

The State of Bihar and Another

Vs

Tata Engineering and Locomotive Co. Ltd.

Civil Appeal No. 2402 of 1966

(A. N. Ray, J. C. Shah, K. S. Hegde, A. N. Grover, G. K. Mitter JJ)

27.11.1970

JUDGMENT

HEDGE, J. -

1. This is an appeal by special leave. It arises from the judgment of the High Court of Patna in a Reference under Section 25(3) of the Bihar Sales Tax Act, 1947. That reference was called for by the High Court at the instance of the assessee Company (the respondent herein). The questions referred for the opinion of the High Court by the Board of Revenue were :

"(1) With regard to the sales which took place in the period from 1st of April, 1955, to the 6th September, 1955, whether the assessee is entitled, upon the facts found by the Board of Revenue with regard to these categories of sales, to exemption from liability under the Bihar Sales tax Act because of the provision of Article 286(1)(a) of the Constitution as it stood at the relevant date, read with the explanation to that Article.

(2) With regard to the sales which took place in the period from 7th September, 1955, to 31st March, 1956, whether the assessee is entitled, upon the facts found by the Board of Revenue with regard to these categories of sales, to exemption from liability under the Bihar Sales-tax Act on the ground that the sales took place in the course of inter-State trade or commerce under Article 286(2) of the Constitution as it stood at the relevant period."

2. The High Court answered the first question in the negative and against the assessee. It answered the second question in the affirmative and in favour of the assessee. The assessee has not come up in appeal. This appeal has been brought by the State of Bihar contesting the correctness of the opinion given by the High Court on the second of the two questions referred to earlier.

3. The assessee is a Public Limited Co., incorporated under the Indian Companies Act, 1913. It carries on business of manufacturing and selling inter alia trucks and bus chassis and spare parts thereof to their appointed dealers, State Transport Organizations and individual buyers throughout India. The registered office of the assessee is at Bombay but its factory where manufacturing process is being carried on is at Jamshedpur in Bihar. The assessee has appointed several dealers all over India for the sale of its trucks, bus chassis and spare parts. Those dealers are appointed under agreements entered into between them and the assessee. The turn-over in dispute relates to the sales made by the assessee to its dealers of trucks, bus chassis and spare parts for being sold in the territories assigned to them under the dealership agreements. The agreements between the assessee

and its dealers appear to be similar. Under the agreements, each dealer is assigned a territory in which alone he can sell the trucks, bus chassis and other spare parts purchased by him from the assessee company. He is forbidden from selling any one of those articles to any purchaser outside his territory. As per the agreements, dealers will have to place their indents, pay the price of the goods to be purchased and obtain delivery orders from the Bombay officer of the assessee. In pursuance of those delivery orders, trucks, bus chassis and other spare parts were delivered in Bihar to be taken over to the territories assigned to them. Under the contracts of sale, the dealers were required to remove the trucks, bus chassis and the spare parts delivered to them in the State of Bihar to places outside Bihar. These are facts found by the Board of revenue and affirmed by the High Court. On the basis of these facts, we have to decide whether the sales with which we are concerned in this appeal are sales that took place in the course of inter-State trade and commerce as contemplated by Article 286(2) of the Constitution as it stood at the relevant time. In other words the question for decision is whether the sales in question were sales for the purpose of inter-State trade or commerce or whether they were sales in the course of inter-State trade or commerce. As seen earlier, the High Court has held that those sales took place in the course of inter-State trade or commerce.

4. The expression "in the course of" appearing in Article 286(1)(b) came up for consideration in *State of Travancore Cochin and Others v. The Bombay Co. Ltd.* (1952 SCR 1112 : AIR 1952 SC 366 : 1952 SCJ 527) Therein this Court held that whatever else may or may not fall within Article 286(1)(b) of the Constitution, sales and purchases which themselves occasion the export of import of the goods as the case maybe out of or into, the territory of India come within the exemption. In that case this Court further observed that a sale by export involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country by land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated and the sale and the resultant export form parts of single transaction. Of these two integrated activities which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Even in cases where the property in the goods passed to the foreign buyers and the sales were thus completed, within the state before the goods commenced their journey from the State, the sales must be regarded as having taken place in the course of the export and therefore exempt under Article 286(1)(b). The same exposition of the law is true of clause (2) of Article 286 as it stood prior to its amendment on September 11, 1956.

5. The next decision in which Article 286(1)(a), 1(b) and (2) came to be considered by this Court is *State of Travancore-Cochin and Others v. Shanmugha Vilas Cashew Nut Factory and Others.* ((1954) SCR 53 : AIR 1953 SC 333 : 1953 SCJ 471) Therein this Court observed that the word "course" etymologically denotes movement from one point to another and the expression "in the course of" in Article 286(1)(b) not only implies a period of time during which the movement is in progress but postulates also a connected relation. Consequently, a sale in the course of export out of the country should be understood in the context of Article 286(1)(b) as meaning a sale taking place not only during the activities directed to the end of exportation of the goods out of the country, but also as part of or connected with such activities. But a purchase of goods for the purpose of export is only an act preparatory to their export and not an act done in the course of the export of the goods.

6. In *The Bengal Immunity Company Ltd. v. The State of Bihar and Others*, ((1955) 11 SCR 603 : AIR 1955 SC 661 : 1955 SCJ 672) Venkatarama Ayyar, J., observed that a sale could be a sale in the course of inter-State trade only if two conditions concur : (1) a sale of goods and (2) a transport of those goods from one State to another under the contract of sale.

7. In *Endupuri Narasimham and Son v. The state of Orissa and Others*, ((1962) 1 SCR 314 : AIR 1961 SC 1344 : (1962) SCJ 54) this Court held that in order that a sale or purchase might be inter-State, it is essential that there must be a transport of goods from one State to another under the contract of sale or purchase. A purchase made inside a State, for sale outside the State cannot itself be held to be in the course of inter-State and the imposition of tax thereon is not repugnant to Article 286(2) of the Constitution.

8. In *Tata iron and Steel Co. Ltd. v. S. R. Sarkar and Others*, ((1961) 1 SCR 379 : AIR 1961 SC 65) this Court held that within clause (b) of Section 3 of the Central Sales tax Act, 1956, are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto and also covers sales in which movement of goods from one State to another is the result of a covenant or incident of the contract of sale and property in the goods passes in either State. Clause (b) Section 3 of the Central Sales Tax Act, 1956, says :

"That 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 in the course of the import of goods into, or export of the goods out of, the territory of India."

9. In *The Cement Marketing Co. of India (Private) Ltd. and Another v. The State of Mysore and Another*, (14 STC 175) this Court held that where the goods were transported outside the State as required by the contract of sale, they are inter-State sales and hence exempt from sales-tax. On the facts of that case it was held that the sales transactions themselves involved movement of goods across the border.

10. In *Ben Gorm Nilgiri Plantations Co., Coonoor and Others v. Sales tax Officer, Special Circle, Ernakulam and Others*, ((1964) 7 SCR 706 : AIR 1964 SC 1752 : (1964) 2 SCJ 693) this Court had to consider what sales are sales in the course of export and what sales are for the purpose of export. In the course of the judgment Shah, J. (one of us), observed :

"A sale in the course of export predicates a connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising, from the nature of the transaction. In this sense to constitute a sale in the course of export it may be said that must be an intention on the part of both the buyer and the seller to export, there must be obligation to export, and there must be an actual export. The obligation may arise by reason of statute, contract between the parties, or from mutual understanding or agreement between them, or even from the nature of the transaction which links the sale to export. A transaction of sale which is a preliminary to export of the commodity sold may be regarded as a sale for export, but is not necessarily to be regarded as one in the course of export, unless the sale occasions export."

11. In *K. G. Khosla and Co. (P) Ltd. Deputy Commissioner of Commercial Taxes, Madras*, (17 STC 473) this Court held that before a sale could be said to have occasioned the import, the movement of goods must have been incidental to the contract or in pursuance of the conditions of the contract and there should be no possibility of the goods being diverted by the assessee for any other purpose, meaning thereby that there should be no possibility of diversion according to law or contract and not in breach of them.

12. In *Tata Engineering and Locomotive Co. Ltd. v. The Asstt. Commissioner of Commercial Taxes and Another*, ((1970) 1 SCC 622) this Court after referring to the earlier decisions observed :

"It has been laid down that the sale in the course of export predicated connection between the sale and export, the two activities being so integrated that the connection between the two cannot be voluntarily interrupted without a breach of the contract or the compulsion arising from the nature of the transaction. To occasion export there must exist such a bond between the contract of sale and the actual exportation that each link is inextricably connected with the one immediately preceding it. The principle thus admits of no doubt, according to the decisions of this Court, that the sales to be exigible to tax under Act (Central Sales Tax Act, 1956), must be shown to have occasioned the movement of the goods or articles from one State to another. The movement must be the result of a covenant or incident of the contract of sale."

13. If we apply the principles enunciated by this Court in the decisions referred to above to the facts of this case, it is obvious that the sales with which we are concerned in this case are sales in the course of inter-State trade. The dealers were required to move the trucks, buses chassis and other spare parts purchased by them from the State of Bihar to places outside Bihar. They are so required by the terms of the contracts entered into by them with the assessee. They would have committed breach of their contracts and incurred the penalty prescribed in their dealership agreement, if they had failed to abide by the term requiring them to move the goods outside the State of Bihar.

14. The decided cases establish that sales will be considered as sales in the course of export or import or sales in the course inter-State trade and commerce under the following circumstances :

- (1) When goods which are in export or import stream are sold;
- (2) When the contract of sale or law under which goods are sold require those goods to be exported or imported to a foreign country or from a foreign country as the case may be or are required to be transported to a State other than the State in which the delivery of goods takes place; and
- (3) Where as a necessary incidence of the contract of sale goods sold are required to be exported or imported or transported out of the State in which the delivery of goods takes place.

15. But Mr. A. K. Sen, learned Counsel for the State of Bihar contended that this Court has taken a different view of the law in *Coffee Board Bangalore v. Joint Commercial Tax Officer, Madras and Another*. (25 STC 528) According to him the ratio of that decision is that whenever goods are delivered in a State in pursuance of a contract of sale, the sale in question becomes exigible to tax in the State in which the goods are delivered unless they are taken out of the State for purposes of consumption and not resale, or the same is taken out of the State in pursuance of an already existing agreement to resell in the State to which it is taken. The decision in *Coffee Board case* (supra) does not, in our opinion, afford any basis for these contentions.

16. We have earlier noticed that this Court in a series of decisions has pronounced in unambiguous terms that where under the terms of a contract of sale, the buyer is required to remove the goods from the State in which he purchased those goods to another State and when the goods are so moved, the sale in question must be considered as a sale in the course of inter-State trade or

commerce. This is a well established position in law. In the Coffee Board case this Court did not deviate from this position nor could it deviate as the earlier decisions were binding on it. Further in the course of his judgment, the learned Chief Justice who spoke for the Court referred with approval to the earlier decisions of this Court where distinction between the sales in the course of inter-State trade or commerce and sales for the purpose of inter-State trade and commerce were explained. On the basis of the facts in that case, his Lordship came to the conclusion that the export of the coffee in question was not integrated with the sales with which the Court was concerned and that there was no direct bond between the export and the sales. In the course of his judgment his Lordship observed :

"Here there are two independent sales involved in the export programme. The first is a sale between the Coffee Board as seller to the export promoter. Then there is the sale by the export promoter to a foreign buyer. Of the latter sale, the Coffee Board does not have any inkling when the first sale takes place. The Coffee Board's sale is not in any way related to the second sale. Therefore, the first sale has no connection with the second sale which is in the course of export, that is to say, movement of goods between an exporter and an importer."

17. This finding clearly brings out the distinction between the facts of the Coffee Board's case (supra) and the facts of the cases wherein this Court held that the sales in question were sales in the course of export or import. In the Coffee Board's case (supra), this Court found that what was insisted on by the Coffee Board was that the coffee set apart for the purpose of the export must be exported; it was not incumbent for the purchasers at the auction to export that coffee themselves; they may do it themselves or they may sell it to somebody who may export it outside India. On that basis, this Court came to the conclusion that the sale effected by the Coffee Board are not sales in the course of export; they are only sales for the purpose of export. The ratio of that does not bear on the facts before us. Herein under the terms of the contracts of sale, the purchasers were required to remove the goods from the State of Bihar to other States. Hence the sales with which we are concerned in this case must be held to be sales in the course of inter-State trade or commerce.

18. For the reasons mentioned above, we agree with the findings of the High Court. In the result this appeal fails and the same is dismissed with costs.

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