

(1959) 09 MAD CK 0038

In the Madras High Court

Case No : Tax Revision Case No. 63 of 1956

Volkart Brothers, Madras

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 15-09-1959

Acts Referred:

Constitution of India, 1950 — Article 286(1), 286(2)

Citation : AIR 1960 Mad 236 : (1960) 73 LW 282 : (1959) 10 STC 598

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Judgement

Rajagopalan, J.

(1) These proceedings related to the assessment years, 1950-51, when the President's Sales Tax Continuance Order, 1950, was in force. The

only item of the assessee's turnover, with which we need concern ourselves, at this stage is what was dealt with as the "second item" by the

Tribunal, sales of machinery etc., to buyers outside the State, the turnover of which was Rs. 3,02,639-3-0. The contention of the assessee was

that these were sales which fell within the scope of explanation to Art. 286(1)(a) of the Constitution, and that, as the machinery in question had

been sold in the course of inter-State trade to persons residing outside the State for consumption in those States, those sales could not be taxed

within the State of Madras, nor could they be treated as intra-State sales, as far as Madras State was concerned. Even in the proceedings before

the Tribunal, the assessee produced certain affidavits, which no doubt covered only a portion of the disputed turnover, in support of his contention,

that the machinery had been sold to buyers in the States outside Madras State for the purpose of consumption in those States, that is, the buyers"

States.

(2) The Tribunal considered the question, whether these were ""explanation sales"", in the sense that they come within the scope of explanation to

Art. 286(1)(a). If they fell within that category, then obviously, Madras State could not tax those transactions, as those would be outside sales as

far as Madras State was concerned, and they would be inside or intra-State sales only in the States where the goods were delivered for

consumption. The Tribunal, apparently, was of the view, that it was unnecessary to decide the question, because whether the sales come within the

scope of Art. 286(1)(a) or whether they were sales in the course of inter-State trade or commerce within the scope of Art. 286(2), the levy would

be subject to Sales tax under the President's Sales Tax Continuance Order.

That view itself was based upon certain observations of the learned Judges of the Supreme Court in *State of Travancore-cochin and Others Vs.*

Shanmugha Vilas Cashew Nut Factory and Others, , and also the observations of this Court in *East India Match Factory v. The State of Madras*,

1954 5 STC 269, to which the Tribunal referred. We have, however, to reconsider the position in the light of the principles laid down in the *The*

Bengal Immunity Company Limited Vs. The State of Bihar and Others, and *Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and*

Others, .

(3) The ""explanation sale"", that is, the sale which falls within the scope of Art. 286(1)(a) of the Constitution can itself be a sale in the course of

inter-State trade, and to such a sale the ban imposed under Art. 286(2), as it stood, would also apply. If that ban is lifted, then the question would

arise under the explanation to Art. 286(1)(a), which is the State that could tax the transaction, in view of the fact, that the ban on the transaction in

the course of inter-State trade was lifted by the President's Sales-tax Continuance Order up to 31-3-1951. Then as we said, we have to decide

whether it was an inside sale as far as Madras State was concerned, or whether it was an outside sale which came within the scope of explanation

to Art. 286(1)(a).

If they were outside sales, the President's Sales tax Continuance order would not enable Madras State to tax on those transactions, because the

implied ban imposed by explanation to Art. 286(1)(a) would apply *proprio vigore*

and could not be covered by the President's Sales-tax

Continuance Order, which was concerned only with the lifting of the ban on taxing of sales in the course of inter-State trade. That was the principle

explained in the subsequent decision of the Supreme Court in Ram Narain Sons Ltd. Vs. Asst. Commissioner of Sales Tax and Others, .

(4) Since the question at issue, whether there were sales of machinery outside the State of Madras for consumption in the States of delivery, was

not decided by the Tribunal, we think that the best course would be to remand the proceedings for disposal afresh, the remand being limited to the

issue we have mentioned above, the liability of the ""second item"" with the turnover of Rs. 3,02,639-3-0 in sales-tax. It is open to the Tribunal to

allow the assessee an opportunity to supplement the evidence already on record. Even if such further evidence is not offered, then with reference to

the facts already on record the Tribunal will consider whether even a portion of the turnover is of sales of articles delivered for consumption outside

the State of Madras and if so, whether Madras State could not tax such sales, despite the President's Sales-tax Continuance Order. In other

respects, the order of the Tribunal will stand confirmed. In fact, those findings were not challenged before us.

(5) The order of the Tribunal is set aside to the extent indicated above. The Tribunal will hear the appeal afresh on the lines indicated above and

dispose of it in accordance with law. There will be no order as to costs in the proceedings before us.

(6) Order accordingly.