

The State of Madras

Vs

Davar & Co.

Civil Appeal Nos. 1462 to 1465 of 1967

(CJI M. Hidayatullah, C. A. Vaidialingam, J. M. Shelat, K. S. Hedge, A. N. Grover JJ)

20.05.1969

JUDGMENT

VAIDIALINGAM, J. -

1. These appeals, by special leave, by the State of Madras, are directed against the common judgment, dated July 17, 1963 of the Madras High Court.
2. The short question, that arises for consideration in these appeals, is as to whether the turnover, which was the subject of consideration by the High Court, was liable for sales-tax, under the Madras General Sales Tax Act, 1959 (Act I of 1959) (hereinafter called the Madras Act). The assessee claimed that the turnover in question represented sales in the course of import and, as such, not liable to tax under the Madras Act. The State of Madras claimed that in all these cases the sale had been effected by a transfer of documents of title to the respective buyers after the ships had crossed the territorial waters and hence they were liable to tax under the Madras Act. The contention of the assessee was negatived by the Assistant Commercial Tax Officer, as also by the Appellate Assistant Commissioner of Commercial Taxes. But, on further appeal by the assessee, the Sales Tax Appellate Tribunal accepted their contention and held that the disputed turnovers were not liable to tax under the Madras Act. The revisions filed by the State against the orders of the Sales Tax Appellate Tribunal were dismissed by the High Court. Hence these appeals.
3. Though each of the respondents in these appeals is an importer of a different commodity, the pattern adopted by each of them in the matter of importing the goods concerned from foreign countries and in the matter of transferring title to the respective buyers, is more or less the same. We shall therefore refer only to the facts relating to the dealings adopted by Davar and Company (hereinafter called the assessee), the respondent in Civil Appeal No. 1462 of 1967.
4. The assessee was assessed by the Assistant Commercial Tax Officer, South Madras and Chingleput, under the Madras Act on a turnover of Rs. 6,60,200.07 for the year 1957-58. It was carrying on business in timber at Madras and in the course of its business the assessee imported timber from Burma and sold it to its customers in India. Out of the turnover abovementioned, the assessee disputed its liability to the extent of a turnover of Rs. 1,95,490.67 on the ground that the said amount represented sales in the course of import and that such sales were not liable to tax as they were covered by Article 286(1)(b) of the Constitution. This claim was based on the following circumstances. The respondent-assessee entered into contracts for sale of timber with a firm of merchants called Velu and Brothers (hereinafter called the buyers). The timber was to be imported from Burma. Under the contract the buyers were to pay the assessee 8 per cent. profit on the C.I.F. value of timber sold and also the sales-tax and other charges and expenses. The buyers were to retire

the shipping documents at least 10 days before the expected arrival of the steamer carrying the timber. The assessee imported two consignments of timber from Rangoon. The value of the first consignment was Rs. 99,098. 05. The ship carrying the consignment arrived at the Madras Harbour on October 17, 1957. The assessee got Rs. 1,00,000/- from the buyers on October 24, 1957 and retired the documents of title, from the bank and handed over the said documents on the same date to the buyers to enable them to clear the goods. All charges and expenses by way of import duty, clearance charges etc., were paid by the buyers on behalf of the assessee. A second consignment reached Madras by ship on December 17, 1957. The assessee obtained from the buyers, on December 23, 1957 the value of this consignment after handing over to the buyers the necessary shipping documents.

5. On these facts both the Commercial Tax Officer as well as the Appellate Assistant Commissioner came to the conclusion that the sales, effected by the assessee to the buyers were not sales in the course of import, but were local sales liable to tax under the Madras Act. The Sales Tax Appellate Tribunal, on the other hand, held to the contrary. The High Court has concurred with the view of the Appellate Tribunal.

6. According to the Assistant Commercial Tax Officer and the Appellate Assistant Commissioner the sale was effected by the assessee to the buyers after the consignment of timber had come into the Madras Port and in consequence there was no intention to transfer the property in the goods to the buyers before they were cleared from the customs frontier and hence the sales could not be considered to be sales in the course of import. The Appellate Tribunal took the view that the sale by the assessee to the buyers had been effected by transferring the documents of title relating to the goods, before the goods crossed the customs barrier and before the import became complete. Therefore, according to the Tribunal, the sales should be treated as being in the course of import and, in consequence, not liable for tax under the Madras Act.

7. On the facts stated above, the parties were not in dispute; but, before the High Court, the State raised the contention that the sales in question were not sales in the course of import as the documents of title were handed over by the assessee to the buyers after the ship had crossed the 'territorial waters'. According to the State, the expression 'customs frontier', occurring in Section 5(2) of the Central Sales Tax Act, 1956 (Act LXXIV of 1956) (hereinafter called the Central Act) is coterminous with the extent of the 'territorial waters' of India, as fixed by the Proclamation, dated March 22, 1956 issued by the President of India. That is, according to the State, the import is complete when the ship carrying the goods from a foreign port enters the territorial waters and any sale by the importer, by transfer of documents of title to the goods subsequent to such entry will not amount to a sale in the course of import. According to the assessee, 'customs frontier' in Section 5(2) of the Central Act, must be treated as analogous to customs barrier' and, so read, the position would be that a sale effected by transfer of documents of title before the goods cross the 'customs barrier' would not be liable to tax under the Madras Act.

8. The High Court has, after a reference to various decisions of this Court as to when a sale can be considered to be in the course of import or export, held that the 'customs frontier' as laid down by this Court does not mean any geographical features like land or coast or limits of territorial waters, but only the operation of the machinery of the Customs Department consisting of levy and collection of duty and clearance of the goods. The High Court further held that it would be proper to construe the words 'customs frontiers' as 'customs barriers' in the Central Act. In this view the High Court held that as the sale had been effected by transfer of title to the goods before they entered the customs barrier, the sale was not liable to tax under the Madras Act.

9. On behalf of the appellant-State, Mr. A. K. Sen, learned counsel, urged that the view of the Madras High Court construing the words 'customs frontiers' as 'customs barriers' in the Central Act was erroneous. According to the learned counsel, on the admitted facts the sales in all these cases had been effected by transfer of the documents of title long after the sales had ceased to be in the course of import. This contention, on behalf of the State, was resisted by Mr. Thiagarajan and Mr. K. Jaya Ram, appearing for the respondent in Civil Appeals Nos. 1464 and 1465 of 1967, respectively.

10. We are of the view that the judgment of the Madras High Court cannot be sustained and the expression 'customs frontiers' in Section 5 of the Central Act cannot be construed to mean 'customs barriers'. Article 286(1) places a ban on the State imposing or authorising the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of import of goods into or export of goods out of the territory of India. Clause (2) of Article 286 gives power to the Parliament, by law, to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1). Accordingly Parliament has enacted the Central Act. Section 5 of that Act lays down the conditions under which a sale or purchase of goods can be said to take place in the course of import or export. Sub-sections (1) and (2) deal with sale or purchase of goods in the course of export and sale or purchase of goods in the course of import, respectively. As we are concerned with a sale in the course of import, the relevant provision is sub-section (2) of Section 5, which is as follows :

"5(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India."

11. In this case, the claim made by the assessee for exemption from tax liability is on the ground that the sale was effected by transfer to the buyer of documents of title to the goods. Under Section 5(2) of the Central Act, in order to treat the sale as one in the course of import, the documents of title must have been transferred before the goods have crossed the customs frontiers of India. The question is what does the expression 'customs frontiers' of India, in Section 5 of the Central Act, mean ? To answer this question, it is necessary to refer to certain Proclamations made by the President of India and Notifications issued by the Central Government under Section 3-A of the Sea Customs Act, 1878 (Act VIII of 1878, (hereinafter called the Act).

12. The President of India has issued a Proclamation, dated March 22, 1956 and that contains a declaration as to the extent of the territorial waters of India. That Proclamation has been published with the notification of the Government of India in the Ministry of External Affairs, No. S. R. 0. 669, dated March 22, 1956 and is as follows.

"S.R.O. 669. - The following Proclamation by the President is published for general information :

PROCLAMATION

'WHEREAS international law has always recognised that sovereignty of a State extends to a belt of sea adjacent to its coast;

AND WHEREAS international practice is not uniform as regards the extent of this sea-belt

commonly known as the territorial waters of the State, and consequently it is necessary to make a declaration as to the extent of the territorial waters of India;

I, Rajendra Prasad, President of India, in the Seventh Year of the Republic, do hereby proclaim that, notwithstanding any rule of law or practice to the contrary which may have been observed in the past in relation to India or any part thereof, the territorial waters of India extend into the sea to a distance of six nautical miles measured from the appropriate base line'.

RAJENDRA PRASAD,

President."

On September 30, 1967 another Proclamation was issued by the President of India and published with the notification of the Government of India in the Ministry of External Affairs, No. F. L/111(1)/67, dated September 30, 1967. BY this Proclamation the earlier Proclamation of March 22, 1956 has been superseded and the territorial waters of India have been declared to extend into the sea to a distance of twelve nautical miles measured from the appropriate base line. But in the present appeals, we are concerned only with the earlier Proclamation dated March 22, 1956.

13. Section 3-A of the Act gives power to the Central Government, to define, by notification in the Official Gazette. the 'customs frontiers' of India. By virtue of the powers conferred by this section, the Central Government (Ministry of Finance, Revenue Division) had issued a notification, No. 25-Customs, dated April 1, 1950, defining the 'customs frontiers' of India; but it is not necessary to consider the definition contained in this notification, as it has been superseded by the issue of a fresh notification, No. S. R. O. 1683, dated August 6, 1955. The latter notification, issued by the Ministry of Finance (Revenue Division), Customs, which is relevant for the present purpose, is as follows :

"New Delhi, the 6th August, 1955.

S.R.O. 1683. - In exercise of the powers conferred by Section 3-A of the Sea Customs Act, 1878 (VIII of 1878), and in supersession of the notification of the Government of India in the Ministry of Finance (Revenue Division) No. 25-Customs, dated the 1st April 1950, the Central Government hereby defines the customs frontiers of India as the boundaries of the territory, including territorial waters, of India.

Sd. Jt. Secretary."

14. The expression 'customs frontiers of India' in Section 5 of the Central Act, in our opinion, must be construed in accordance with the notification issued by the Central Government under Section 3-A of the Act, on August 6, 1955, read with the Proclamation of the President of India, dated March 22, 1956. So applying the definition of 'customs frontiers' it is clear that, in the instant case, the sales were effected by transfer of documents of title long after the goods had crossed the customs frontiers of India. We have already stated that the ships carrying the goods in question were all in the respective harbours within the State of Madras when the sales were effected by the assesseees by transfer of documents of title to the buyers. If so, it follows that the claim made by the assesseees that the sales in question were sales in the course of import, has been rightly rejected by the assessing authority. Unfortunately, though various aspects seem to have been pressed before the High Court by the State of Madras, this notification of August 6, 1955, issued by the Government of India, defining the 'customs frontiers' of India, was not brought to the notice of the High Court.

15. In the result, the common order, dated July 17, 1963 of the Madras High Court is set aside and the appeals allowed. In the circumstances of the case, there will be no order as to costs.

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