

Indian Copper Corporation Ltd.

Vs

The State of Bihar and Others

Civil Appeal No. 210 of 1959

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

07.11.1960

JUDGMENT

AYYANGAR J. -

The sole question which arises in this appeal, which comes by way of special leave is as to whether sales under which goods were delivered outside the State of Bihar for the purpose of consumption but not within the State of first delivery or first destination, are exempt from the levy of sales-tax by the Bihar State by virtue of Art. 286(1)(a) of the Constitution as it stood before the recent amendment.

The India Copper Corporation Ltd. (referred to hereafter as the assessee-company) carries on business in copper and various other materials and mineral products and the office of its General Manager is in the district of Singhbhum in Bihar. The period covered by the assessment now in dispute is January 26, 1950 to March 31, 1950. The normal practice of the assessee-company was to deposit sums of money from time to time provisionally towards payment of sales-tax in advance and have the amount finally adjusted after the completion of the assessment of each year. The assessee-company followed this practice in respect of the amount of sales-tax due by it for the year 1949-50. For the financial year April 1, 1949 to March 31, 1950, the Superintendent of Sales-tax, Singhbhum, computed the tax liability of the company in the sum of Rs. 3,60,703-4-0 by an order of assessment dated November 13, 1950, and the company made payment of the amount due by it beyond the sums already paid. It would be noticed that this financial year comprised two periods - (1) before the Constitution, viz., April 1, 1949 to January 25, 1950, and (2) the post-Constitution period from January 26, 1950 to March 31, 1950. There is now no controversy as regards the sales-tax payable in respect of sales effected during the pre-Constitution period. The assessee-company however raised a dispute that in respect of the post-Constitution period, it was not liable to pay any sales-tax in respect of sales to buyers, under which though the property in the goods passed within the State, delivery of the goods was effected outside the State of Bihar for consumption outside that State on the ground that such sales were exempted from tax by Art. 286(1)(a) of the Constitution as it originally stood. It addressed a formal letter to the Commissioner of Commercial Taxes, Bihar, on December 30, 1952, making this demand enclosing a statement showing full particulars of the goods sold, the bill numbers, the date and the amount etc., to enable the refund claimed to be calculated. The assessee-company followed it up by a formal petition for review of the assessment order by filing a revised return under section 12(2) of the Bihar Sales-tax Act together with an application for refund. The departmental authorities rejected these applications by order dated July 20, 1953. Further proceedings before the department by way of revision etc. failed to secure to the assessee-company the relief which it claimed and thereafter it filed an application under Arts. 226 and 227 of the Constitution before the High Court of Patna praying for the issue of a writ to quash the order of

assessment dated November 30, 1950, and the orders rejecting the prayers for review, reassessment and refund and for a direction to the departmental authorities to refund the sum realised by them in so far as the tax related to sales as a result of which goods were delivered outside the State of Bihar for consumption outside the State of Bihar.

The learned Judges of the High Court held that the order of the Superintendent of Sales-tax, Singhbhum, dated November 13, 1950, should be set aside and that the matter should go back to the Superintendent to make a reassessment according to law for the post-Constitution period. A further direction was added requiring the respondent to refund to the assessee so much of the tax as had been paid in excess of the amount of reassessment to be made by the Superintendent in accordance with the law as laid down by the Court. In formulating the law applicable, the learned Judges drew a distinction between sales as a direct result of which goods were delivered in a State outside the State of Bihar and consumed in that State and those cases in which the goods thus delivered, were not consumed in the State of first destination but were re-exported from the State of first destination but were re-exported from the State of first destination to other States. They held that the first category of sales were covered by the Explanation to Art. 286(1)(a) of the Constitution and were "inside" the State of first delivery and consequently "outside" the State of Bihar within the meaning of the Article and therefore exempt from tax by the Bihar State. In regard, however, to the second category of sales, it was held that they were not within the Explanation and were therefore outside the constitutional exemption under Art. 286(1)(a).

The assessee-company not being satisfied, filed an application to the High Court for a Certificate of fitness under Arts. 132 and 133 of the Constitution, but this having been rejected, they applied to and obtained special leave from this Court under Art. 136 of the Constitution and that is how the appeal is now before us.

Three points were urged before us by Mr. B. C. Ghose, learned Counsel for the appellants : (1) that on a proper construction of Art. 286(1)(a) and the Explanation thereto (as it stood before the Article was amended by the Constitution Sixth Amendment Act, 1956) every sale as a direct result of which goods were delivered for consumption outside the State, was not within the taxing power of the State in which the goods were at the time of the sale, and in which property passed as a result thereof, and that it was immaterial whether the delivery was for the purpose of consumption in the State of first destination or whether the delivery in such State was not for the purpose of consumption therein but, for re-export to other States, (2) that even if Art. 286(1)(a) exempted only sales in which as a direct result of the sale the goods were delivered for the purpose of consumption in the State of first destination, on the pleadings and the evidence before the Court the assessee-company must be taken to have established that all the sales effected by it and in regard to which exemption from payment of tax was claimed, conformed to this requirement, (3) a narrower submission, that even it be that to fall within the Explanation the delivery has to be for the purpose of consumption in the State of first destination, the learned Judges of the High Court erred in requiring the assessee-company to prove not merely that the goods were delivered for the purpose of consumption but further that the goods so delivered were actually consumed within that State.

We shall now deal with these points in that order. Article 286(1)(a) together with the Explanation on whose construction the first point depends ran in these terms :

"Article 286(1). 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).....##

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."

The scope and the purpose of this Explanation was discussed and explained by this Court in *The State of Bombay v. United Motors (India) Ltd.* ([1953] S.C.R. 1069, 1081.) and it is the passage in this judgment extracted below on which reliance was placed by the learned Counsel in support of his submission :

"..... The authors of the Constitution had to devise a formula of restrictions to be imposed on the State-power of taxing sales or purchases involving inter-State elements which would avoid the doubts and difficulties arising out of the imposition of sales-tax on the same transaction by several Provincial Legislatures in the country before the commencement of the Constitution. This they did by enacting clause (1)(a) with the Explanation and clause (2) of Article 286. Clause (1)(a) prohibits the taxation of all sales or purchases which take place outside the State but a localised sale is a troublesome concept, for, a sale is a composite transaction involving as it does several elements such as agreement to sell, transfer of ownership, payment of the price, delivery of the goods and so forth, which may take place at different places. To solve the difficulty an easily applicable test for determining what is an outside sale had to be formulated, and that is what, in our opinion, the Explanation was intended to do. It provides by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption therein is the State in which the sale or purchase is to be considered to have taken place, notwithstanding the property in such goods passed in the another State..... An "outside" sale or purchase is explained by defining what is an inside sale, and why actual delivery and consumption in the State are made the determining factors in locating a sale or purchase will presently appear. The test of sufficient territorial nexus was thus replaced by a simpler and more easily workable test : Are the goods actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein ? Then, such sale or purchase shall be deemed to have taken place in the State and outside all other States. The latter States are prohibited from taxing the sale or purchase; the former alone is left free to do so. Multiple taxation of the same transaction by different States is also thus avoided."

It might be mentioned that this portion of the judgment is unaffected by the dissent expressed in the alter decision in *The Bengal Immunity Company Ltd. v. The State of Bihar* ([1955] 2 S.C.R. 603.). The argument based upon this passage was broadly on these lines : Article 286(1)(a) imposes a ban on the legislative power to levy a tax on sales which are "outside" the taxing State. What sales are "outside" is not easy to decide because that depends upon "the situs" of a sale, which cannot, in most cases, be located in any one place with certainty - being dependent on a variety of factors which might or might not converge. The Constitution makers did not directly define what was meant by a sale that was "outside the State" but achieved the same purpose by explaining an "inside" sale with

the result that what was not an "inside" sale should be held to be an "outside" sale. It must however be pointed out that it was not disputed that the terms of the "Explanation" would not be satisfied unless the delivery was for the purpose of consumption therein, i.e. in the State of first destination. If the terms of the Explanation were satisfied, the State of "delivery-cum-consumption", (to coin a convenient expression to designate the State in which goods are delivered as a direct result of the sale for the purpose of consumption therein), used in the Explanation, would have power to tax the sale as being one fictionally "inside" it. In such an event all the other States in India, barring that State would be prevented from taxing that sale because the sale would be "outside" those States. This however, it was urged, would not exhaust the operation of the Explanation, but further that the Explanation was exhaustive of what the Constitution makers conceived to be a sale which alone may be the subject of tax by a State. The deduction learned Counsel made from these premises was twofold (1) that in cases where goods were as a direct result of the sale delivered outside the State of Bihar for the purpose of consumption in the State of first destination, the conditions of the Explanation were satisfied and the sales being "outside" the State of Bihar could not be taxed by that State. So far there is no dispute and indeed the learned Judges of the High Court have, subject to a matter of detail to which reference will be made later, accepted the contention of the assessee. (2) a further consequence, that in cases where goods were delivered as a result of the sale outside the State of Bihar, but not for the purpose of consumption in such State of first destination, the terms of the Explanation were no doubt not satisfied and consequently the sale was not inside such State of delivery and indeed not "inside" any State in India within the Explanation, but that such sales also must be held to be "outside" every State in India within Art. 286(1)(a).

The learned Judges of the High Court repelled this contention and, in our opinion, correctly. The passage in the judgment of the United Motors case extracted earlier dealt with Explanation sales and with none else. When the terms of the Explanation were satisfied such sales were by a fiction deemed to be "inside" the State of delivery-cum-consumption and therefore "outside" all other States. In such cases therefore, only the State "inside" which the sale is deemed to take place by virtue of the Explanation, is exempt from the ban imposed by Art. 286(1)(a). All other States would be subject to that ban in respect of such sales.

The learned Chief Justice however did not, in the passage extracted, deal with the case of sales which did not satisfy the terms of the Explanation. The situs of what might be termed 'non-Explanation' sales has therefore to be determined independently of the terms of the Explanation. Such sales would be exempt from tax only if the sale took place "outside" the State but not otherwise.

The next question is, does a sale take place "outside" the State, where as a result of the contract of sale, the property in the goods passes to the purchaser within the State; in other words, is a sale completed by the passing of property within the State not "inside" a State, for the mere reason that as a direct result of the sale the goods are delivered outside the State. The answer depends on the meaning to be attributed to the words "a sale or purchase which has taken place" outside the State occurring in the body of Art. 286(1). The expression "outside the State" is capable of being understood in more senses than one. It could be understood as comprehending cases where no element or ingredient which constitutes a sale takes place within the State; in other words as applying solely to those cases where there exists no territorial nexus between the State imposing the tax and the sale. Obviously, this could not have been intended to be incorporated in Art. 286(1) because the tax in such cases would be beyond the legislative power of the State under Entry 54 of the State List read with Art. 246 of the Constitution. The expression "outside" has therefore to be understood not as a sale so "outside" as not to have any territorial connection between the State in question and the sale, but in a somewhat narrower sense. The real difficulty arises in ascertaining

the precise content of the narrower sense in which the word is used as meaning a sale in substance "outside" the State, though there might be some elements of the sale which if the exemption under Art. 286(1)(a) were not enacted, would enable a State to levy a tax on the sale on the ground that it was within the legislative power of the State under Art. 246 read with Entry 54.

As already pointed out, the situs of a sale is not easy to determine and several factors which constitute a completed transaction of sale including the delivery of the goods, lay claim to be considered as in themselves constituting sufficient next to justify their being treated as determining the locus of a sale. Thus, merely by way of illustration, the place where the goods are at the time of the contract of sale, the place where the contract of sale is concluded, the place where the property in the goods passes and that in which the delivery takes place compete for recognition as constitution the locus of a sale. Before the Constitution, these and other similar factors were treated as affording sufficient territorial connection to endow the State in which any of the events occurred with legislative competence to tax the sale. This led to a multiplicity of the taxation of the same transaction of sale by a plurality of States, with the result that consumer was hard hit and trade itself, and national economy suffered in the process. It has been pointed out that Art. 286(1)(a) was designed to counteract that state of affairs.

If a single State was designed to have the power to tax any particular transaction of sale, the question that next falls to be considered is the determination of that State in regard to which it could be predicated that the sale in question was not "outside" that State or in other words, the determination of the particular State in regard to which it could be said that the sale was "inside" that State. The key to the problem is afforded by two indications in the Article itself : (1) the opening words of Article 286(1) which speak of a sale or purchase taking place and (2) the non-obstante clause in the Explanation which refers to the general law relating to "sale of goods under which property in the goods has, by reason of such sale or purchase, passed in another State." These two together indicate that it is the passing of property within the State that is intended to be fastened on, for the purpose of determining, whether the sale in question is "inside" or "outside" the State, and therefore, subject to the operation of the "Explanation" that State in which property passes would be the only State which would have the power to levy a tax on the sale. As was explained in the recent decision of this Court in *Burmah Shell Oil Storage & Distributing Co., of India, Ltd. v. The Commercial Tax Officer* (C.A. 751 of 1957 & C.A. 10 of 1958 (Unreported.)) : "By sale here (Art. 286(1)(a)) is meant a completed transaction by which property in the goods passes. Before the property in the goods passes, 'the contract of sale is only executory, and the buyer has only a chose in action.'..... The Constitution thinks in terms of a completed sale by the passing of property and not in terms of an executory contract for the sale of goods."

Notwithstanding that is not an "outside" sale, the power of the State to tax might be negated by the operation of the Explanation which by its non-obstante clause-shifts the situs of the sale and renders the sale transaction one within the delivery-cum-consumption State, i.e. as the State in which the sale transaction must be deemed to take place. Where the terms of the Explanation are satisfied, the sale transaction will, by a legal fiction created by it, be deemed to take place "inside" the State of delivery and therefore is that where the property in the goods passes within a State as a direct result of the sale. the sale transaction is not outside the State for the purpose of Art. 286(1)(a), unless the Explanation operates. We need also add that the power of the State to impose the tax might still not be available unless the transaction in question is unaffected by the other bans imposed under sub-cl. (1)(b), (2) and (3) of Art. 286. The submission therefore of learned Counsel for the appellants, that in respect of non-Explanation sales the State of Bihar has no power to levy a tax by reason of such sales being "outside" the State within Art. 286(1)(a) must be rejected.

The second contention urged by the learned Counsel for the appellant was that even assuming he was wrong on the first point, all the sales by the assessee-company fell within the terms of the Explanation to art. 286(1)(a) being sales as a direct result of which the goods were delivered for consumption in the State of first destination, and that the learned Judges of the High Court were in error in considering, that some of the sales did not conform to this requirement. In support of this submission learned counsel drew out attention to two matters. He first referred us to the application dated December 30, 1952 made on behalf of the assessee-company to the Commissioner of Commercial Taxes, Bihar, Patna in which the claim for refund of the tax paid was rested on the following ground :

After setting out that the tax on sales effected between the period January 26, 1950 to March 31, 1950 was not assessable by virtue of Art. 286 of the Constitution, the application stated : "Total sales of raw materials of copper and brass sheet and circles sold by us and despatched under railway receipts for buyers' consumption are as follows". Then followed the sales effected and the tax paid in respect of the sales. The claim in this form was annexed to and made part of the petition to the High Court under Art. 226 and 227 of the Constitution and in paragraph 9 of the petition, this letter was referred to and a copy thereof was incorporated and marked as 'A'. In this paragraph which was the other matter relied on the claim for refund was said to be "on sales made to buyers outside Bihar State for consumption". Learned Counsel strongly pressed upon us that paragraph 9 and the annexure had clearly asserted that the sales which were the subject of the claim for refund involved a delivery of the goods outside the State of Bihar for consumption in the State of first destination and the State of Bihar not having filed any counter-affidavit challenging the correctness of these allegations, the High Court should have held that the terms of the Explanation were satisfied and should have ordered the refund claimed. We however consider that this submission is without force. Neither in the claim put forward in Exh. 'A' nor in paragraph 9 of the petition was any distinction drawn between sales under which deliveries were effected outside the State of Bihar for the purpose of consumption in the State of first destination and those in which the deliveries outside the State were effected for the purpose of consumption not in the State of first destination but in other States. In fact, this was made clear in the later paragraphs of the petition to the High Court from which it is apparent that the assessee-company made a claim for tax exemption in respect of sales in which the delivery took place outside the State of Bihar, whether the delivery was for the purpose of consumption in the State of first destination or otherwise. In paragraph 17(i) of the petition to the High Court the assessee stated : "(the petitioner was not liable to pay tax on goods delivered outside the State of Bihar which was also for consumption outside the State of Bihar", and again in clause (iii) of the same paragraph this was repeated : "the goods being outside the State of Bihar, delivered outside the State of Bihar and consumed outside the State of Bihar were not liable to sales-tax by the State of Bihar" and similarly in cl. (v) of the same paragraph a reference was made to "goods delivered outside the State of Bihar for consumption outside the State of Bihar". The same idea is emphasized in paragraph 19 also which contained the prayer of the petition. On these averments it is clear that the claim made by the assessee was that to invoke the exemption contained in Art. 286(1)(a) it was sufficient that the goods were delivered outside the State of Bihar and that it was immaterial whether the delivery was for the purpose of consumption in the State of consumption in the State of first destination or otherwise. This involved the same argument which was raised by the learned Counsel that we have dealt with earlier. The learned Judges of the High Court were therefore right in drawing a distinction between the two types of sales which we have already indicated.

The last point that was urged by the learned Counsel was that the learned Judges of the High Court erred in requiring the assessee to prove that the goods delivered outside the State of Bihar were

actually consumed in the State of first destination before the exemption from tax could be availed of. In their judgment now under appeal the learned Judges have stated :

"The petitioner would not be entitled to exemption if the goods were not consumed in the State of first destination but were re-exported from the State of first destination to other States".

Learned Counsel for the appellant complained that under the Explanation to Art. 286(1)(a) there need be no proof of actual consumption of the goods delivered in the State of first destination but that the Explanation was satisfied if the purpose of the delivery under the sale was for consumption in that State. If after a sale that satisfied that requirement, viz., for the purpose of consumption in the State of first destination, the buyer under such a sale for his own purposes re-exported the goods that was not a matter with which the seller was concerned and would not affect the character of the sale as one falling within the Explanation to Art. 286(1)(a). Learned Counsel therefore urged that the learned Judges of the High Court went wrong in requiring proof on the part of the assessee that the goods were actually consumed within the State of first delivery outside Bihar and that this was an unwarranted addition to the requirements of the Explanation. We consider this submission well-founded and indeed the learned Counsel for the respondent did not dispute that the actual order of the High Court went beyond the terms of the Explanation to Art. 286(1)(a). The order of the High Court will, therefore, be modified by making it clear that if the goods were as a direct result of the sale delivered outside the State of Bihar for the Purpose of consumption in the State of first delivery the assessee would be entitled to exemption of the sales-tax imposed and that it would not be necessary for the assessee to consumed in the State of first destination.

Subject to this modification, the appeal fails, but in the circumstances of the case there will be no order as to costs.

SHAH J. -

We agree with the conclusion of Mr. Justice Rajagopala Ayyangar, J., but because our approach to the question is somewhat different, we propose to record our reasons separately.

The Bihar Sales Tax Act, 1947, was enacted in exercise of legislative authority conferred upon the Provincial Legislatures by entry 42 in List II read with section 100(3) of the Government of India Act, 1935. By section 2(g) of the Act, "sale" was defined (in so far as it is material) as meaning any "transfer of property in goods for cash or deferred payment or other valuable consideration... .. provided..... provided further that notwithstanding anything to the contrary in the Indian Sales of Goods Act, 1930, the sale of any goods -

(i) which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in section 4 of that Act is made, or

(ii) 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."

Under entry 42 of List II of the Government of India Act, 1935, the Provincial Legislatures could tax sales by selecting some fact or circumstance which provided a territorial nexus with the taxing

power of the State even if the property in the goods sold passed outside the Province or the delivery under the contract of sale took place outside the Province. Legislation taxing sales depending solely upon the existence of nexus, such as production or manufacturer of the goods, or presence of the goods in the Province at the date of the contract of sale, between the sale and the Legislating Province could competently be enacted under the Government of India Act, 1935 - see the *Tata Iron and Steel Co., Ltd. v. The State of Bihar* ([1958] S.C.R. 1355.) and *Poppatlal Shah v. The State of Madras* ([1953] S.C.R. 677.).

By Art. 286 of the Constitution, certain fetters were placed upon the legislative powers of the States as follows :

Art. 286 :- "(1) 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-cl. (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 goods the property in the goods has been reason of such sale or purchase passed in another State.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce :

Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

With a view to impose restrictions on the taxing power of the States under the pre-Constitution statutes, amendments were made in these statutes by the Adaptation of Laws Order. By the Adaptation of Laws Order, 1951, in the Bihar Sales Tax Act was incorporated with retrospective operation from January 26, 1950, section 33, which provided :

"(1) Notwithstanding anything contained in this Act, -

(a) a tax on the sale or purchase of goods shall not be imposed under this Act -

- (i) where such sale or purchase takes place outside the State of Bihar; or
- (ii) where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India;
- (b) a tax on the sale or purchase of any goods shall not, after the 31st day of March, 1951, be imposed where such sale or purchase takes place in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide;
- (2) The Explanation to cl. (1) of Art. 286 of the Constitution shall apply for the interpretation of sub-cl. (1) of cl. (a) of sub-section (1)."

By this amendment, on the taxing power of the Bihar State the same restrictions were engrafted on the pre-Constitution statute as were imposed by Art. 286 of the Constitution upon Post-Constitution statutes.

This court has held in the *Bengal Immunity Co., Ltd. v. The State of Bihar* ([1955] 2 S.C.R. 603.) that the operative provisions of the several parts of Art. 286 namely cl. (1)(a), (1)(b) and (2) and cl. (3) were intended to deal with different topics and one could not be projected or read into another. Therefore, by the incorporation of section 33 in the Bihar Sales Tax Act read with Art. 286, notwithstanding the amplitude of the power otherwise granted by the charging section read with the definition of "sale", a cumulative fetter of triple dimension was imposed upon the taxing power of the State. The Legislature of the Bihar State could not since January 26, 1950, levy a tax on sale of goods taking place outside the State or in the course of import of the goods into, or export of the goods out of the territory of India, or on sale of any goods where such sale took place in the course of inter-State trade or commerce. By the Explanation to art. 286(1)(a) which is incorporated by sub-section (2) section 33 of the Bihar Sales Tax Act, a sale is deemed to take place in the State in which the goods are actually delivered as a direct result of such sale for the purpose of consumption in that State even though under the law relating to sale of goods the property in the goods has by reason of such sale passed in another State. In the *State of Bombay v. The United Motors (India) Ltd.* ([1953] S.C.R. 1069.), it was held that since the enactment of Art. 286(1)(a), a sale described in the Explanation which may for convenience be called an "Explanation sale" is taxable by that State alone in which the goods sold are actually delivered as a direct result of sale for the purpose of consumption in that State. The right to tax arises because the sale is deemed to take place in that State and outside all other states and the latter States are prohibited from taxing the sale; the former alone is left free to do so.

The Bihar Sales Tax Act enacted in exercise of the power conferred by entry 42 of List II of the Government of India Act, 1935, upon the Provincial Legislatures is saved by Art. 372 of the Constitution as existing law, but by the combined operation of sub-sections (1) and (2) of section 33, the Bihar State is incompetent to tax sales of goods in the course of imports into and exports out of the territory of India, and after March 31, 1951, sales of goods in the course of inter-State trade or commerce. In view of the exposition of the content of the Explanation to Art. 286(1)(a) by this court in the *United Motors* case ([1953] S.C.R. 1069.), the Bihar State is also incompetent to tax "Explanation sales" where the goods are delivered in another State as a direct result of the sale for consumption in that State. By this last ban, to the extent provided by sub-section (1)(a)(i) and sub-section (2) of section 33, the State of Bihar is deprived of its power to tax sales; but the ban does not wholly extinguish the power of the State to tax sales relying upon a real territorial nexus between the sale and the State. In other words, by enacting that a tax shall not be imposed under the Act

when the sale takes place outside the State of Bihar in section 33(1)(a)(i), only the power to tax "Explanation sales" which do not take place within the State of Bihar is taken away, but not the power to tax "non-Explanation sales" in which though under the general law of sale of goods the property passes outside the State, there exists between the taxing power of the State and the sale a nexus as contemplated by the definition of sale in section 2(g). If the sale is one in which the goods have been delivered outside the State of Bihar, but not as a direct result of the sale or not for the purpose of consumption in the State of first delivery, the sale will not be covered by the Explanation, and the right to tax the sale, if arising otherwise under the Act relying upon the territorial nexus, will not be impaired by the prohibition imposed by cl. (1)(a)(i) of section 33. The right of the State of Bihar to tax a sale relying upon a real territorial nexus not being impaired by section 33 of the Act, all sales as defined by section 2(g) of the Bihar Sales Tax Act are liable to be taxed, except those falling within section 33(1)(a)(ii), section 33(2) and "Explanation sales" outside the State of Bihar.

The appellant company carries on the business of manufacturing copper and other mineral products in the State of Bihar. It has its registered office and its place of business in the District of Singhbhum in the State of Bihar and is registered as a "dealer" under the Bihar Sales Tax Act, 1947. The appellant company sent out its products to various places in India in the year of assessment ending on March 31, 1950 and has paid the tax assessed by the Sales Tax Officer. The appellant is now seeking to obtain a refund of the tax paid for the period between January 26 and March 31, 1950, on the plea that the tax was paid under a misapprehension of the law. The High Court in an application under Art. 226 of the Constitution directed the Sales Tax authorities to refund so much of the tax as was not proved to have been paid in respect of sales of goods delivered and consumed in the State of first destination. On the goods delivered and consumed in the State of first destination outside Bihar, the appellant could not be called upon to pay sales tax. That is undisputed. The appellant also claimed that on the goods delivered for consumption in the State of first delivery outside Bihar, it was not liable to pay sales tax, even if there was no evidence to prove that the goods were in fact consumed in such State. In our judgment, the High Court was in error in directing that the exemption provided by Art. 286(1)(a) read with the Explanation which was at the material time incorporated by section 33 in the Bihar Sales Tax Act by the Adaptation of Laws Order, 1951, only applied to all sales of goods delivered and consumed in the State of first destination. If the goods were delivered for consumption, it is immaterial whether they were in fact consumed in the State where they were delivered. The power of the State to levy sales tax relying upon the territorial nexus between the taxing power of the State and the sale, is impaired for reasons already set out to the extent to which it is restricted by the incorporation of Art. 286(1)(a)(i) and the Explanation thereto, in that Act. Therefore, sales effected on or after January 26, 1950, where goods are as a direct result of the sale delivered in another State for consumption in that other State, are not liable to be taxed.

The directions issued by the High Court will therefore be modified as follows :

The order of the Superintendent of Taxes is set aside. He is directed to grant refund of tax paid in the light of this judgment. The appellant will be entitled to exemption from payment of tax if the goods are, as a direct result of the sale, delivered in another State for the purpose of consumption in that State.

Appeal dismissed subject to modification.

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