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In the High Court Of Kerala

Case No : O.P. No''s. 251, 286, 287, 288, 289, 299 and 301/60

Mulji Ratanshi and Co. APPELLANT

Vs

State of Kerala and Another RESPONDENT

Date of Decision : 25-10-1960

Acts Referred:
Constitution of India, 1950 — Article 269, 286

Citation : (1961) 12 STC 657

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant; The Government Pleader, for the Respondent

Judgement

M.A. Ansari, C.J.—These seven writ petitions are against the provisional assessment orders under the General Sales Tax Act No. XI of 1125, and the grounds, on which the petitioners seek to vacate them, are two in number. The first is that the assessment orders, based on the notification u/s 5(vii) of the General Sales Tax Act, are notwithstanding the validation by the General Sales Tax (Amendment) Act, No. III of 1960, defective and inadequate to levy the sales tax on the petitioners. The Amendment Act has been passed because of Abu v. State of Kerala 1960 K.L.J. 457 wherein a Division Bench of this Court has held that the aforesaid notification due to non-compliance with the provisions of Section 24 of the General Sales Tax Act, which section provided how the rules are to be framed under the Act, would not justify the last purchaser of the commodities mentioned in the notification being made liable to sales tax, even though the notification be mentioned in Rule 4(2) under the Act. Thereafter, the enacting authorities have passed the General Sales Tax (Amendment) Ordinance, 1960 (No. 1 of 1960), which has repealed and was followed by the General Sales Tax (Amendment) Act (No. III of 1960). Thereunder, old Section 5(vii) has been amended and Section 3 provided for validation of earlier assessment proceedings. It is obvious that should we find the second ground raised against the provisional assessment orders to be of substance, the decision of the first

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ground stated above would be obiter. That apart, we are not impressed with the soundness of the objection and we have, in a different batch of writ petitions, which were heard with these petitions assigned more fully our reasons for not accepting the objection. We would, therefore, examine the arguments urged by the petitioners'' learned Advocates in support of the second ground.

2. The petitioners claim that the several sales provisionally assessed are inter-State and, therefore, exempt from levy u/s 26(1)(b) of the General Sales Tax Act, 1125, which reads as follows: -

Section 26(1) "Notwithstanding anything contained in this Act,-

* * * * (b) tax on the sale or purchase of any goods shall not, after the 31st day of March 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce".

3. They complain that the assessing authorities have provisionally assessed them without satisfactorily adjudicating on the objections raised by the petitioners concerning the transactions being exempted.

4. For the better appreciation of the complaint, it is necessary to emphasise that the authorisation to tax sales of goods is subject to certain limitations, one of which arises from the circumscribed territorial jurisdiction of the taxing authorities, and the other from the freedom of trade, commerce and inter-course specially conferred by the Constitution. We feel it necessary to emphasise the limitations, because taxing authorities are apt to overlook them when applying the provisions under which they are authorised to levy the tax. Both the limitations are to be found in Article 286, which firstly excludes outside sales from being taxed, and next occurs exemption of sales in the course of import or export. The freedom of commerce and trade has been in 1956 clarified further by the Sixth Amendment of the Constitution. Thereunder, Articles 269 and 286 have been amended, and a new item 92A has been added to List I of the Seventh Schedule. The amendment to Article 269 is by adding the following two clauses to the Article.

In Article 269(1) * * *

(l)(g) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce"; and * * *

(3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce.

5. The amendment of Article 286 is by the Explanation in Clause (1) being omitted and the following new clauses (2) and (3) being substituted :

(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).

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(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

6. Finally the new entry of the Union List reads thus :-

92A. Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

7. And the old entry 54 in the State List stands also substituted thus;-

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

8. It follows that the three classes of sale transactions of goods that stand beyond the taxing powers of the States are : -

(1) Outside sales ;

(2) Import and export sales ; and

(3) Inter-State sales.

9. We are not concerned with the first and the second of the above classes, but misunderstanding of when the third class occurs, has certainly caused some confusion in these cases before us. To clarify the position it is necessary to remember that Parliament was authorised to formulate when sales in any of the ways mentioned in Article 286(1) take place and in pursuance has enacted the Central Sales Tax Act, 1956 (No. 74 of 1956). Section 3 of this Act reads as follows:-

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 commrnence 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.

10. Section 4 defines "inside sale" ; but it is subject to the definition u/s 3, and

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Section 5 states what are "export and import" sales. Briefly summarised, the definition of "inside sale" under the Act is such sale transactions where the ownerships in the goods situated in the State pass within the State. Therefore, it would be outside sales for the other States, and would not be taxable. Then come the two limitations upon the authority to tax even such transaction and they are where the sale be in course of export, which is because of Article 286(1) (b), or it be inter-State which is due to definition of inside sales being made subject to such sales under the aforesaid Central enactment. The latter rule is also enacted by Section 26(1) (b) of the General Sales Tax Act, which provides that tax on the sale or purchase of any goods shall not be imposed where such sale or purchase takes place in the course of inter-State trade or commerce. The State enactment does not define what inter-State sale is as that has been done by the Central Sales Tax Act, and we are, for ascertaining what such sales are, bound to rely on Section 3 of that Central Act or the authorities dealing with the section. Very briefly that section defines the sales to be where the transaction causes transfer of ownership in the goods and provides for outside movement of the goods as well or where the ownership is transferred when the goods be in transit. It follows that where the transaction be inside sale and yet it be causing the goods to move, it would be inter-State sale and exempt u/s 26(1)(b) of the General Sales Tax Act. Whatever doubt there may have been concerning the position, it is clarified in Tata Iron and Steel Co. Ltd. v. S. R. Sarkar [1960] 11 S.T.C. 655 at p. 666. There Shah, J., delivering the majority judgment has observed as follows :-

A sale being by the definition, transfer of property, becomes taxable u/s 3(a) if the movement of goods from one State to another is under a covenant or incident of the contract of sale, and the property in the goods passes to the. purchaser otherwise than by transfer of documents of title when the goods are in movement from one State to another. In respect of an inter-State sale, the tax is leviable only once and that indicates that the two clauses of Section 3 are mutually exclusive. A sale taxable as falling within Clause (a) of Section 3, will be excluded from the purview of Clause (b) of Section 3; otherwise certain sales may be liable to tax under both the clauses and the two States may, in respect of a single sale, claim to levy the tax contrary to the plain intendment of Sections 6 and 9 of the Act.

11. The same learned Judge again observes at page 667 thus :--

In our view, therefore, within Clause (b) of Section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto : Clause (a) of Section 3 covers sales, other than those included in Clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.

12. It should be noted that Sarkar, J., interpreted the two clauses differently, for the learned Judge who delivered the minority judgment observes as follows:-

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We take Clause (a) of Section 3 first. That clause contemplates a sale which occasions the movement of goods from one State to another. The words ''sale which occasions the movement'' should create no difficulty. It is apparent from the Explanation in Section 2(a) ... that they mean ''moved by reason of the sale''. The question then arises, when does a sale occasion the movement of goods sold? It seems clear to us that a sale can occasion the movement of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides.

13. We turn now to the sale contemplated by Clause (b) of Section 3. That is a sale effected by a transfer of documents of title to the goods during their movement from one State to another. What then is a sale effected by a transfer of documents of title ? In our view, it can only be a sale where the property in the goods sold is passed by a transfer of documents of title. It is well known that in many cases of sale, property in the goods sold is transferred by a transfer of documents of title to them".

14. The legal position, therefore, is no longer in doubt, though its application to facts of the particular cases may be difficult. We are concerned in these petitions with the complaint that the taxing authorities have levied the tax without paying adequate attention to the claim of the transactions being inter-State under the definition of Section 3(a) of the Central Sales Tax Act, and we feel there is substance in the complaint. The taxing authorities were handicapped by the Supreme Court decision not being available, and it is but proper that the provisional assessments in all these writ petitions should be vacated with a view to fresh assessments being made in the light of the pronouncement of the Supreme Court in the case mentioned above.

15. We would, further, clarify the position by dealing with the arguments in support of the provisional assessments, which have been addressed to us on behalf of the taxing authority. The learned Government Pleader has pressed on us the argument that should the sale transactions be complete within the State and notwithstanding the outside movement of the goods under the covenants of sale, the bargain would still be taxable. In support of his argument he has relied on State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, where the learned Judges dealing with the exemption of import and export, have observed that the words "export out of" and "import into" mean the exportation out of and importation into the country respectively and that the last purchase of the goods made by the exporter for the purpose of exporting them would not be covered by the exemption. He has further relied on Kerala Arecanut Co. v. State of Travancore-Cochin [1957] 8 S.T.C. 817 at p. 822 where a Division Bench of this Court has held that the purchase in the case could not be considered as purchase which took place "in the course of inter-State trade or commerce". In this connection Menon, J., has observed as follows:-

As we understand the passages extracted above, they only mean that in

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interpreting a contract of sale its ''commercial significance'' and ''the normal way in which trade and commerce in that particular line of goods flows across the boundary'' should not be forgotten. In other words, what the passages do is to emphasise a mode of construction and a way of approach rather than posulate a rule to the effect that even if the contracts of sale do not require or necessarily involve transportation across the State boundary, the sales should none the less be considered as taking place ''in the course of inter-State trade or commerce''

16. We do not think either of the observations relied on by the learned Government Pleader supports the view that should the sale transaction sought to be taxed causes movement of goods outside the State where the goods be situate and under a covenant of the sale, or should such a movement be incidental to the bargain, nevertheless the sale would be liable to tax under the statute. The majority pronouncement of the Supreme Court on Section 3(a) is clear, and the taxing authorities must proceed to assess afresh in the light of the aforesaid observations.

17. Accordingly we allow all these writ petitions, vacate the assessment orders and direct the taxing authorities to proceed afresh in view of the legal position clarified above. Costs will abide the final result. This order will cover all the O.Ps.

18. The collection of the tax as per the provisional assessments has been stayed subject to furnishing of security which has been done. As the provisional assessments have been vacated, it is clear that there is no tax, whose collection can be stayed. Therefore, the stay order becomes unnecessary and the security furnished to get the stay order should be released.

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