

State Trading Corporation of India Ltd.

Vs

State of Mysore

Petitions Nos. 65 and 66 of 1960

(S. K. Das, M. Hidayatullah, J. L. Kapur, Raghuvar Dayal, A. K. Sarkar JJ)

28.08.1962

JUDGMENT

SARKAR, J. -

These are two petitions under Art. 32 of the Constitution asking for writs to quash certain assessment orders imposing sales tax and for consequential reliefs preventing the levy and collection of that tax. The petitioners allege that the assessment orders are wholly void and therefore affect their fundamental rights under Art. 19(1)(f) and Art. 31.

There are two petitioners in each case, the first being the State Trading Corporation of India Ltd. and the second, the Coment Marketing Company of India Ltd. There are also two respondents in each petition, the first of whom is the State of Mysore which through one of its officers, the second respondent, passed the assessment orders imposing the tax.

The impugned assessment orders were made on the Marketing Company in respect of certain sales of cement made by it in the year 1957-58. The petitioners say that the Marketing Company made those sales as agent of the Trading Corporation. Whether this is correct or not is not strictly relevant in this case for the Marketing Company does not deny its liability to be taxed as the agent of the Corporation. The only dispute is whether the sales in which the goods were moved from outside the State of Mysore into it were liable to be taxed. The petitioners contend that they were not so liable as they were sales made in the course of inter-State trade, which no law of a State legislature could tax.

Though the assessment year was one, namely, 1957-58, there were two assessment orders. That was because in that year there were in force in Mysore two Sales Tax Acts, namely, the Mysore Sales Tax Act, 1948, and the Mysore Sales Tax Act, 1957, the latter of which repealed the earlier with effect from October 1, 1957. The disputed sales which took place between April 1, 1957, and September 30, 1957, were taxed under the 1948 Act and those that took place between October 1, 1957, and March 31, 1958, under the 1957 Act. Both the assessment orders are challenged by the petitioners.

The tax was levied under State laws. Now Art. 286(2) of the Constitution as originally framed laid down that except in so far as Parliament by law otherwise provided, a State could not pass a law taxing an inter-State sale or purchase. This provision was deleted by the Constitution (Sixth Amendment) Act, 1956, which came into force on September 11, 1956. The Constitution (Sixth Amendment) Act also amended Art. 269, the relevant portion of which after such amendment reads as follows:

#Art. 269 (1) - "The following duties and taxes shall be levied and collected by the Government of India (2) taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce..... (3) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce."##

The Constitution Amendment Act had also amended the Seventh Schedule by adding item 92A to List I and thereby giving the Union the power to tax sales or purchases of goods other than newspapers made in the course of inter-State trade or commerce and by substituting for old item 54 in List II a new item which gave the State the power to tax all sales or purchases of goods other than newspapers, subject to entry 92A of List 1. Since this amendment of the Constitution therefore the States can not tax an inter-State sale or purchase.

On December 21, 1962. Parliament passed the Central Sales Tax Act, s. 3 of which defined an inter-State sale. This section came into force on January 5, 1957. The taxing provisions of this Act however came into force much later but with them we are not concerned in these cases.

The whole of the assessment year 1957-58 was after s. 3 of the Central Sales Tax Act, 1956 had come into force. During that year, therefore, the State could not tax a sale which was an inter-State sale as defined in s. 3 of the Central Sales Tax Act. That section defined an inter-State sale in two ways one of which is in these terms : "A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase - (a) occasions the movement of goods from one state to another." The petitioners contend that the disputed sales were of this variety and the respondent, therefore, could not tax them.

The question then is, did the sales occasion the movement of cement from another State into Mysore within the meaning of the definition ? In *Tata Iron & Steel Co. Ltd. v. S. R. Sarkar* ([1961] I S.C.R. 379, 391.) it was held that a sale occasions the movement of goods from one State to another within s. 3(a) of the Central Sales Tax Act, when the movement is the result of a covenant of incident of the contract of sale". That the cement concerned in the disputed sales was actually moved from another State into Mysore is not denied. The respondents only contend that the movement was not the result of a covenant in or an incident of the contract of sale.

The result of this appeal will therefore turn on whether the movement of cement from another State into Mysore was the result of a covenant in the contract of sale or an incident of such contract. This question will depend on the contract and in order properly to appreciate the contract the procedure of the sales, as to which there is no dispute, has to be referred to. Now, at the relevant time cement could be purchased only under a permit issued by the Government and on the terms contained in it. This, it seems, was the result of certain statutory provisions. All the sales with which we are concerned were under such permits. Unfortunately the petitioners did not disclose in their petitions any specimen copy of a permit. As however the existence of the permits was not in dispute and had been mentioned in the petitions, the petitioners were allowed at the hearing to produce a specimen copy of a permit which was accepted by the respondents as a correct specimen. It appears from the specimen produced that a cement factory which was required to supply the cement covered by the permit was named in it. We are concerned with sales in which the permits required supplies to be made from factories outside Mysore. These permits were issued to the purchasers and the supplier named in them was the Marketing Company. On receipt of the permit the purchaser placed an order with the Marketing Company and later a firm contract with it was made.

In making the orders of assessment, the Taxing Officer observed that the firm contracts did not provide for any supplies being made from any particular factory and the supplies had actually been made from factories outside the State of Mysore only to suit the convenience of the supplier, the Marketing Company, and not because of any covenant in the contracts. It is true that the written contracts did not themselves contain any covenant that the supply had to be made from any particular factory but it seems to us that the agreement between the parties was not fully set out in them. In any case each contract was subject to the terms of the permit to which it expressly referred. As it is not in dispute that the sale could only be under a permit and on the terms contained in it, a contract has to be read as subject to it. Since the permits with which we are concerned provided that the supply had to be made from one or other factory situate outside Mysore, the contracts must be deemed to have contained a covenant that the goods would be supplied in Mysore from a place situate outside its borders. A sale under such a contract would clearly be an inter-State sale as defined in s. 3(a) of the Central Sales Tax Act. In view of the provisions of the Constitution and the Central Sales Tax Act earlier referred to a State could not impose a tax on such a sale. Therefore it seems to us that the petition should succeed.

It was however said that the petitions were incompetent in view of our decision in *Smt. Ujjam Bai v. State of Uttar Pradesh* ((1963) I S.C.R. 778.) in as much as the Taxing Officers under the Mysore Acts had jurisdiction to decide whether a particular sale was an inter-State sale or not and any error committed by them as quasi-judicial tribunals in exercise of such jurisdiction did not offend any fundamental right. But we think that that case is clearly distinguishable. *Das, J.*, there stated that "if a quasi-judicial authority acts without jurisdiction or wrongly assumes jurisdiction by committing an error as to a collateral fact and the resultant action threatens or violates a fundamental right, the question of enforcement of that right arises and a petition under Art. 32 will lie." He also said that where a statute is intra-vires but the action taken is without jurisdiction, then a petition under Art. 32 would be competent. That is the case here. There is no dispute that the Taxing Officer had no jurisdiction to tax inter-State sales, there being a constitutional prohibition against a State taxing them. He could not give himself jurisdiction to do so by deciding a collateral fact wrongly. That is what he seems to have done here. Therefore we think the decision in *Ujjam Bai's case* ((1963) I S.C.R. 778.), is not applicable to the present case and the petitions are fully competent.

The result is that the petitions are allowed and we direct that appropriate writs be issued quashing the orders of assessment mentioned in the petitions and restraining the respondents from levying or collecting the tax in respect of sales mentioned in the petitions in which the goods moved from outside into Mysore. There will be no order for costs as the petitioners had omitted to disclose to permits and had not in the petitions stated their case as clearly as it could have been done. As they had been granted some indulgence we think it right to deprive them of the costs of these petitions.

Petitions allowed.

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