Member Board of Revenue, West Bengal

Vs

M/S. Swaika Oil Mills

Civil Appeal No. 1477 of 1972

(Y. V. Chandrchud, P. S. Kaliasam JJ)

04.08.1977

JUDGMENT

CHANDRACHUD, J. -

Article 286(1)(b) of the Constitution provides 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 the goods into, or export of the goods out of, the territory of India. By the Sixth Amendment to the Constitution which came into force on September 11, 1956, an amendment was made to clause (2) of Article 286, by which Parliament was given the power 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). Acting in pursuance of this power, the Parliament enacted Section 5(1) of the Central Sales Tax Act, 1956, providing that a sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

2. The question which arises for our consideration in this appeal is whether a sale effected by the respondents - M/s. Swaika Oil Mills - is a sale in the course of the export of goods out of the territory of India. This question was answered against the respondents by the Revenue Authorities which held that the sale was exigible to sales tax. But, on a reference made to the Calcutta High Court by the Board of Revenue under Section 21(1) of the Bengal Finance (Sales Tax) Act, 1941, the High Court set aside the assessment on the ground that the sale took place in the course of export of the goods.

3. By a letter dated September 10, 1952, the Netherlands Selling Organisation Ltd. conformed having "bought from the respondents certain quantity of linseed oil", "F.O.B., Calcutta Price". The main terms of the contract of sale, which was made and concluded in Calcutta, are these :

(a) The price of the goods was to be paid F.O.B., Calcutta against the first presentation of 'Clean on board' Mate's receipt along with the relative G.R.I. forms in triplicate;

(b) The insurance charges were to be paid by the purchasers;

(c) The purchasers were to send to the respondents their shipping broker for arranging booking of the shipping space for the goods to be put on board the ship by the respondents;

(d) The respondents were to mark the goods with the shipment marks specified by the

purchasers in the letter;

(e) Due to import restrictions in Indonesia, the respondents were to ship not more than 500 imperial gallons of linseed oil; and finally,

(f) The "Export" was "to be made" under the export-licence of the respondents.

4. Mr. Shankar Ghose, who appears on behalf of the respondents, has raised a variety of interesting points, which, in our opinion, have lost their validity and relevance in view of a Constitution Bench decision of this Court in Mohd. Serajuddin v. State of Orissa [1975 Supp SCR 169 : (1975) 2 SCC 47 : 1975 SCC (Tax) 269.]. A catena of decisions hearing on the question as to when a sale can be deemed to be in the course of export was examined elaborately in that case, Applying the ratio of Serajuddin's case to the facts before us, we are of the opinion that the High Court of Calcutta, which did not have the benefit of that judgment, is wrong in holding that the sale effected by the respondents in favour of the Netherlands Selling Organisation is a sale in the course of export. Our reasons for saying so are these :

(1) There was a direct, distinct and independent contract of sale between the respondents on one hand and their buyers in India, the Netherlands Selling Organisation.

(2) The sale effected in pursuance of that contract is wholly unconnected with the sale by the Netherlands Organisation to their foreign buyer. The two sales are not a part of one integral transaction.

(3) There is no privity of contract between the respondents and the foreign buyer. They sold the goods in India. Which the buyer on his own account exported to Indonesia. The foreign buyer was undisclosed to the respondents and, indeed, there is nothing on the record to show the terms of the contract between the Netherlands Organisation and their foreign buyer. Respondents knew nothing of those terms and their contract with the Netherlands Organisation did not stand or fall by the terms of that sale.

(4) The immediate cause of the movement of goods and the export was the contract between the Netherlands Organisation and their foreign buyer and not the sale between the respondents and the Netherlands Organisation. The export was occasioned by the contract of sale between the Netherlands Organisation and their own buyer and not by the contract of sale between the respondents and the Netherlands Organisation.

(5) The bill of lading was indisputably made out in the name of the Netherlands Organisation which obtained a complete and indefeasible title to the goods purchased by them from the respondents in India.

(6) There was no obligation either on the respondents or on the Netherlands Organisation to export the goods out of India.

(7) Respondents put the goods sold by them to the Netherlands Organisation on board the ship merely to facilitate the intended export of goods by the Netherlands Organisation. In loading the goods on the ship, respondents were acting as mere carriers, since they were under an obligation to do so under their contract with the Netherlands Organisation.

(8) Neither of the two transactions created any mutual rights and obligation as between the

respondents and the person or persons for whose benefit the export was made or intended.

(9) The circumstances that the contract between the respondents and the Netherlands Organisation was in the F.O.B. form and that the payment of price was to be made only after the goods were put on board the ship by the respondents, do not affect the fundamental position that there were two distinct, independent and unconnected sales. The payment of price was made to depend on the fact of shipment for the reason that under the terms of the contract, which the respondents entered into with the Netherlands Organisation, a duty was imposed upon the former to put the goods on board the ship. The Netherlands Organisation, instead of accepting the delivery of goods in a factory or godown of the respondents, stipulated that the goods, on their behalf, be put by the respondents on board the ship. The fact that the place of delivery is a foreign-bound ship cannot, by itself, make a sale one in the course of export.

(10) The very agreement, which is the basis of the respondents' claim for exemption from sales tax, begins with the assertion : "We herewith confirm having bought from you" the goods mentioned in the letter. The sale transaction was thus concluded between the respondents and the Netherlands Organisation in India. Lastly,

(11) The fact that the respondents were to lend to the Netherlands Organisation the use of their export licence or that the respondents paid the customs duty and the Port Commissioner's charges, does not mean that the goods were exported by or at the instance of the respondents or that the sale effected by them in favour of the Netherlands Organisation occasioned the export. If the respondents name was shown as the exporters, it was because they had obligingly lent the use of their export licence to facilitate the export of the goods by the Netherlands Organisation.

5. For these reasons, we set aside the judgment of the High Court and hold that the sale in respect of which the respondents claimed exemption is not a sale in the course of export and is therefore, exigible to sales tax.

6. The appeal is accordingly allowed with costs.

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