

Messrs. Anwar Khan Mehboob Company

Vs

The Commissioner of Sales Tax, Madhya Pradesh

Civil Appeal No. 275 of 1967

(J. C. Shah, K. S. Hegde, A. N. GroverBachawat JJ)

22.04.1970

JUDGMENT

SHAH, J. -

1. The appellants are a firm having their head office at Jabalpur in Madhya Pradesh and branches offices at Lucknow, Kanpur, Faizabad and Bombay. They are engaged in the business of manufacturing and selling Bidis, and are registered as dealers under the C.P. and Berar Sales Tax Act, 1947. Between November, 1948 and October 12, 1949, the appellants despatched Bidis of the value of Rs. 22,60,241/5/- to their branch offices outside the State of Madhya Pradesh, and Bidis of the value of Rs. 5,35,404/15/- under instructions from their branches to other destinations outside the State. The Sales Tax Officer rejected the contention of the appellants that the turnover resulting from the sale of Bidis supplied to the branches and under instructions from the branches was not liable to be taxed under the C.P. and Berar Sales Tax Act, 1947, and brought the aggregate turnover of Rs. 27,85,646/4/- to tax. In appeal, the Deputy Commissioner reduced the taxable turnover by 5%. The order of the Deputy Commissioner was confirmed in appeal to the Commissioner of Sales Tax. A revision application filed before the Sales Tax Tribunal was unsuccessful.

2. At the instance of the appellant, the Tribunal submitted a Statement of case, and referred the following questions to the High Court of Madhya Pradesh for opinion :

"1. Whether, in the facts and circumstances of the case, the transaction amounting to Rs. 21,47,228/- were sales and therefore, liable for inclusion in the turnover of the appellant for assessment to tax ?"

"2. Whether, in the facts and circumstances of the case, the transactions amounting to Rs. 5,35,404/15/- were sales and, therefore, liable for inclusion in the turnover of the appellant for assessment to tax ?"

The two questions have not been drawn with care. In order to clarify the import of the two questions the words "sales and therefore" should, in our judgment, be omitted, and the words "liable for inclusion" be substituted by the words "liable to be included". We reframe the questions accordingly.

3. The sales in respect of Bidis which resulted in the turnover in question did not take place within the State of Madhya Pradesh. It is common ground that the Bidis were appropriated to the contracts of sale outside the State of Madhya Pradesh. The transactions were for a period prior to the Constitution and the authority of the State to levy tax on transactions of sale was not subject to the limitation prescribed by Article 286 of the Constitution. Section 2(g) of the C.P. and Berar Sales Tax

Act, 1947, as then in operation provided :

"Sale' with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract, but does not include mortgage, hypothecation, charge or pledge.

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Explanation (II). - Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale of any goods which are actually in the Central Provinces and Berar at the time when the contract of sale is defined in the Act in respect thereof is made, shall wherever the said contract of sale is made, be deemed for the purpose of this Act taken place in the Central Provinces of Berar."

This Act was enacted in exercise of the powers conferred upon the Provincial Legislature by Entry 48, List II, Seventh Schedule to the Government of India Act, 1935. In exercise of that power the Legislature was competent to enact a law for levying sales tax, acting on the principles of territorial nexus, i.e. the Province could fix upon one or more ingredients of sale, and make it the foundation for imposing liability for sales tax. The Provincial Legislature, relying upon either the manufacture of the goods within the Province, or the existence of the goods at the date of the contract of sale within the Province, or the making of the contract of sale within the territory as the basis, could provide for levying sales tax. Sale within the territory was not a condition of the exercise of power to levy sales tax.

4. The Sales Tax Officer held that the appellants had despatched Bidis to their offices receiving previous orders or contracts of sale which were "collected by" the appellants' "Travelling salesman, Depot Managers or other merchants or salesmen, in respect of goods manufacture and situated in the State of Madhya Pradesh and on that account Explanation 2 to Section 2(g) of the Act was attracted and the transfers were sales within the State."

5. In appeal the Deputy Commissioner of Sales Tax observed :

"From the insistent demands of the branch manager, it is evident that the appellants' Bidis were in great demand in those markets. The buyers were anxious to get stocks of appellants' brands of Bidis and they were placing orders on the branches so that there would be an uninterrupted supply of Bidis. It is also amply clear that in a very large number of cases, orders were already accepted by the branches for the supply of Bidis. These circumstances lead to the inevitable conclusion that a large proportion of the despatches were covered by previous orders accepted by the branches or head office."

The Commissioner of Sales Tax agreed with the findings of the Deputy Commissioner. He observed that the "branches had collected orders from customers and had forwarded those orders to the head office at Jabalpur where the orders were executed for despatch of goods to the places where the branches existed." In this view, the Bidis were despatched in execution of orders of the customers forwarded by the branches. He rejected the contention of the appellants that the Bidis were "sent to the branches to replenish dwindling stock." The Sales Tax Tribunal in rejecting the revision application also expressed a similar view.

6. The High Court observed :

"When the definition of 'sale' is read with the Second Explanation it is apparent that if on the date when the agreement of sale is entered into with respect to any goods and if the goods are in existence in the Province of Central Provinces and Berar on the date of the agreement, it is deemed that the sale takes place within the Province of Central Provinces and Berar, though, in fact under the provisions of the Indian Sale of Goods Act, 1930, the sale may take place outside the Province when the goods are appropriated towards the contract."

7. Section 4 of the C.P. and Berar Sales Tax Act, 1947, is the charging section : it renders every dealer whose turnover exceeds the specified amount in respect of sales of goods in Madhya Pradesh liable to pay the sales tax. Under the Act, tax is levied on sale. By the definition in Section 2(g) the sale is defined as transfer of property in goods for cash or deferred payment or for other valuable consideration. Under the provisions of the Sale of Goods Act, 1930, 'sale' would ordinarily take place where goods are by mutual agreement appropriated towards the contract. Explanation II to Section 2(g) however prescribes for the purpose of the C.P. and Berar Sale Tax Act a fictional situs of the sale. If at the date of the contract of sale, goods are actually within the Province, the sale wherever it takes place, is deemed by a legal fiction to take place within the Province. The condition of liability to tax is the existence of goods within the Province at the date of the contract of sale : it is immaterial that the contract of sale and the passing of property in the goods take place outside the taxing Province.

8. To attract liability to sales tax under the Act there must be a sale of goods, i.e., there must be a transfer of property in goods for cash or deferred payment or for other valuable consideration, and the sale must take place in pursuance of the contract of sale. If these conditions exist, the sale shall be deemed to have taken place within the Province if at the date of the contract of sale the goods are actually within the territory of the Province.

9. This Court held in *The Tata Iron and Steel Co. Ltd. v. State of Bihar* ((1958) SCR 1355) that under the Government of India Act, 1935 the Provincial Legislature was competent to levy sales tax, relying upon the theory of territorial nexus, in respect of sales which took place outside the Province. This Court observed that the sales tax may be levied only on completed sales, but the theory of territorial nexus may be utilised for fixing one of several ingredients of sale as furnishing a connection between the taxing province and the sale. The decision of this court in *The Commissioner of Sales Tax, Eastern Division, Nagpur v. Hussenali Adamji and Co.* ((1959) Supp 2 SCR 702) does not make any departure from the rule enunciated in *The Tata Iron and Steel Co. Ltd.*'s case (supra). In that case the Court held that goods which were not in existence at the date of the contract of sale will not be deemed by virtue of the second Explanation to Section 2(g) of the Central Provinces and Berar Sales Tax Act, 1947, to have been sold within the Province, merely because the goods had subsequently come into existence. The case related to sales tax on sale of logs of wood. At the date of the agreement of sale, the logs were unascertained goods, for they were still to be cut in the shape of logs from standing trees. The Court held that explanation II to Section 2(g) of the Central Provinces and Berar Sales Tax Act, 1947, did not render the sale of the logs of wood liable to sales tax, for at the date of the contract of sale the logs of wood agreed to be sold were not in existence.

10. The sales tax authorities did not attempt to determine whether at the date of the contracts pursuant to which the goods were despatched by the head office, the goods were in existence. They

assumed that the liability to tax arose if it was shown that the contract for sale of Bidis were made by the employees or agent of the appellants and the Bidis were despatched pursuant to those contract. The High Court observed that Section 2(g) "indicated that the fiction of sale taking place within the province would arise only if the goods were in existence at the date of the contract of sale." The High Court, however, did not proceed to consider whether in respect of the Bidis despatched by the appellants the condition of the existence of the Bidis within the Province was satisfied. It must, however, be observed that at no stage in the proceeding for assessment to tax, attention of the authorities was invited that the liability to tax depended upon proof of the existence of the Bidis within the territory of the Province.

11. Mr. Karkhanis for the appellants requested us to call for supplementary statement of the case, and then answer the questions. We do not deem it necessary to accede to that request. Under Section 23, sub-section (5) of the C.P. Berar Sales Tax Act, 1917, the Tribunal will decide the case according to the answer recorded by this Court.

12. We proceed to answer the two question as follows :

- (1) The turnover arising out of transaction aggregating to Rs. 21,47,228/- is liable to sales tax in so far as it arises out of sales made in pursuance of contract relating to goods which were at the date of the contract in existence within the Province.
- (2) The turnover arising out of transaction amounting to Rs. 5,35,404/15/- is liable to sales tax in so far as it arises out of sales made in pursuance of contracts relating to goods which were at the date of the contract in existence within the Province.

There will be no order as to costs.

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