

SUPREME COURT OF INDIA

Kailash Nath

Vs.

State of U.P.

(N. H. Bhagwati, B. Jagannadhadas, S. J. Imam, P. Govinda Menon and J. L. Kapur, JJ.)

Writ Petn. No. 94 of 1956

22.02.1957

JUDGEMENT

GOVINDA MENON J. –

1. This petition under Art. 32 of the Constitution raises the question as to whether the 1st respondent, the State of Uttar Pradesh illegally and unauthorisedly levied sales tax on the 2nd petitioner firm, under the Uttar Pradesh Sales Tax Act (U. P. Act XV of 1948) with regard to the cloth manufactured by the 2nd petitioner, with a view to exporting such cloth outside the territories of India, by customers of the 2nd petitioner called "indentors."

2. The 1st petitioner is the Director of Messrs Cawnpore Textiles Limited, a Public Limited Company, having its registered office in Kanpur, the 2nd petitioner being the Company itself, whose business is the manufacture of cotton cloth and yarn intended for sale in India, as also for export abroad. In the course of that business, the 2nd petitioner sells quantities of cloth to persons styled as Indentors who after dyeing and hand-printing them, export them overseas."

The 2nd petitioner is a dealer as defined in S. 2 (c) of the Uttar Pradesh Sales Tax Act, which by S. 3 lays down that every dealer shall be subject to the provisions of the Act, in every assessment year pay a tax on his turn-over of each year which shall be determined in such manner as may be prescribed. Under S. 4 of that Act, the State Government has been empowered either to exempt certain kinds of transactions from the payment of sales tax completely, or to allow a rebate of a portion of the tax payable.

In pursuance to that, the Uttar Pradesh Government on 3-12-1949 issued a Notification No. ST. 6499-X-902 (20) 48, that with effect from 1-12-1949 the provisions of S. 3 of the Act (relating to the levy of sales tax) shall not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after 1-12-1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn is actually exported and proof of such actual export is furnished. This notification having been made in accordance with the power conferred by the statute has statutory force and validity and therefore, the exemption is as if it is contained in the parent Act itself. The question for decision in this petition is whether the petitioners are entitled to avail themselves of this exemption and whether, therefore the levy of tax is illegal.

3. During the assessment years 1952-53, 1953-54 and 1954-55, the petitioner had sold quantities of cotton cloth to constituents of theirs who thereafter printed such cloth with hand made apparatus and

exported them over seas as hand printed cloth. Such customers are known as indentors who had placed orders with the petitioners for the manufacture of cloth. The modus operandi followed by the indenter in the transaction of business is to the following effect:-

Having received orders for the supply of hand printed cloth from merchants over-seas, the indenter applies to the Chief Controller of Export and Import, Ministry of Commerce, Government of India, for the grant of and export licence which, when granted, permits him to export cotton piece goods to be manufactured by a Textile Mill, specified in such a licence.

The licence also names the mills where the cotton cloth is to be manufactured and further descriptions of the cloth are also given. A copy of the licence is given to the indenter and another copy is sent to the Textile Mill named in the licence which is to manufacture the cloth. Thereafter the Mill receives the order from the indenter to manufacture the cloth intended for export under the licence and the required quantity is delivered to the indenter after manufacture in the mills.

On delivery the indenter pays the excise duty to the Central Government and removes the goods to his actual place of business. The cloth is then printed by hand-printing and exported. It is to this kind of cloth manufactured with a view to export over-seas for which a licence has already been granted by the Central Government that the exemption from sales tax referred to in the notification above mentioned applies.

4. According to the petitioners, during the three years, namely, 1953, 1954 and 1955, they had been assessed to sums of money on this account which they should not have been because of the exemption. Samples of export licence as well as the intimation to the manufacturers were placed before the court and no objection was taken by the counsel appearing on behalf of the State Government to their correctness. The conditions on which the licence has been granted are that the licence is valid only for export by the named consignor to the particular ultimate consignee named therein, and if the original transaction licensed breaks down or if any change of consignee is initiated by the exporter or any middle man without proper authority, the goods consigned are liable to be detained enroute.

5. When the Sales Tax Officer attempted to assess the petitioners for the three years referred to above, along with other items on the quantity of cloth sold by them to the indentors for the purpose of hand-printing and export over-seas, he did not accept the objections raised on the footing of the exemption and passed the final assessment order in each case.

6. With regard to the years 1952-53 and 1954-55, the Sales Tax Officer did not find that as a matter of fact the quantities sold to the indentors had actually been exported, with the result that the exemption clauses could not be availed of.

We are told that appeals against those two years of assessment are pending before the Judge of Appeals as Sales Tax. With regard to the year 1953-54 also there was an appeal and in those proceedings the Appellate Judge after finding that cloth had actually been exported, came to the conclusion that what was exported was not such cloth because after purchase by the indentors, the cloth had been prepared and processed so that the resulting article was not the same as that sold by the petitioners, that being the case, in the opinion of the Sales-tax Appellate Judge exemption clause would not apply, as it would be applicable only if the cloth in the exact condition and manner without any kind of change, transformation or alteration, had been exported.

7. In the affidavit filed in this Court on behalf of the State Government, paragraph 12 is as follows:-

"That it is submitted that the exemption from tax was refused on the legal ground that sales of this nature, even if the processed cloth was ultimately exported, were not covered by the exemption but the fact of the actual export of the proceed cloth was not gone into and even if it is held that the exemption is permissible in respect of such sales, then it will have to be established as fact that the cloth sold by the petitioner was actually exported out of India."

8. This contention cannot be accepted into toto because the order of the Appellate Sales-Tax Judge for the year 1953-54 proceeds on the footing that there had actually been export of cloth for that particular year. In these circumstances, we propose to discuss the validity of the assessment for the year 1953-54 only, for the reason that with regard to the other two years the fact of export itself is disputed. It has to be mentioned that it is only on facts admitted or taken as approved that the question of the violation of a fundamental right can be decided by this Court under Art 32, because when facts are in dispute, the matter has to be enquired into and decided by proper legal proceedings.

9. Confining ourselves, therefore, to the legality of the levy of tax for the year 1953-54, the question is whether the state had any authority to impose the tax in the circumstances. If a tax is levied without due legal authority on any trade or business, then it is open to the citizen aggrieved to approach this Court for a writ under Art. 32 since his right to carry on a trade is violated or infringed by the imposition and such being the case, Art. 19 (1) (g) comes into play.

10. An objection has been taken on behalf of the State Government that the imposition of an illegal tax will not entitle, the citizen to invoke Art. 32, but he must resort to remedies available under the ordinary law or proceed under Art. 226 of the Constitution, in view of the fact that the right to be exempted from the payment of tax cannot be said to be a fundamental right which comes within the purview of Art. 32. This argument has no force in view of the decision of this "Court in "Bengal Immunity Co. Ltd. v. State of Bihar.", 1955-2 SCR 603 at 618 : ((S) AIR 1955 S C 661 AT pp. 668-689) (A), where a Full Bench dealing with the Bihar Sales Tax Act, 1947, observed as follows:

"We are unable to agree with the above conclusion. In reaching that conclusion the High Court appears to have overlooked the fact that the main contention of the appellant company, as set forth in its petition, is that the Act in so far as it purports to tax non-resident dealers in respect of an inter State sale or purchase of goods is ultra vires the Constitution and wholly illegal. In the impugned Act there are various provisions laying down conditions which dealers must comply with or submit to, namely to give only a few instances, compulsory registration of dealers (S.10), filing of returns (S.12), attendance and production of evidence in support of the return (S.13), production, inspection and search of premises (S.17). Section 26 prescribes penalties for contravention of the provisions of the Act. These and other like provisions in the Act undoubtedly constitute restrictions on the fundamental right to carry on business which is guaranteed to every citizen of India by Art. 19 (1) (g) of the Constitution. If, as contended, the Act is ultra vires the Constitution and consequently void these onerous conditions can never be justified as reasonable restrictions within the meaning of Cl. (6) of that article as this Court held in the case of Mohammad Yasin v. Town Area Committee, Jalalabad, 1952-3 S C R 572: (AIR 1952 S C 115) (B). The same view was also expressed in state of Bombay v. United Motors (India) Ltd., 1953 SCR 1069 at p.1077: (AIR 1953 SC 252 at p.256) (C) and again only recently in Himmatlal Harilal Mehta v. State of Madhya Pradesh, 1954 SCR 1122 at p.1127: (AIR 1954 SC 403 at p.405) (D)."

11. In addition to the cases cited above, there is a more recent authority dealing with the subject, viz., "Bidi Supply Co. v. The Union of India" 1956 SCR 267 at p. 277: ((S) AIR 1956 SC 479 at p. 487) (E). What we have therefore to ascertain is whether the interpretation put upon the exemption clause by the Sales-tax authorities with regard to the quantity of cloth sold during the year 1953-54, to the Indentors is sound in law.

12. One of the arguments advanced on behalf of the State is that the quantity of cloth sold was not specifically manufactured for that purpose because there is an observation by the Sales-Tax Officer that it was admitted before him that from the existing manufacturers cloth available with the manufacturer the quantity intended for export was sold and that there was no manufacture in accordance with the directions given in the licence.

It is urged that in such a case the exemption cannot be availed of. In our opinion it is not necessary for the application of the exemption clause that there should be an initial manufacture with a view to make a sale for export but that the exemption will be satisfied even if already existing manufactured cloth is sold with a view to export. All that is essential is the sale of cotton cloth or yarn made on or after 1-12-1949 with a view to export.

The exemption will be attracted if the sale is made on or after the particular date for the specific purpose. The essential pre-requisite is that the sale must be made with a view to export as the emphasis is on the word 'sale' and its time and purpose and not the manufacture of the cloth at a particular time for a particular purpose. Three conditions are necessary to be fulfilled in order to attract the exemption under the notification. They are (1) the cloth must be manufactured in U. P.: (2) the sale should be on or after 1-12-1949 with a view to export and (3) there should be actual export of such cloth.

On the facts admitted or found there has been a sale and also that export has taken place of such cloth but what is urged is that the thing exported is not the same and reliance is placed upon the words, 'such cloth'. Mr. Mathur contends that when the quantity of cloth sold by the petitioners is printed, coloured or dyed it get transformed into some other material and therefore what is exported is not the same cloth. By such printing and dyeing the original cloth gets metamorphosed into a different material with incidents not the same and appearance and colour changed.

We are of the opinion that this argument is unsound. By using the word 'such' what the legislature has laid down is not that the identical thing should be exported in bulk and quantity or that any change in appearance would be crucial to alter it. Mr. Mathur relied upon "State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory" 1954 S C R 53: (AIR 1953 SC 333) (F) wherein this Court held that where cashew nuts were purchased conditioned and processed for export abroad, the exported article is not the same as the one purchased and therefore the exemption under Art. 286 would not apply.

It seems to us that there is a vast difference between prepared cashew nuts and printed cloth and the observations there can, by no stretch of imagination, have any application to this case. We are of the view that the words "such cloth or yarn would mean the cloth or yarn manufactured in U. P. and sold." It has nothing to do with the transformation by printing and designs on the cloth. The cloth exported is the same as the cloth sold with this variation or difference that the colour has changed by printing and processing.

In the view which we take that the cloth exported is the same as the cloth sold by the petitioners,

there can be no question about the exemption clause not applying to it, and if the exemption applies, then the tax has been levied without jurisdiction. The disputed levy of sale-tax for the year 1953- 54 is not according to law and to that extent the levy of tax is hereby quashed.

13. The parties will bear their own costs in this Court.

Order accordingly.

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