

SUPREME COURT OF INDIA

Pashabhai Patel and Co. (Private) Ltd.

Vs.

S. I. H. Razvi

C.A.No.706 of 1957

(S. R. Das, C.J.I., T. L. Venkatarama Ayyar, S. K. Das, A. K. Sarkar and Vivian Bose, JJ.)

11.03.1958

JUDGEMENT

T. L. VENKATARAMA AIYAR, J.:

(On behalf of **S. R. DAS C. J., S. K. DAS, VIVIAN BOSE, JJ.** and himself).

1. The appellants are a private limited Company having their registered office in the City of Bombay, and they are carrying on business as dealers in agricultural machinery and tools in Bombay. In the course of their business, they entered into several contracts with the Government of Bihar and the local authorities in that State for the sale and delivery of agricultural construction and earth-moving machinery and spare parts. The respondent who is the concerned Commercial Tax Officer of the State of Bihar issued notices to the appellants calling upon them to submit returns of sales effected by them to consumers in the State of Bihar during the periods 1-4-1953 to 31-3-1955 and 1-4-1955 to 6-9-1955, and produce their accounts for the purpose of assessment of the tax payable thereon. The appellants questioned the legality of the proposed levy and after a prolonged correspondence, filed on 10-7-1957, an application in the High Court of Bombay for the issue of an appropriate writ to restrain the respondent from taking proceedings for imposing any tax on the sales. The grounds on which the appellants disputed the validity of the assessment had been already considered by a Bench of the Bombay High Court in a judgment pronounced on 10-8-1956 and reported in *Dialdas v. P. S. Talwalkar*, AIR 1957 Bom 71 (A). In view of this decision, the application of the appellants was summarily dismissed by Tendolkar and Shelat, JJ., on 10-7-1957, and it is against this order that this appeal has been preferred by special leave of this Court.

2. On behalf of the appellants, their learned Counsel, Mr. Bhagwati urges that the sale proposed to be taxed by the respondent took place in the course of inter-State trade and were therefore not liable to be taxed by reason of Art. 286 (2) of the Constitution; that S. 33 of the Bihar Sales Tax Act, 1947, under which the levy is proposed to be made does not, on its true construction, impose a tax on the Explanation sales; that even if it could be regarded as imposing a conditional levy, that would also be bad, as authorisation by Parliament under Art. 286 (2) was condition precedent to enactment of such law and that had not been given; that the Sales Tax Laws Validation Act No. VII of 1956 was ultra vires, as Art. 286 (2) did not authorise the enactment of a legislation retrospective in character; that there could not be any validation of what was unconstitutional and illegal; that the provisions of the Bihar Sales Tax Act provide for assessment of sales-tax on the basis of quarterly returns, and that it would result in great hardship if assessment under S. 33 were not to be made retrospectively, as the appellants are not now in a position to pass the tax on to the consumers; that

the Validation Act validated only levies actually made up to 6-9-1955, and did not authorise the initiation of fresh proceedings for imposition of tax, and that, in any event, as S. 33 of the Bihar Sales Tax Act was unconstitutional when it was enacted, it was void and the Validation Act could not infuse life into what was a dead provision, and that no proceedings could therefore be taken thereunder.

3. This appeal was heard by us along with Petitions Nos. 220, 222, 240 and 380 to 395 of 1955, in which similar contentions were raised, and in the judgment delivered by us in those petitions today, we have held that those contentions are unsustainable. In view of the conclusions stated by us therein, this appeal must fail.

4. We must mention that the learned Counsel for the appellants also contended that on the facts the sales in question did not fall within the Explanation to Sec. 33 of the Bihar Sales Tax Act. He stated that the contracts for sale were concluded in Bombay, that the price therefor was paid in Bombay, that the goods were delivered f.o.r., in Bombay, and that the railway receipts were taken in the names of the consignees and despatched to them and that accordingly the sales were wholly inside Bombay and did not fall within the Explanation to S. 33. These are questions which have to be determined by the appropriate sales-tax authorities on materials to be placed before them, and cannot be raised in these proceedings.

5. In the result, the appeal is dismissed with costs.

6. **A. K. SARKAR, J.** : In view of the majority decision delivered earlier in the day I agree with the Judgment of the majority in this case also.

Appeal dismissed.

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