

M/s. National Tractors, Hubli

Vs

Commissioner of Commercial Taxes, Bangalore

Civil Appeals Nos. 801, 796 to 798 of 1969

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

15.01.1971

JUDGMENT

GROVER, J. -

1. These appeals have been brought by special leave against a common judgment of the Mysore High Court.
2. The facts are not in dispute. The assessee is a dealer in iron ore. It purchases iron ore from mine owners in Hospet and sells them to the State Trading Corporation for export to foreign countries. The assessee and the State Trading Corporation are registered as dealers under the Mysore Sales Tax Act, 1957, hereinafter called the "Act". According to the agreement between the parties ore was to be transported by rail from Hospet to Hubli and from there by road to Karwar port where it was loaded into ships for transportation to foreign countries. All expenses of transportation from Hospet to the point where the ore was loaded in ships were to be borne by the assessee. The documents relating to transport by rail such as way bills, Railway Receipts, etc., were made out in the name of the State Trading Corporation. In these documents the ore was shown as consigned by the State Trading Corporation to itself. The railway wagons for transportation were also arranged by the State Trading Corporation but from Hubli to Karwar it was the assessee who engaged trucks for transporting the ore. All documents of export including the export licences from Karwar to foreign countries and all relevant shipping documents were made out in the name of the State Trading Corporation. The State Trading Corporation paid the price in two instalments. Ninety-five per cent. of the price was paid against shipping documents and five per cent. against the certificate of weight and analysis at the foreign port of discharge. The assessee was, however, enabled by means of an arrangement between the State Trading Corporation and the State Bank and other Banks to raise advances on security of the ore to be adjusted against payment of price by the State Trading Corporation at the point of time mentioned in the contracts. The contracts between the assessee and the State Trading Corporation were described as "f.o.b.t.". The letter 'T' stood for the word "trim" which had reference to the quality of the ore answering to specification contained in the contracts. Under Section 5(3), read with the Third Schedule of the Act tax was payable on iron ore at the point of last purchase within the State. For the two half-yearly periods of 1957-58 and the two subsequent years 1958-59 and 1959-60 the assessing authority held that the assessee was liable to tax being the last purchaser within the State. On appeal the Deputy Commissioner of Commercial Taxes held that the last purchases had been made by the State Trading Corporation and not by the assessee and it was, therefore, the former that was liable to pay the tax. The Commissioner of Commercial Taxes revised suo motu the order of the Deputy Commissioner and restored that of the assessing authority. The assessee filed an appeal in case of each assessment to the High Court under Section 24(1) of the Act.

3. The approach of the High Court was on these lines. There were two purchases, one by the assessee from the mine owner and the other by the State Trading Corporation from it. If the purchase by the State Trading Corporation from the assessee was for the purpose of export then the former would be liable but if the purchase by the State Trading Corporation was one in the course of export of goods out of the territories of India the last purchase would be that of the assessee from the mine owner and it would be the assessee on whom the incidence of tax would fall. The High Court relied largely on a decision of this Court in *B. K. Wadeyar v. M/s. Daulatram Rameshwarlal*, ((1961) 1 SCR 924 : AIR 1961 SC 315 : 11 STC 764 : (1962) 2 SCJ 251.) and after noticing Article 286 of the Constitution, as amended by the Constitution Sixth Amendment Act, 1956 and Section 5 of the Central Sales Tax Act, 1956, as also the conditions and nature of the contracts entered into between the parties, found that the transactions between the assessee and the State Trading Corporation were in the course of export and therefore the corporation had no liability to pay the tax. Reliance was placed on the presumption in the case of f.o.b. contracts that property in the goods passed when they were put on board the ship in the absence of special circumstances pointing to the passing of the property at some other point of time. The following portion from the judgment of the High Court may be reproduce :

"The only other circumstances specially relied upon by the appellant were that at an earlier point of time when the goods were being transported by rail, the railway documents were made out in the name of S.T.C. and that the appellant had been enabled to borrow moneys from banks on the hypothecation or security of the goods themselves. The former circumstance, in our opinion, cannot be regarded as conclusive or decisive because even after the goods were discharged at the railway station at Hubli the responsibility of transporting them by road to Karwar port and loading them in the ship beyond the customs barrier still remained with the appellant in terms of the contract between him and the S. T.C. The fact that the appellant was enabled to hypothecate the goods is, if anything, a circumstance more against the appellant's contention than in favour of it. The certification by the S. T.C., on the strength of which such hypothecation of goods was made possible, does not indicate anything more than that wherever the assistance of the S.T.C. was necessary, it was made available to the appellant under the terms of the contract, for example, in the matter of arranging for railway wagons for transport from Hospet to Hubli. In any event, these circumstances are quite equivocal and never so firm as to displace the normal presumption attaching to f.o.b. contracts to the effect that the title in the goods covered by such contracts passes to the buyer only when the goods are put on board ships."

4. In our judgment the crucial point that fell to be determined was whether the property passed to the State Trading Corporation pursuant to contracts entered into between the parties within the State of Mysore ? If the property did not so pass to the Corporation the last purchaser would be the assessee. Admittedly the contracts entered into between the parties were f.o. b. and the normal rule in such contracts is that the property is intended to pass and does pass on the shipment of the goods. In other words in the absence of special agreement the property in the goods does not pass in case of such contracts until the goods are actually put on board the ship. The High Court has enumerated with care all the material conditions which were to be found in the contracts as also the manner in which the transportation of the goods took place apart from the payment of price and the arrangement about obtaining of advances by the assessee by hypothecation of goods. We are unable to find any infirmity in the approach and reasoning of the High Court on the question of passing of property in the goods in the light of the presumption which arises in the case of f.o.b. contracts. We

would accordingly affirm the conclusion of the High Court that the assessee was the last purchaser of the iron ore within the State and was thus liable to pay tax in accordance with the provisions of the Act.

5. In one of the appeals a minor question arose relating to the imposition of tax in respect of sale of tyres and tubes by the assessee to the National Transport, Hubli. It was argued before the High Court that the assessee was not a regular dealer in tyres and tubes and that there was no profit motive in selling those articles. The case of the assessee was that the supply of these tyres and tubes had been made to the transport contractors to ensure that the terms of the assessee's contracts with the State Trading Corporation were fully and properly complied with. Before us the learned counsel for the State has quite rightly and properly agreed, in view of the comparatively small amount of tax involved, that the assessee would not be called upon to pay the tax on the sale of those tyres and tubes.

6. In the result the appeals fail except with regard to the tax which was levied on the sale of tyres and tubes which will not now be payable by the assessee. The respondent will be entitled to costs in this Court. One hearing fee.

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