

Himatsingka Timber Company Limited

v.

State of Orissa

(Supreme Court Of India)

HON'BLE CHIEF JUSTICE MR. P. B. GAJENDRAGADKAR HON'BLE MR. JUSTICE K. N. WANCHOO HON'BLE MR. JUSTICE M. HIDAYATULLAH HON'BLE MR. JUSTICE RAGHUVAR DAYAL HON'BLE MR. JUSTICE J. R. MUDHOLKAR

Civil Appeal No. 70 Of 1964 | 26-10-1964

HIDAYATULLAH, J.

1. The appellant-company (Messrs Himatsingka Timber Ltd.) has appealed to this Court by special leave against the order of the High Court of Orissa dated August 10, 1961, dismissing its application under section 24(2) of the Orissa Sales Tax Act, 1947. The appellant is a public company with its registered officer in West Bengal and has branches in different States, including one in the State of Orissa. The appellant-company had registered itself as a dealer and held a certificate of registration issued by the Sales Tax Officer, Mayurbhanj, Baripada, under the Orissa Sales Tax Act, 1947. The main business of the company was to take forests on lease for the extraction of timber and sleepers. The company held a contract for supply of sleepers to the Sleeper control Officer, Eastern Group, Calcutta. For this purpose it was extracting sleepers from the forests held on lease by it and was exporting them to Calcutta. As the extracted sleepers were not sufficient in number it made purchases locally from local merchants to make up its quota. In the same way the company purchased other timber to fulfil its obligations outside the State. The sleepers and timber so purchased were loaded in wagons in the State of Orissa f.o.r. destinations outside the State.

2. The company submitted its returns to the Sales Tax Authorities for the quarter ended March 31, 1951, and the dispute in this case, briefly stated, centres round the inclusion of the purchases made by the company in its turnover for the said quarter. Before the Sales Tax Officer a claim was made to exclude these purchases on the ground that they were in the course of inter-State

trade and were not taxable by reason of Article 286 of the Constitution. It may be mentioned here that the tax under the Orissa Act is a single point tax and the local purchases would have been subject to Sales Tax Act, if the company did not hold a certificate as a registered dealer and purchased free from sales tax on certificate that they were for resale in Orissa. The Sales Tax Officer, Mayurbhanj, did not accept the contention of the company under Article 286. He held that Article 286 of the Constitution was not operative till March 31, 1951, by reason of an order passed by the President of India. The order of the Sales Tax Officer, Mayurbhanj, is dated October 14, 1953, and the view then prevailing [The State of Bombay and Another v. The United Motors (India) Ltd. and Others ([1953] S.C.R. 1069; 4 S.T.C. 133.)) was that sales tax could be levied on inter-State trade because of the order of the President. It was only subsequently that this Court pointed out that there were two conditions in Article 286 and the President's Order removed only one of them and the other still continued to operate (The Bengal Immunity Co. Ltd. v. The State of Bihar and Others ([1955] 2 S.C.R. 603; 6 S.T.C. 446.)).

3. We need not enter into discussion of the controversies that took place then because the sale which is sought to be taxed in the present case is the first sale from the local dealer to the company which but for the fact that it was to a registered dealer would have been taxable because that sale ex facie was not in the course of inter-State trade and commerce. It has been held by this Court in several cases - chief among which is Endupuri Narasimham and Son v. The State of Orissa and Others ([1962] 1 S.C.R. 314; 12 S.T.C. 282.) - that a registered dealer who makes purchases to carry out his obligations to constituents outside the State does not make such purchases in the course of inter-State trade and commerce because those purchases are at a stage when the course of inter-State trade does not really commence. Such a sale, as held in Endupuri Narasimham's case ([1962] 1 S.C.R. 314; 12 S.T.C. 282.) can be taxed and the imposition of tax is not repugnant to Article 286(2) of the Constitution. The cited case, be it noted, arose under the Orissa Sales Tax Act, 1947. It follows that the decision of the Sales Tax Officer to which we have just referred is supportable. The company then took an appeal before the Assistant Collector of Sales Tax, Sambalpur, who dismissed it. A revision petition before the Collector of Commercial Taxes (Sales Tax), Orissa, also failed. The Collector noted the change in the views about Article 286 of the Constitution but he held that the tax was payable because the company had given a certificate that the sleepers and timber which were purchased locally were for resale in the State of Orissa but contrary to the certificate had exported them out of the State. He

purported to act under the proviso to section 5(2)(a)(ii) of the Orissa Sales Tax Act, as amended by the Orissa Sales Tax (Amendment) Act, 1950, from December 21, 1950. Section 5(2)(a)(ii) of the Orissa Sales Tax Act, after the amendment, read as follows :-

"Sales to a registered dealer of goods specified in the purchasing dealer's certificate of registration as being intended for resale by him or for use by him in the manufacture or processing of any goods for sale other than the manufacture or processing of any goods declared from time to time as tax-free under section 6 or in the execution of any contract and on sale to a registered dealer of containers and other materials for the packing of such goods :

Provided that when such goods are used by the registered dealer for purposes other than those specified in his certificate of registration the price of goods so utilised shall be included in his taxable turnover."

The tax was levied under the above proviso because of the breach of company's declaration in the certificate issued by it to the local dealers.

4. A second revision was then taken to the Board of Revenue but it also failed. The learned Member pointed out that the taxation of the sale of goods within the State was within the powers of the State Legislature and it was fully entitled to declare the circumstances under which the sale was to be tax-free or not tax-free. He pointed out that the Legislature had granted exemption from tax to sales between one registered dealer and another registered dealer on the latter's certificate that the goods were to be used either for resale or for manufacture but had enacted that if the purchasing registered dealer made a breach of the declaration in his certificate the first sale was to be taxable and that this was what had happened. He upheld the tax. The company made an application under section 23(1) of the Orissa Sales Tax Act asking for a reference of seven questions of law for the determination of the High Court. The Member, Board of Revenue, declined to make a reference. It appears that at the time of the argument the company reduced the questions to five which may be set out below :"(1) Whether on the facts and circumstances of the case, the purchases which occasioned the export outside the State of Orissa, came within the constitutional prohibition contained in Article 286 of the Constitution of India;

(2) Whether on the admitted facts that the goods in question were sold and delivered outside the State of Orissa for consumption therein it is within the legislative competency of the State Legislature to do the same;

(3) Whether on the facts and circumstances of the case the proviso to sub-clause (ii) of clause (a) of sub-section (2) of section 5 of the Orissa Sales Tax Act, 1947, comes within the powers conferred by entry 54 of List II of the Seventh Schedule to the Constitution of India and is intra vires of the State Legislature;

(4) Whether the imposition of liability on the appellant-purchaser is within the ambit and scope of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947);

(5) Whether the proviso to sub-clause (ii) of clause (a) of sub-section (2) of section 5 of the Orissa Sales Tax Act, 1947 (Orissa Act 14 of 1947) is unconstitutional and void, as offending Article 286 of the Constitution of India."

The company then made an application in the High Court for calling for a reference but the High Court rejected the application in view of the decision in the case from Orissa cited earlier.

5. At the hearing before us Mr. S. T. Desai conceded that questions 1, 2, 3 and 5 were not open to him as a result of the decision in Endupuri Narasimham's case ([1962] 1 S.C.R. 314; 12 S.T.C. 282.). He confined his arguments to the fourth question which he said arose from the decisions of the Tribunals. That is so general that it can be said to arise in every case. He contended on the strength of the terms of the contract produced by him that property in the sleepers passed to the Sleeper Control Officer in the State of Orissa itself and that as the goods were actually resold in the State they were not liable to tax because the company had complied with the certificate issued by it. This contention was not raised before and is a departure from the earlier stand of the company that the local purchases were in the course of inter-State trade. That argument could only be raised if the property in the goods passed outside the State. There is thus no finding that property in the sleepers or timber passed in the State of Orissa. It is too late now to plead facts. The result is fairly obvious. What is being sought

to be taxed is not the sale to the Sleeper Control Officer but the earlier sale to the company by the local dealers which was tax-free as between one registered dealer and another. The first sale was independent of the sale to the Sleeper Control Officer as it was not in the course of inter-State trade and it could be taxed and the law imposing a tax on such a sale was not also ultra vires. The only question in this case was whether the certificate which the appellant-company gave to the local dealers was complied with or not or whether the proviso to section 5(2)(a)(ii) quoted above applied. The company had obtained the sleepers and the timber tax-free by reason of its certificate that they were from resale in the State of Orissa. The company did not sell them but exported them. If there was no sale in the State the company was liable to sales tax on the first sale under the said proviso by reason of the breach of the certificate. Mr. Desai compared section 5(2)(a)(ii) as enacted by the 1950 amendment with that enacted in 1951 which came into force from November 25, 1951. He pointed out that the words "in Orissa" were added in the operative part after the quarter involved in this case and, therefore, the export of the sleepers and timber outside the State did not affect the company as prior to the 1951 amendment exemption was available if the goods were for resale irrespective of the place of sale. This is not correct. The tax was always leviable on the first sale and it would have been so levied but for the certificate which was furnished by the company when making purchases from the local dealers. The certificate was that the sleepers and timber were for resale in Orissa and when that condition was not fulfilled, the tax became payable even under section 5(2)(a)(ii) before the 1951 amendment. This is now settled by a series of decisions the last being Civil Appeal No. 534 of 1964 (Modi Spinning & Weaving Mills Co. Ltd. v. The State of Punjab and Others (Since reported at [1965] 16 S.T.C. 310.)) decided by this Court on October 5, 1964.

6. In our opinion, the High Court was right in thinking that in view of the rulings referred to by it no question of law arose in this case and in declining to call for a reference and we accordingly dismiss the appeal with costs.

7. Appeal dismissed.