
(1959) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 37 of 1959

Mukundas Proprietor, Krishna Cycle Stores, Secunderabad

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 13-11-1959

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : AIR 1960 AP 298 : (1960) 11 STC 420

Hon'ble Judges : Satyanarayana Raju, J;Kumarayya, J

Bench : Division Bench

**Advocate : Ramakrishna Rao Nimbalkar and D. Madhava Rao, for the Appellant;
II Government Pleader and D.V. Sastry, for the Respondent**

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—In this Revision Case a somewhat novel point has been raised, and that is, whether after the reorganisation of States on the 1st November 1956, transactions of sale involving the movement of goods from the Telangana area into the Andhra area (both areas being constituent parts of the State of Andhra Pradesh) can be deemed to be inter-state sales.

2. The petitioners are dealers in cycles and cycle parts at Secunderabad. This city was a part of the area comprised in Hyderabad State before its disintegration and is now within the territory of the State of Andhra Pradesh.

3. For the assessment year 1956-57, the assessing authority under the Hyderabad General Sales Tax Act determined the petitioners' total net turn over at Rs. 10,95,439-14-9. Out of the aggregate turnover a sum of Rs. 46,739-2-0 represents the sales effected by the petitioners to dealers in the Andhra area from 1st November 1956 to 31-3-1957. It was contended by the petitioners that u/s 119 of the States Reorganisation Act, 1956 there were during the relevant period, two separate Acts in force, namely, the Hyderabad Sales Tax Act in the area popularly known as Telangana which previously Formed part of the erstwhile

State of Hyderabad, and the Madras General Sales Tax Act in the rest of the State of Andhra Pradesh and that sales effected by them to dealers in the Andhra area of the State should be deemed to be inter-state sales. This contention was not accepted by the Sales Tax Appellate Tribunal and the subordinate authorities. Hence this revision.

4. In order to appreciate the point raised in this revision, it is necessary to indicate the changes brought about by the reorganisation of States. On the 26th January 1950, the Constitution of India came into force. Clause (1) of Article 1 provides:

"India, that is, Bharat, shall be a Union of States."

Clauses (2) and (3) of Article 1, as they stood before their amendment, were as follows:

"(2) The States and the territories thereof shall be the States and their territories specified in Parts A, B and C of the First Schedule.

(3) The territory of India shall comprise-

(a) The territories of the States;

(b) the territories specified in Part D of the First Schedule; "and

(c) such other territories as may be acquired."

5. At the inception, the States and Territories comprised in the Union of India, were nine Part A States, eight Part B States and ten Part C states and the Andaman and Nicobar Islands within the territories specified in Part D of the First Schedule. Since then the Parliament of the Republic of India has in and by the Andhra State Act (30 of 1953) established a new Part A state, viz., The State of Andhra. By reason of the consequential amendments made in the Constitution, it was provided that the "territory of the State of Andhra shall comprise of the territories specified in Sub-section (1) of Section 3 of the Andhra State Act," and the First Schedule to the Constitution was amended by the inclusion of the new State.

The State of Andhra was inaugurated on the 1st of October, 1953. u/s 53 of the Andhra State Act, it was provided that the laws in force in the territories in the Andhra State prior to its Constitution were to continue to be in force even thereafter; and one of those laws is the Madras General Sales Tax Act (Madras Act IV of 1939). Section 54 of the Andhra State Act conferred on the Government a power to adopt laws for the purpose of facilitating the application of any law previously made, and in exercise of the powers so conferred, the Government of Andhra made an Adaptation order on the 2nd November 1953, whereby the word "Andhra" was substituted for the word "Madras" in the Madras Act. The territory forming part of the State of Andhra was thus governed by the Madras Act. This state of affairs continued till the 1st of November, 1956.

6. The States Reorganisation Act (37 of 1956) became law on 31-8-1956, and it brought about the reorganisation of the States comprised in the Union of India. Section 3 of that Act provided for certain territorial changes and among them was the transfer of territory from Hyderabad to Andhra and the alteration of the name of the latter State. As from the appointed day, that is, the 1st of November 1956, the territories comprised in the districts of Hyderabad, Medak, Nizamabad, Karimnagar, Warangal, Khammam, Nalgonda and Maha-boobnagar and certain other areas specified in Section 3 ceased to form part of the existing State of Hyderabad and were added to the State of Andhra, which thenceforth came to be known as the State of Andhra Pradesh. Despite the fact that the territory popularly known as Telangana, was added to the State of Andhra Pradesh, the laws in force in that territory were preserved under the States Reorganisation Act till the competent legislature made the necessary adaptations and modifications.

7. The relevant provisions in the States Reorganisation Act 1956, are the following;

"119. Territorial extent of laws: The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to any existing State shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day.

"120. Power to adapt laws: For the purpose of facilitating the application of any law in relation to any of the States formed or territorially altered by the provisions of Part II, the appropriate Government may, before the expiration of one year from the appointed day by order make such adaptations and modifications of the law, whether by way of repeal or amendment as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

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"121. Power to construe laws: Notwithstanding that no provision or insufficient provision has been made u/s 120 for the adaptation of a law made before the appointed day, any Court, tribunal or authority required or empowered to enforce such law may, for the purpose of facilitating its application in relation to any State formed Or territorially altered by the provisions of Part II, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority."

8. Section 119, which corresponds to Section 53 of the Andhra State Act, enacts that for the purpose of the application of the laws, there must be deemed to have been no change in the territories, that is, though the Telangana area is now a part of Andhra Pradesh, laws in force in the former State of Hyderabad would be in force in that area. Those laws would continue to govern the rights of parties

till the competent legislature or other competent authority otherwise provided.

9. Section 120 confers a power on the Government to make such adaptations and modifications in law and the law with such adaptations and modifications would prevail till the competent legislature Or authority amended the law. If the appropriate Government exercised its powers and made suitable orders u/s 120, the Courts were empowered u/s 121, to construe the law in such manner as was necessary to facilitate the application of the laws in relation to the territory added by the Act.

10. Pursuant to the power confided by Section 120, the Governor of Andhra Pradesh promulgated the Andhra Pradesh Adaptation of Laws Order, 1957. Sub-clause (2) of Clause 1 of the Order gave it retrospective operation as from the 1st day of November, 1958. Clause 3(1) of the Order provided as follows:

"As from the appointed day, the Andhra laws mentioned in the First Schedule to this Order and the Hyderabad Laws mentioned in the second schedule to this Order, shall, until altered, repealed or amended by a competent Legislature or other competent authority, have effect subject to the adaptations and modifications directed by those Schedules, or if it is so directed, shall stand repealed."

Among the Andhra laws enumerated in the First Schedule was the Madras General Sales Tax Act, 1939, and in the Second Schedule was included the Hyderabad General Sales Tax Act, 1950. By reason of the Adaptation Order, the words "Hyderabad State," occurring in Sub-section (2) of Section 1 of the Hyderabad General Sales Tax Act, 1950, were substituted by the words "the Hyderabad area of the State of Andhra Pradesh." As a result of the fore-going changes, the Hyderabad General Sales Tax Act continued to be operative in the Telangana area. So too, the Madras General Sales Tax Act continued to be operative in the rest of the territory comprised within the State of Andhra Pradesh. This was the position till the Andhra Pradesh General Sales Tax Act came into force on 10-6-1957.

11. In this revision, we are concerned with the period from 1-11-1956, to 31-3-1957, when admittedly the Hyderabad General Sales Tax Act governed the assessment, levy and collection of tax on sales and purchases in the Telangana area, and the Madras General Sales Tax Act governed the rest of the territory. It is contended that as two separate Acts were in force in the two areas comprised in the State, transactions of sale involving the movement of goods from the Telangana area to the Andhra area must be deemed to be inter-state sales.

12. As from the 1st of November 1956, both the Telangana and Andhra areas are comprised in one single State. As pointed out by the Supreme Court in *Rao Shiv Bahadur Singh and Another Vs. The State of Andhra Pradesh*, in the normal course and in the absence of any attempt to introduce uniform legislation throughout the State, the pre-existing laws of the various component parts would continue to be in force on the well-accepted principle laid down by the

Privy Council in *Mayor of Lyons v. East India Co.*, 1 Moo Ind App 175 at pp. 270, 271)

13. Section 119 of the States Reorganisation Act makes a suitable provision for avoiding any hiatus. The effect of that section is to declare that notwithstanding the emergence of the State of Andhra Pradesh and other States, there shall not be deemed to be any change in the territory to which the law in force applied. It provides firstly, that there shall be no change in the law; and secondly, that there shall not be deemed to be any change in the territory to which the law applies.

14. Now, under the Constitution, Parliament) can legislate for the whole or any part of the territory of India and the legislature of the State for the whole or any part of the State. Parliament has exclusive powers to make laws with respect to any of the matters in the Union List and has concurrent powers along with States Legislatures for all subjects enumerated in the concurrent List. A State Legislature has exclusive powers to make laws for the State or any part thereof with respect to any of the matters enumerated in the State List.

In each of the States forming part of the Indian Union, there is a body of laws which may, for the sake of convenience, be termed Union Laws, and also a body of laws made by State Legislatures. So far as the Union Laws are concerned, they continue to be operative throughout the Union, i. e., throughout the States and territories comprised in the Union. The recognition of States does not disturb that law. The other body of laws made by a State Legislature are operative within the territories of the particular State. It is declared by Parliament in and by Section 119 that the existing laws in force in those territories shall continue to be operative in spite of the Reorganisation of States.

15. The question then is as to what would constitute inter-State trade and commerce. In *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , Venkatarama Ayyar J., observed:

""A sale could be in the course of inter-State trade only if two conditions occur: (1) a sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions satisfied there can be no sale in the course of inter-State trade."

Movement of goods across a State border is the very essence of inter-State trade and commerce. The Constitution (Seventh Amendment) Act, 1956, included the territories specified in Sub-section (1) of Section 3 of the Andhra State Act, 1953, and the territories specified in Sub-section (1) of Section 3 of the States Reorganisation Act, 1956, in the State of Andhra Pradesh and as a consequence of the reorganisation, the State of Hyderabad ceased to exist. Thereafter both the Telangana and Andhra areas constituted the territory of the State Andhra Pradesh. The preservation of the pre-existing sales tax laws by reason of Section 119 of the States Reorganisation Act has not the effect of constituting the movement of goods from one area of the State into another area an inter-State transaction. The territory of the State of Andhra Pradesh being one, the

transaction in question must be held to be an intra-State sale and not an inter-State sale. That being the position of law the petitioners' contention is unsustainable.

16. The Revision Case is therefore dismissed with costs. Advocates' fee Rs. 100.