

(1957) 10 MP CK 0011

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No"s. 440 and 441 of 1955

Mullaji Jamaluddin and Co.

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 18-10-1957

Acts Referred:

Central Provinces and Berar Sales Tax Act, 1947 — Section 2(3)
Constitution of India, 1950 — Article 286

Citation : AIR 1958 MP 220 : (1957) ILR (MP) 631 : (1958) 3 MPLJ 353 : (1958) 9 STC 499

Hon'ble Judges : M. Hidayatullah, C.J;G.P. Bhutt, J;B.K. Choudhuri, J

Bench : Full Bench

Advocate : A.P. Sen, for the Appellant; M. Adhikari, A.G. for Opposite Party Nos. 1 to 3, for the Respondent

Final Decision : Partly Allowed

Judgement

The order shall also govern the disposal of miscellaneous petition No. 441 Of 1955.

These two petitions were filed by Messrs Mullaji Jamaluddin and Co., of Jabalpur who were assessed to slaes tax on certain sales of bidis by the Sales Tax Department. The cases referred to different assessment periods. Miscellaneous petition No. 440 of 1956 covers transactions between 22-10-1949 and 9-11-1950. The other case covers the period of assessment between 10-11-1950 and 30-10-1951.

In miscellaneous petition No. 441 of 1955 the assessee got some relief by way of a first appeal, and in both the cases the second appeals of the assessee were dismissed as out of time. We need not, however, refer to the amounts involved for the reason that the points raised are covered now by authorities and all that we have to do is to give a binding decision for future cases on, similar points.

The tax was levied on sales in which admittedly the goods were not delivered in

the State. The assessee despatched goods to Uttar Pradesh where other dealers sold them to consumers. The short point is whether sales tax can be levied upon such transactions regard being had to Article 286 of the Constitution and the interpretation thereof by the Supreme Court.

The two assessment cases divide themselves into two categories. The first category relates to despatches between 22-10-1949 and 25-1-1950 and the second to despatches after 26-1-1950. In other words the dividing line is the inauguration of the Constitution and the enactment of Article 286 of the Constitution.

It was ruled by this Court in *Shrirani Gulabdas v. Board of Revenue, M. P. Nagpur* AIR 1952 Nag 378 (A), that Explanation (II) to section 2 (g) the Central Provinces and Berar Sales Tax Act, 1947 enabled the State Government to levy sales tax on sales in which at the time the contract of sale took place the goods were within the State. This Court on that occasion held that there was sufficient nexus to overcome any extraterritoriality and that the Explanation was validly enacted. It was, however, ruled that the amended Explanation was invalid because the consent of the Governor-General was not obtained.

The Division Bench on that occasion also ruled that the unconstitutionality of the amended. Explanation made the unamended Explanation to revive and that the transactions could therefore be considered under the old Explanation. That case went before the Supreme Court in *Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others*, and the decision of the Division Bench was upheld, though it was reversed on the ground that a writ in that case might well have been issued after the amended Explanation was considered to be unconstitutional. That question, however, does not arise here.

It may be pointed out that the nexus theory was accepted by their Lordships of the Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, That case was dissented from by the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, but the nexus theory was not dissented from except by a learned single Judge. Since the Supreme Court did not reverse the *United Motors Ltd. case* (C), on the ground of nexus we take it that the approval of the decision of the Division Bench in *Shriram Gulabdas v. Board of Revenue* (A), (supra) by *Himmatlal v. State of M. P. (B)*, (supra) still stands.

The result therefore is that following *Shriram Gulabdas v. Board of Revenue* (A), and *Himmatlal v. State of M. P. (B)*, (supra) we hold that sales tax could be collected in respect of transactions between 22-10-1949 and 25-1-1950.

This brings us to the transactions after the inauguration of the Constitution. Here the bar created by Article 286 of the Constitution operates. The bar in that section is created by two separate clauses.

The first clause creates a bar in respect of the imposition of tax on the sale or

purchase of goods where such sale or purchase takes place outside the State. The second clause introduces a bar in respect of sales or purchases which take place in the course of inter-State trade or commerce. The bar of the second clause did not operate till 31-3-1951 by reason of the President's order which had been issued under the proviso to that clause.

Later, an Ordinance (the Sales Tax Laws Validation Ordinance, 1956) and an Act (the Sales Tax Laws Validation Act, 1956 (No. VII of 1956) validated the recovery of sales tax in spite of the fact that the sale or purchase took place in the course of inter-State trade or commerce. Neither the president's order nor the Ordinance nor the Act validated the collection of such tax which offended the first clause of Article 286 of the Constitution.

This follows from the decision of their Lordships of the Supreme Court in *Bengal Immunity Co. v. State of Bihar* (D), (supra). The transactions in the two cases before us after 26-1-1950 therefore will have to be judged from these two points. The curative provisions of the President's order or the Ordinance or the Act would save the collection of tax from the operation of the second clause but not from the operation of the first clause.

The first clause has an Explanation added to it which says that tax can only be collected by the State in which the goods have been delivered for the purpose of consumption in that State. In the cases before us the goods were sent to dealers in Uttar Pradesh who sold or delivered them for consumption in that State.

In view of the decision of this Court in *Shriram Gulabdas v. Board of Revenue* (A), (supra) approved as it is in *Himmatlal v. State of M. P.* (B), (supra) sales tax could only be collected by the State in which the goods were actually delivered for the purpose of consumption in that State and not by the State from which the goods were sent for such delivery. All taxes, therefore, which were collected in these circumstances after 26-1-1950 would offend the provisions of the first clause of Article 286 of the Constitution.

We, therefore, hold that the taxes recovered or about to be recovered in respect of transactions in which the goods were sent outside the State for delivery to consumers there would be immune from tax in this State after 26-1-1950 but not in respect of transactions in which sufficient nexus in the goods is established as ruled in *Shriram Gulabdas v. Board of Revenue* (A), (supra) before the inauguration of Constitution.

In other words, the tax on transactions prior to 26th January 1950 must be held to be validly collected while the tax on transactions after 26th January 1950 must be held to be invalidly collected. We accordingly allow the two petitions but partly. Any tax recovered contrary to our decision shall be refunded to the assessee.

In view of the partial success of the petition we do not think it necessary to make any order about costs. The security deposit be refunded.