The State of Bihar

Vs

Rai Bahadur Hurdut Roy Moti Lall Jute Mills & Another (and connected appeal)

Civil Appeal No. 678 of 1957

(CJI B. P. Sinha, P. B. Gajendragadkar, K. Subha Rao, K. C. Das Gupta, J. C. Shah JJ)

26.11.1955

JUDGEMENT

GAJENDRAGADKAR J. –

This is a group of three appeals which have been filed in this Court by the State of Bihar (hereinafter called the appellant) against three separate registered dealers with a certificate issued by the Patna High Court under Art. 132(1) of the Constitution that they involve a substantial quest ion of law as to the interpretation of Art. 20(1) of the Constitution. The facts in each one of the three appeals are similar, though not exactly the same, but they raise a common question of law under the proviso to s. 14A of the Bihar Sales Tax Act, 1947 (Act XIX of 1947) (hereinafter called the Act). Orders of forfeiture have been passed against the three registered dealers in the three appeals respectively, and they raise a common question of law in regard to the validity of the said orders. By consent Civil Appeal No. 678 of 1957, has been argued before us as the principal appeal and it has been conceded that our decision in that appeal will govern the two other appeals. We would, therefore, set out the facts in Civil Appeal No. 678 of 1957 and deal with the merits of the points raised for our decision in that appeal.

Rai Bahadur Hurdut Roy Motilal Jute Mills, Katihar (hereinafter called the first respondent) was at the material time registered as a dealer under the Act and was carrying on business of manufacture and sale of gunny bags, Hessian and other jute products at Katihar in the District of Purnea. During the period April 1, 1950, to March 31, 1951, the said respondent sold and despatched its ware worth about Rs. 92,24,386-1-6 to dealers outside the State of Bihar and realised a sum of Rs. 2,11,222-9-6 as sales tax from such dealers. The said respondent's assessment to sales tax for the relevant period was taken up by the superintendent of Sales Tax, Purnea (hereinafter called the second respondent) on May 31, 1953; and in consequence of these proceedings the impugned order of forfeiture to be passed.

Meanwhile Art. 286 of the Constitution along with other articles was considered by this Court in the State of Bombay & Anr. v. The United Motors (India) Ltd. & Ors ([1953] S.C.R. 1069). The question which this Court had to consider in that case was about the vires of the impugned provisions of the Bombay Sales ax Act, 1952 (Act XXIV of 1952), and for the decision of the said question Art. 286 fell to be considered. According to the majority judgment in that case Art. 286(1) (a) read with the explanation thereto and construed in the light of Art. 301 and Art. 304 prohibits the taxation of sales or purchases involving inter-state elements by all States except the State in which the goods are delivered for the purpose of consumption therein. The latter State is left free to tax such sales or purchases and it derives this power not by virtue of the explanation to Art. 286(1) but under Art. 243(3) read with Entry 54 of List II. The view that the explanation does not deprive the

State in which the property in the goods passed of its taxing power and that consequently both the State in which the property in the goods passes and the State in which the goods are delivered for consumption have the power to tax is not correct.

When the first respondent's assessment was taken up by the second respondent his attention was invited to this Court's decision in the case of the United Motors ([1953] S.C.R. 1069); he followed the said decision and held that the turn over of Rs. 92,24,386-1-6 on account of despatch of manufactured jute products to out-of-State buyers was exempted from the levy of tax; this meant a deduction of the said amount from the amount of the total turnover shown by the first respondent in the return submitted by him according to the provisions of the Act.

Subsequently the second respondent proceeded against the first respondent under s. 14A of the Act and issued a notice in that behalf on June 18, 1954. By this notice the first respondent was called upon to show cause why the entire amount of Rs. 2,11,222-9-6 which had been recovered by him as sales tax from the dealers should not be forfeited to Government. The first respondent showed cause but the second respondent was not satisfied with the explanation given by the first respondent, and so he directed the first respondent to deposit the said amount into the Government treasury and produce the proof of payment before him within a month of the receipt of his order. This order was passed on February 10, 1955. It shows that the second respondent thought that the matter raised for his decision was simple; the first respondent had collected the amount in question as tax under the Act from his customers for and on behalf of the appellant, and so he could not retain the said amount; it must go to the State coffers. He also held that the first respondent had represented to the purchasers that the amount was chargeable as sales tax under the Act and as such the first respondent had clearly contravened the explicit provisions of s. 14A of the Act read the r. 19 of the Bihar Sales Tax Rules (hereinafter called the Rules). It is on these findings that the second respondent passed the impugned order of forfeiture.

The first respondent then applied to the Patna High Court, under Arts. 226 and 227 of the Constitution challenging the validity of the said order. It was urged on his behalf that the proviso to s. 14A under which the impugned order was purported to have been passed did not apply to the case of the first respondent, and as such the order was not justified by the said proviso. It was also contended that if it is held that the said proviso justified the impugned order it was ultra vires the State Legislature inasmuch as it violates Art. 20(1) and Art. 31(2) of the Constitution. The High Court did not consider the first contention raised before it; it dealt with the two Constitutional points urged by the first respondent and found in his favour on both of them. On these findings the petition filed by the first respondent was allowed, the impugned order of forfeiture was set aside and the proceedings taken against the first respondent under s. 14A were quashed. The appellant then applied for and obtained a certificate from the said High Court under Art. 132(1) of the Constitution.

On behalf of the appellant Mr. Lal Narain Sinha has contended that the High Court was in error in holding that the proviso to s. 14A violates either Art. 20(1) or Art. 31(2) of the Constitution. He has addressed us at length in support of his case that neither of the two articles is violated by the impugned proviso. On the other hand, the learned Solicitor-General has sought to support the findings of the High Court on the said two constitutional points; and he has pressed before us as a preliminary point his argument that on a fair and reasonable construction, the proviso cannot be applied to the case of the first respondent. We would, therefore, first deal with this preliminary point. In cases where the vires of statutory provisions are challenged on Constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine

whether the impugned statutory provisions are attracted; if they are, the Constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance.

Before considering the preliminary point raised by the first respondent it is necessary to refer briefly to the relevant scheme of the Act. The Act was originally passed in 1947 because the Legislature thought it necessary to make an addition to the revenue of Bihar, and for that purpose to impose a tax on the sale of goods in Bihar. The provisions of the Act as well as the statutory Rules framed under it have been subsequently modified from time to time. In our present discussions we would refer to the provisions and the Rules which were in operation at the material time. The goods the sale of which is taxed under the Act are defined by s. 2(d) as meaning all kinds of movable property other that those specifically excepted. Section 2(g) defines "sale" inter alia as meaning any transfer of property in goods for cash or other considerations and the second proviso to it prescribes that the sale of any goods - (1) which are actually in Bihar at the time when, in respect thereof the contract of sale as defined in s. 4 of that Act is made, or (2) which are produced or manufactured in Bihar by the producer or manufacturer thereof,- shall wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar. The tax leviable under the Act is defined by s. 2(hh) as including a fee fixed in lieu of the tax under the first proviso to s. 5, whereas under s. 2(i) "turnover" means the aggregate of the amounts of sale process received and receivable by a dealer in respect of sale or supply of goods or carrying out of any contract, effected or made during the given period, or, where the amount of turnover is determined in the prescribed manner, the amount so determined. Section 4 which is the charging section provides that every dealer whose gross turnover during the specified period on sales which have taken place both in and outside Bihar exceeds Rs. 10,000 shall be liable to pay tax on sales which have taken place in Bihar on and from the date of the commencement of the Act. This section shows that the incidence of taxation can be attracted only where the gross turnover of the dealer exceeds Rs. 10,000 and in determining this prescribed minimum, sales which take place both in Bihar and outside are taken into account. Section 5, prescribes the rate of tax at six pies in a rupee on the taxable turnover. The provisos to this section confer specific powers on the State Government; the first proviso which is relevant for our purpose empowers the State Government by notification to fix a higher rate of tax not exceeding one anna in a rupee or any lower rate of tax in respect of a sale of any goods or class of goods specified in such notification subject to such conditions as it may impose. The explanation to this section indicates what the taxable turnover for the purpose of the section means. "Taxable turnover" according to this explanation means that part of a dealer's gross turnover on sales which have taken place in Bihar during any period which remains after deducting therefrom the items specified in cls. (a) and (b) of the explanation. The sale of any goods declared from time to time as tax-free goods under s. 6 is one of those items. Section 6 empowers the State Government to exempt sale of any goods or class of goods from the levy of tax under this Act subject to the conditions specified in the section, whereas s. 7 empowers the Government to exempt dealers from tax, and s. 8 authorises the Government to prescribe points at which goods may be taxed or exempted. Section 9 deals with question of registration of dealers and provides that no dealers who is liable to pay tax under s. 4 shall carry on business unless he has been registered under the Act and possesses a registration certificate. Under s. 11 a list of registered dealers is published, and by s. 12 such registered dealers are required to furnish such returns by such dates and to such authorities as may be prescribed. Section 13 prescribes the procedure for assessments, and s. 14 requires that the tax payable under the Act shall be paid in the manner hereinafter provided at such intervals as may be prescribed.

Section 14(2) requires the registered dealer to pay into a Government treasury the full amount of tax due from him according to the returns which he has to file and has to furnish along with the said return a receipt from the treasury showing the payment of such amount.

Having thus provided for the recovery of the tax charged under s. 4, and s. 14A in effect authorises registered dealers to reimburse their dues by making collections of the tax payable by them in accordance with restrictions and conditions as may be prescribed. It provides that no dealer who is not a registered dealer shall realise any amount by way of tax on sale of goods from purchasers nor shall any registered dealer make any collection of tax except in accordance with such restrictions and conditions as may be prescribed. That takes us to the proviso to s. 14A with which we are directly concerned in the present appeal. It reads thus :

"Provided that if any dealer collects any amount by way of tax, in contravention of the provision of this section or the conditions and restrictions prescribed thereunder, the amount so collected shall, without prejudice to any punishment to which the dealer may be liable for an offence under this Act, be forfeited to the State Government and such dealer shall pay such amount into the Government treasury in accordance with a direction issued to him by the Commissioner or any or any officer appointed under section 3 to assist him and in default as such payment, the amount shall be recovered as an arrear of land revenue."

The effect of this proviso is clear. A dealer is authorised to collect amounts by way of tax from the purchasers only in accordance with the provision of s. 14A and the conditions and restrictions prescribed there-under. The conditions and restrictions referred to in the proviso are to be found in the material Rules framed under the Act. If it is shown that a dealer has collected an amount by way of tax in violation of the conditions and restrictions prescribed by the Rules he incurs the penalty of forfeiture as specified in the proviso. There can no doubt that before the penalty of forfeiture can be imposed upon the dealer under the proviso it must be shown that he has acted contrary to the conditions and restrictions prescribed by the Rules. It would not be enough to show that the collection of the amounts in the question by the dealer is otherwise illegal or improper. The contravention of the statutory provision contained in s. 14A or of the Rules prescribing conditions and restrictions in that behalf alone can from the basis of the imposition of the penalty under the proviso. This position is not disputed before us.

The appellant contends that the proviso is attracted to the present case because the first respondent has contravened the conditions and restrictions imposed by the proviso to r. 19, whereas the first respondent argues that a proper construction of this latter proviso does not justify the appellant's plea. It would thus be seen that the decision of the preliminary point raised by the first respondent involves the narrow question of the construction of the proviso r. 19.

Before construing the said proviso it is, however, necessary to refer to s. 33 of the Act. This section was enacted on April 4, 1951, but it has been expressly made retrospective as from January 26, 1950. Therefore at the material time this section must be deemed to have been in operation. Section 33(1)(a) (i) provides that notwithstanding anything contained in the Act a tax on the sale or purchase of goods shall not be imposed under the Act where such a sale or purchase takes place outside the State of Bihar. Section 33(2) makes the explanation to cl. (1) of Art. 286 of the Constitution applicable for the interpretation of sub-cl. (i) of cl. (a) of sub-s (1). It is common ground that if the relevant provision just cited is construed in the light of the decision of this Court in the case of the United Motors ([1953] S.C.R. 1069) there can be no doubt that the sales which are the subject-matter of the present proceeding consist of transactions on which a tax cannot be

imposed under the Act. That is why the appellant strongly relies on this provision and contends that in construing the proviso to r. 19 the true legal position in respect of the transactions in question must be borne in mind.

Let us now read the proviso to r. 19. Rule 19 itself prescribes which has to be followed by a registered dealer in realising any amount by way of tax on sale of goods from purchasers. This procedure refers to the issue of a cash memo or a bill as prescribed by it. The proviso to this Rule lays down that no such registered dealer shall realise any amount by way of tax at a rate higher than the rate at which he is liable to pay tax under the Act,or realise any amount by way of tax in respect of such part of his turnover as is allowed to be deducted from his gross turnover for the determination of his taxable turnover under the Act or these Rules. The appellant relies on the latter part of the proviso and argues that the part of turnover of the first respondent which is in question fell within s. 33(1) (a)(i) and as such was not liable to be taxed. That being so there was no justification for the first respondent to collect any amount by way of tax from his purchasers under s. 14A. The scheme of s. 14A is to permit the registered dealer to collect such amounts of tax from his purchasers as he in his turn is liable to pay to the appellant. Authority to collect such amounts given to the registered dealer inevitably postulates his liability to pay a similar amount to the appellant. Therefore the conduct of the first respondent in collecting amounts by way of tax from his purchasers amounts to a breach of s. 14A itself.

It is also contended that having regard to the provisions of s. 33(1)(a)(i) the first respondent was entitled to a claim a deduction of the transaction in a question from his gross turnover under the latter part of the proviso, and that clearly means the first part of the said proviso applies to his case and it prohibited him from realising the said amounts. His conduct in collecting the amounts, therefore, constitutes a breach of the conditions specified in the proviso to r. 19.

In appreciating the validity of these arguments it would be relevant to remember that at the material time there was considerable confusion in the minds of the public as well as the State authorities about the true scope and effect of the provisions of Art. 286(1) of the Constitution. It is not disputed that during the material period and in the years preceding it registered dealers used to pay tax in respect of transactions which were really not liable to be taxed under s. 33(1)(a)(i) and such tax was being received by the appellant. In fact, as we have already pointed out s. 14 of the Act imposes a liability on the registered dealer to furnish along with his return a receipt for the payment of the tax which is payable under the return. Such payments were made by the registered dealers in respect of similar transactions and were accepted. It is an accident that the assessment proceedings of the first respondent were actually taken up for decision by the second respondent after the decision of this Court in the case of the United Motors ([1953] S.C.R. 1069). If the question about the first respondent's liability to pay the tax under the Act had been decided before the date of the said decision there is no doubt that he would have been required to pay the tax for the transactions in question. Indeed it is common ground that the notification issued for the material period levied a tax at three pies on the goods in question "if the sales tax authority is satisfied that the goods have been dispatched by or on behalf of the dealer to any person outside the province of Bihar." This notification is consistent with the definition of the word "sale" as it then stood. It is thus clear that at the material time the appellant thought that transactions like those in question in the present appeal were liable to pay tax at the rate of three pies as prescribed by the relevant notification; the registered dealers also had no doubt on the point; and so taxes were collected in respect of such transactions by the appellant from the registered dealers and by the registered dealers in their turn from their purchasers.

Nevertheless, after the enactment of s. 33 the legal fiction about the retrospective operation of the said section must be given effect to and in construing the proviso to r. 19 it must be assumed that the transactions in question were outside the scope of the Act and no tax could have been imposed in respect of them. Construing the proviso on this assumption, can it be said that in respect of the first part of the first respondent's turnover which is in question a deduction was allowable within the meaning of the proviso ? In our opinion this question cannot be answered in favour of the appellant. Rule 19 itself was framed in 1949 and has not been amended subsequent to the enactment of s. 33. As it was framed its reference to the allowable deductions was clearly based on the provisions of ss. 6, 7 and 8 of the Act. This position would be clear beyond all doubt if we read the material words in the proviso in the light of the explanation to s. 5 of the Act. The explanation in terms enumerates deductions which have to be made in determining the taxable turnover of the registered dealer and it is to these deductions which are allowable under the three sections specified in the explanation to which the latter part of the proviso to r. 19 refers. A claim for the exclusion of a part of the first respondent's turnover on the strength of s. 33(1)(a)(i) cannot, therefore, be said to be an allowable deduction under the proviso.

This question can be considered from the another point of view. The provisions which allow deductions to be made or grant exemptions in respect of certain transactions obviously postulate that but for them the transactions in question would be liable to tax under the Act; and so when the such transactions are included in the return the registered dealer is allowed to claim appropriate deductions in respect of them. But, the position with regard to s. 33 is entirely different; transactions which attract the provisions of the said section are in substance outside the scope of the Act and no tax can be imposed on them at all. If that be the true position the claim which can be made by the registered dealer in respect of such transactions cannot in law be regarded as a claim for allowable deductions or exemptions properly so-called; it is really a claim that the Act itself does not apply to the said transactions. Therefore, in our opinion it would be straining the language of the second part of the proviso to r. 19 to hold that the transactions in question fell within its purview.

There is one more point to be considered in this connection. Form VI which has been prescribed for making the returns under the s. 12 requires the gross turnover to be mentioned at the outset, and then it provides for the different deductions allowable under the Act. This form was prescribed in 1949 and has not been amended after the addition of s. 33 to the Act. On looking at this form it seems difficult to entertain the argument that the claim for the total exclusion of the transactions in question can be made under any of the headings prescribed in the form. The appellant, however, contends that the first item of gross turnover means the whole of the gross turnover which must include all sale transactions whether they took place within Bihar or outside it, and in support of this argument reliance is placed on the definition of "turnover" contained in s. 2(i). If the whole gross turnover has to be mentioned under item 1, it is urged, the claim for the exclusion of the transactions in question can well be adjusted under one or the other of the deduction items prescribed in the form. We are not inclined to accept this argument. The form as it has been prescribed construed in the light of the material provisions contained in ss. 6, 7 and 8 does not support the case that in prescribing its several items it was intended that the transactions falling under s. 33 should be first shown under item 1 and then excluded under one or other of the remaining items of deduction. Besides it may be relevant to point out that the heading of Chapter VII which deals with the submission of returns by dealers is "return of taxable turnover" and it is arguable that the gross turnover mentioned in Form VI may mean "gross taxable turnover" and not the gross turnover including the transactions which are outside the scope of the Act.

Then as to the argument about the contravention of s. 14A itself it is difficult to appreciate how any

provision of s. 14A can be said to have been contravened. Section 14A consists of tow parts both of which are put in a negative form. The second part with which we are concerned in effect means nothing more than this, that a registered dealer can make collections of such tax only as is payable by him in accordance with the restrictions and conditions as may be prescribed. If the argument is that the first respondent was not liable to pay any tax and as such was not entitled to make any corresponding collection, then the collection made by him may fall outside s. 14A and be otherwise unjustified or improper; but it does not amount to the contravention of any provision of s. 14A as such. In fact s. 14A itself refers to the restrictions and conditions which may be prescribed and, as we have already seen, these conditions and restrictions are prescribed by the Rules in general and in by r. 19 in particular. So the argument urged under s. 14A takes us back to the question as to whether the proviso to r. 19 has been contravened. In dealing with this question we cannot ignore the fact that the relevant provisions which fall to be construed in the present appeal impose a serious penalty on the registered dealer, and so, even if the view for which the appellant contends may perhaps be a possible view, we see no reason why the other view for which the first respondent contends and which appears to be more reasonable should not be accepted. In the result we hold that the proviso to s. 14A cannot be invoked against the first respondent and so the order of forfeiture passed against him by the second respondent is unjustified and illegal.

In view of this conclusion it is unnecessary to consider the objections raised by the first respondent against the validity of the proviso on the ground that it contravenes Arts. 20(1) and 31(2) of the Constitution. We may be incidentally add that during the course of the arguments before us we have also heard all the learned counsel on the question as to whether the said proviso contravenes the provisions of Art. 19(1)(f) as well.

The result is the appeal fails and is dismissed with costs.

The decision of this appeal governs Civil Appeals Nos. 546 of 1958 and 115 of 1959. They also fail and are dismissed with costs.

Appeal dismissed.

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