

State of Travancore-Cochin and Others

Vs

The Bombay Co. Ltd. State of Travancore-Cochin and Another

Vs

Michael Frederick and Bros. State of Travancore-Cochin and Another

Vs

Stagbrook Rubber and Tea Estates Ltd.

(CJI M. Patanjali Sastri, Vivian Bose, S. R. Dass, Ghulam Hasan, B. K. Mukherjea JJ)

16.10.1952

JUDGMENT

PATANJALI SASTRI C.J. –

These are connected appeals from the judgment and order of the High Court of Travancore-Cochin quashing the assessments under the United State of Travancore and Cochin Sales Tax Act (No. 11 of 1125 M. E.) (hereinafter referred to Tax Act (No. 11 of 1125 M. E.) (hereinafter referred to as "the Act") on the respondents on the turnover of the sales of the commodities (coir products in C. A. 25, lemon grass oil in C. A. 28 and tea in C. A. 29) in which they respectively deal.

The dealings followed more or less the same pattern in all the cases and consisted of export sales of the respective commodities to foreign buyers on c. i. f. or f. o. b. terms as the case may be.

The respondents in each case claimed exemption from assessment in respect of the sales effected by them on the ground, inter alia, that such sales took place "in the course of the export of the goods out of the territory of India" within the meaning of article 286 (1) (b) of the Constitution. The Sales Tax Authorities rejected the contention as, in their view, the sales were completed before the goods were shipped and could not, therefore, be considered to have taken place in the course of the export.

Thereupon the respondents by separate petitions applied to the High Court of the United State of Travancore and Cochin (hereinafter referred to as the State) under article 226 of the Constitution for issue of writs of certiorari and prohibition quashing the assessments made on them and prohibiting such assessment in future. The applications were heard, along with nine other applications for similar reliefs by dealers in cashew nuts, by a Division Bench (Kunhiraman C.J. and Subramania Iyer J.) who upheld the claim of exemption and quashed the assessment orders in respect of the transactions subsequent to the commencement of the Constitution. From that decision the State has preferred appeals in all the cases on a certificate granted by the High Court under article 132 (1) of the Constitution.

As the appeals involved important questions of law which may have a bearing on the sales tax legislation of the various States in India, this Court directed notice of these proceedings to the

Attorney- General for India and the Advocates-General of those States, and they have intervened and participated in the debate at the hearing of these appeals.

When the argument had proceeded for some time, it was discovered that the material facts relating to the course of dealings in cashew nuts, which were more complex in character, had not been clearly ascertained and consequently the relative appeals were remitted to the High Court for findings on certain points agreed upon by the parties. These three appeals were, however, fully heard as they were found to admit of disposal on the materials on record.

Article 286 (1), on which the respondents found their claim to exemption, runs thus :

No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place -

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation. - For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State. On the scope and meaning of clause (b), the learned Judges expressed their view as follows :-

"The words 'in the course of' make the scope of this clause very wide. It is not restricted to the point of time at which goods are imported into or exported from India. The series of transactions which necessarily precede export or import of goods will come within the purview of this clause. Therefore, while in the course of that series of transactions, the sale has taken place, such a sale is exempted from the levy of sales tax. The sale may have taken place within the boundaries of the State. Even then sales tax cannot be levied if the sale had taken place while the goods were in the course of import into India or in the course of export out of India. We are stressing this point because both parties in what we may describe as the cashew nut cases entered into a lengthy discussion as to the exact point of time when the sale became completed and as to the exact place where the goods were when the sale became a completed transaction."

On this interpretation, local purchases "made for the purpose of export" were held by the learned Judges to be "integral parts of the process of exporting". In support of this construction the learned Judges referred to the debates in the Constituent Assembly on clause 264-A of the draft Constitution which corresponded to article 286 and quoted from the speech of one of the members who unsuccessfully moved an amendment defining export as meaning the last transaction and import as meaning the first transaction.

In view of the wide construction thus placed upon clause (b) of article 286 (1), the arguments before us ranged over a large field, and as many as four different views as to its scope and meaning were pressed upon us for our acceptance :-

(1) The exemption is limited to sales by export and purchases by import, that is to say, those sales and purchases which occasion the export or import as the case may be, and extends to no other transactions however directly or immediately connected, in intention or purpose, with such sales or purchases, and wheresoever the property in the goods may pass to the buyer. This is the view put forward on behalf of the State of Madras. The Advocate-General thought that a State could not impose sales tax though title passed within State limits while the goods were still under transport on the high seas and no question of exemption could therefore arise. He said, however, that no such case had actually arisen.

(2) In addition to the sales and purchases of the kind described above, the exemption covers the last purchase by the exporter and the first sale by the importer, if any, so directly and proximately connected with the export sale or import purchase as to form part of the same transaction. This view was sponsored by Attorney-General who was also inclined to think, as advised at the moment, that sales or purchases made while the goods were on the high seas would be exempt, but he would prefer not to go into the wider question, because, whatever view was taken, sales such as those involved in the present cases must, in any event, be exempt.

(3) The exemption covers only those sales and purchases under which the property in the goods concerned is transferred from the seller to the buyer during the course of the transit, that is, after the goods begin to move and before they reach their foreign destination. This view is supported by the State of Bombay and certain other States.

(4) The view which found favour with the learned Judges of the High Court in the passage already extracted.

It will be seen that the construction first mentioned in the narrowest and the last mentioned the widest.

We are clearly of opinion that the sales here in question, which occasioned the export in each case, fall within the scope of the exemption under article 286 (1) (b). Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export form parts of a single transaction. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Assuming without deciding that the property in the goods in the present cases passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey as found by the Sales Tax Authorities, the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under article 286 (1) (b). That clause, indeed, assumes that the sale had taken place within the limits of the State and exempts it if it took place in the course of the export of the goods concerned.

In the foregoing discussion we have assumed that the word "sale" used in the Constitution has the same meaning as in the law relating to the sale of goods, but it has been suggested in the course of the argument that it imports a wider concept than the passing of title from the seller to the buyer

which under that law is determined by highly technical rules based upon the presumed intention of the parties and liable to be displaced by their expressed intention. We leave the point open as it is unnecessary for the purpose of these appeals to pronounce any opinion upon it.

It was said that, on the construction we have indicated above, a "sale in the course of export" would become practically synonymous with "export", and would reduce clause (b) to a mere redundancy, because article 246 (1), read with entry 83 of List I of the Seventh Schedule, vests legislative power with respect to "duties of customs including export duties" exclusively in Parliament, and that would be sufficient to preclude State taxation of such transactions. We see no force in this suggestion. It might well be argued, in the absence of a provision like clause (b) prohibiting in terms the levy of tax on the sale or purchase of goods where such sales and purchases are effected through the machinery of export and import, that both the powers of taxation, though exclusively vested in the Union and the States respectively, could be exercised in respect of the same sale by export or purchase by import, the sales tax and the export duty being regarded as essentially of a different character. A similar argument induced the Federal Court to hold in *Province of Madras v. Boddu Paidanna and Sons* that both central excise duty and provincial sales tax could be validly imposed on the first sale of groundnut oil and cake by the manufacturer or producer as "the two taxes are economically two separate and distinct imposts". Lest similar reasoning should lead to the imposition of such cumulative burden on the export-import trade of this country which is of great importance to the nation's economy, the Constituent Assembly may well have thought it necessary to exempt in terms sales by export and purchases by import from sales tax by inserting article 286 (1) (b) in the Constitution.

We are not much impressed with the contention that no sale or purchase can be said to take place "in the course of" export or import unless the property in the goods is transferred to the buyer during their actual movement, as for instance, where the shipping documents are indorsed and delivered within the State by the seller to a local agent of the foreign buyer during their actual movement, as for instance, where the shipping documents are indorsed and delivered within the State by the seller to a local agent of the foreign buyer after the goods have been actually shipped, or where such documents are cleared on payment, or on acceptance, by the Indian buyer before the arrival of the goods within the State. This view, which lays undue stress on the etymology of the word "course" and formulates a mechanical test for the application of clause (b), places, in our opinion, too narrow a construction upon that clause, in so far as it seeks to limit its operation only to sales and purchases effected during the transit of the goods, and would, if accepted, rob the exemption of much of its usefulness.

We accordingly hold that whatever else may or may not fall within article 286 (1) (b), sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India come within the exemption and that is enough to dispose of these appeals.

Our attention was called, in the course of the debate, to various American decisions which hold that the power "to regulate" inter-State commerce vested exclusively in the Congress by article 1 section 8 (3) of the American Constitution (the Commerce clause) excludes by implication the States' power of taxation only when the goods enter "the export stream", and until then such goods enter "the export stream", and until then such goods form part of "the general mass of property in the State" subject, as such, to its jurisdiction to tax, and that this principle was also applicable to cases arising under article 1 section 9 (5) and section 10 (2) (the Import-Export clause), [see e.g., *Empresa Siderurgica v. Merced Co.*]. These clauses are widely different in language, scope and purpose, and

a varying body of doctrines and tests have grown around them interpreting, extending or restricting, from time to time, their operation and application in the context of the expanding American commerce and industry, and we are of opinion that not much help can be derived from them in the solution of the problems arising under article 286 of the Indian Constitution.

It remains only to point out that the use made by the learned Judges below of the speeches made by the members of the Constituent Assembly in the course of the debates on the draft Constitution is unwarranted. That this form of extrinsic aid to the interpretation of statutes is not admissible has been generally accepted in England, and the same rule has been observed in the construction of Indian statutes - see *Administrator-General of Bengal v. Prem Nath Mallick*. The reason behind the rule was explained by one of us in *Gopalan's case* thus :-

"A speech made in the course of the debate on a bill could at best be indicative of the subjective intent of the speaker, but it could not reflect the inarticulate mental process lying behind the majority vote which carried the bill. Nor is it reasonable to assume that the minds of all those legislators were in accord,"

or, as it is more tersely put in an American case -

"Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other - *United States v. Trans- Missouri Freight Association*.

This rule of exclusion has not always been adhered to in America, and sometimes distinction is made between using such material to ascertain the purpose of a statute and using it for ascertaining its meaning. It would seem that the rule is adopted in Canada and Australia see *Craies on Statute Law*, 5th Ed., p. 122.

In the result, agreeing with the conclusion of the High Court, though on different grounds, we dismiss the appeals with costs.

Agent for the appellants; P. A. Mehta.

Agent for the respondent in C. A. No. 25 of 52; M. S. K. Sastri.

Agent for the respondent in C. A. No. 28 of 52 : Sardar Bahadur.

Agent for the respondent in C. A. No. 29 of 52 : V. P. K. Nambiyar.

Agent for the Interveners (Union of India, State of Bombay, State of Madras, State of Hyderabad, State of Punjab, State of Mysore, and State of Orissa) : P. A. Mehta.

Agent for the State of Uttar Pradesh : C. P. Lal.

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