or interpretation section, as distinguished from the charging section, should be questioned before us. However we would deal with the argument for it is worth. Since the assessment period in this case is pre-Constitution, that is,

from 1st June 1947 to 12th November 1947, we have to consider whether the impugned provision of the Act could be validly enacted by the Provincial Legislature. The Explanation as originally enacted and in force during the material period stood as follows:

"Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in the Central Provinces and Berar at the time when the contract of sale as defined in that Act in respect thereof is made, shall, wherever the said contract of sale is made, be deemed for the purpose of this Act to have taken place in the Central Provinces and Berar."

According to this provision, if goods be in the province at the time of making a contract of sale in respect of those goods, the sale would be deemed to have taken place within the Province no matter where the contract of sale is made. It would thus appear that the territorial nexus between the goods and the Province has been used for exercise of the taxing power. For the pre-constitution period, the power of the State to tax concluded sales could be exercised even though not all the ingredients of a sale like the agreement to sell, the passing of title, delivery of goods etc. had territorial connection with the State: *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, It was on this principle that Explanation II to Section 2 (g) of the Act was held in two Division Branch casts of this Court not to be ultra vires: *Messrs. Shriram Gulabdas vs. Board of Revenue* ILR 1953 Nag 332 . and *The Burhanpur Tapti Mills Ltd vs. The State of Madhya Pradesh* (cit. sup.). We may also point out that like provisions in the Madras General Sale-Tax Act and the Bihar Sales Tax Act were upheld as valid in *Poppatlal Shah Vs. The State of Madras*, and *Tata Iron & Steel Co. Ltd. vs. State of Bihar* AIR 1958 SC 452. Similarly, the power to assess and collect tax on sales made before the commencement of the Constitution in accordance with an enactment which was valid in its entirety before such commencement remains unaffected. This follows from Articles 372 and 367 (1) of the Constitution read with Section 6 of the General Causes Act 1897, which has been expressly applied for the interpretation of the provisions of the Constitution. In this connection, we may also refer to *Messrs Ramnarain Sons Ltd vs. Assistant Commissioner of Sales Tax* (1955 28, CR. 483. and *Tata Iron & Steel Co Ltd vs. State of Bihar* (cit sup.) Since the counsel for the assessee did not seriously press his contentions involved in questions (iv) and (vii), we do not consider it necessary to dwell further on this aspect of the case, in our opinion, Explanation II to Section 2 (g) of the Act as originally enacted and in force during the material period was intra vires and the sales-tax could be validly assessed and collected on the basis of that enactment even after the commencement of the Constitution.

6. We have next to consider whether there was evidence to support the finding that Explanation II to Section 2 (g) of the Act was attracted. The assessee examined only his Munim Parmanand and led no other evidence. This is what Parmanand stated : -

""All the exports shown by us in the return have been made to declare outside C. P. and Berar. Out of these some are our agents also. We have no written agreements with our agents. Mostly our Munim visits the shops of our agents and obtains orders. At times the agent also writes to us directly. Our Munim sends us the order in a particular form after contracting with the agent. The bidis are then sent to the agent's place according to the order In the case of dealers also either our Munim takes orders from dealers or they themselves write to us directly to send goods to them While sending the orders the dealers or agents specify exactly what kind of good they desire..... Railway Receipt is always sent in the name of self and unless it is endorsed in favour of the agent or dealer. If the goods are lost or destroyed, the agent or dealer claims from the Railway..... Our selling rates are fixed. The agent should not change it; but if he does so, he loses his agency but we have no right to call back the goods from him. After Diwali 1947, we have created our branches at Bhusawal, Jhansi and Kanpur. We have now appointed our own Munims in those branches."

7. Although the assessee claimed that he exported bidis worth Rs. 80,06,135/9/3 to its agents and branches, it is clear from the evidence of Parmanand himself that no part of the goods was sent to the assessee's branches which came into existence for the first time after the relevant period of assessment. Again, it is also manifest that most of the goods were sent to dealers and only some goods were sent to agents. The contracts made with these agents were not proved. It would appear from the evidence that the cases of these agents were indistinguishable from those of dealers. In either case, the assessee's Munim received an order for goods. If he had no power to accept the order, he merely transmitted it for acceptance in the head office at Jabalpur, where the order was accepted and goods were despatched. The property in the goods passed as soon as they were delivered to the common carrier. This is reinforced by the consideration that the risk, which prima facie goes with property, passed to the person placing the order, for, under the contract, he was to claim damages, for goods lost or destroyed. Indeed, it was accepted that the assessee had no right to call back the goods. Sales such as these, whether made to dealers or to the so-called agents, who do not appear to have been other than favoured buyers, took place at Jabalpur where the property in the goods passed. That being so these were inside sales. If the Munim had power to accept an order received by him outside the Province, the contract of sale became complete only if at that time the goods situated in this Province were ascertained. To such a transaction, Explanation II, Section 2 (g) of the Act was attracted and the sale was taxable under the Act. On the other hand, if the goods were not ascertained, the property did not pass; The Commissioner of Sales-Tax, Eastern Division, Nagpur Vs. Husenali Adamji and Co., for unascertained goods, the property passed at Jabalpur as soon as they were handed over to the common carrier and therefore this was also an inside sale. In our opinion, there is basis in the evidence of Parmanand for the view that some of the sales were covered by Explanation II to

Section 2 (g) of the Act.

8. It is true that a person cannot sell his goods to himself, that there must be two parties to a sale and that there is no sale if a person merely transports his goods to another State to be stored therein his branch shop for selling it there sub-sequently. It is also true that the words "Taxes on sale of goods" in entry No. 48, List II, Schedule VII of the Government of India Act. 1935, mean completed sales and do not include agreements to sell or forward contracts. We further agree that under that Act, excise duty could not be levied collected by a Province on goods produced or or manufactured therein other than those covered by entry No. 40 of List II of Schedule VII. We must, however, point out that these contentions put forward by Shri A. P. Sen are unrelated to, and have no bearing on, the facts found and referred to us for opinion. We may add that, in a like case, many of the contention urged before us were put forward and repelled by the Supreme Court: *Tata Iron & Steel Co. Ltd. State of Bihar* (cit. sup)

9. The question whether freight paid in such cases should or should not be excluded was decided in a similar case against the assessee. *Tata Iron & Steel Co. Ltd. vs. State of Bihar* (cit. sup.) The learned counsel for the assessee conceded that the same view must be taken in this case.

10. The last question is whether, under the provisions of sub-section (7) of Section 22 of the Act the Board was competent to remand the case or the Board itself had to revise the order passed in appeal by the Commissioner. The relevant provision reads as follows : -

"The Tribunal may, on application by a dealer for revision of an order passed under this Act by the second appellate authority made within sixty days from the date of communication of the order, revise the order, if it appears to the Tribunal that the order passed by the second appellate authority is contrary to law.

This question does not arise in the instant case since the Board remanded the case to the Commissioner merely for the purpose of "elucidation of the scope of his findings and conclusions".

11. Our opinion on the several questions referred to us are these-

(i) These transactions were sales to dealers and so-called agents who were buyers.

(ii) The property in the goods passed when they were despatched. Sales of goods of the value of Rs. 80,06,-135/9/3: despatched to places outside the Province were taxable.

(iii) Property in the goods mostly passed in the Province and sales in regard to such goods were inside sales. Even when property in the goods passed outside the Province as a result of concluded sales made there, such sales were taxable because the goods were then in this Province.

(iv) The Second Explanation to Section 2 (g) of the Act as originally enacted and

in force during the assessment period was intra vires.

(v) There is evidence to support the Tribunal's finding that, to some cases, the Second Explanation to Section 2 (g) of the Act applied.

(vi) On the facts of this case, the tax imposed on the assessee was not an excise duty.

(vii) The tax payable in respect of the turnover of Rs. 80,06,135/9/3 could be assessed and collected even after the commencement of the Constitution.

(viii) The amount of freight paid in respect of goods exported outside the Province was not liable to be excluded from the taxable turnover.

(ix) On the facts of this case, this question does not arise.

12. Having regard to the view that we have taken of this case, we direct that the costs of this reference be borne by the assessee.