

SUREME COURT OF INDIA

Government of Tamil Nadu

Vs.

Thiru Lakshmi Match Works

(A Sen, E Venkataramiah and P Bhagwati JJ.)

22.07.1980

JUDGMENT

P.N. BHAGWATI, J.

1. These appeals by certificate are directed against an order passed by the High Court of Madras disposing of three revision petitions preferred by the three respondents challenging the levy of sales tax on certain transactions of sale of matches entered into by them with buyers in the States of Karnataka and Maharashtra. These transactions of sale were taxed by the sales tax authorities as inter-State sales under the Central Sales Tax Act, 1956, and tax was levied on them at seven per cent under Section 8(2)(b) of the Act. The respondents contended that the sales in question were not inter-State sales and were, therefore, not amenable to tax under the Central Sales Tax Act, 1956. This contention was finally negated by the High Court in the revision petitions preferred by them and since no appeals have been preferred by the respondents against this finding, it has become final against them. The respondents also contended in the alternative that even if the sales effected by them were inter-State sales they were not liable to be taxed at seven per cent under Section 8(2)(b) since that section was ultra vires and void as offending Article 301 of the Constitution and that the appropriate rate of tax leviable on these sales was, therefore, the same rate which was leviable on local sales of matches within the State of Tamil Nadu, namely, two per cent. The High Court upheld the contention of the respondents and following its earlier decision in *Sitalakshmi Mills Ltd. v. Deputy Commercial Tax Officer* [1968] 22 STC 436 (Mad) took the view that Section 8(2)(b) was violative of Article 301 of the Constitution and was, therefore, unconstitutional and void and, on this view it held that the sales effected by the respondents were taxable only at the rate of two per cent. The State of Tamil Nadu thereupon preferred the present appeals after obtaining certificate from the High Court.

2. The only question which arises for consideration in these appeals is whether Section 8(2)(b) of the Central Sales Tax Act, 1956, is unconstitutional and void as violating Article 301 of the Constitution. It is no doubt true that in *Sitalakshmi Mills' case* [1968] 22 STC 436 (Mad) the High Court of Madras held Section 8(2)(b) to be ultra vires and void but this decision of the Madras High Court was reversed in appeal by this Court. The judgment of this Court reversing that decision is reported as *State of Tamil Nadu v. Sitalakshmi Mills* [1974] 33 STC 200 (SC). This Court held in that case that Section 8(2)(b) of the Central Sales Tax Act, 1956, does not offend Articles 301 and

303(1) of the Constitution and is valid. In view of this decision, it was impossible for Mr. Francis, on behalf of the respondents, to sustain the judgment under appeal and that judgment must therefore be set aside.

3. We accordingly allow these appeals, set aside the judgment of the Madras High Court and direct that the sales which form the subject-matter of dispute in these appeals are taxable at the rate of seven per cent under Section 8(2)(b) of the Central Sales Tax Act, 1956. The State will be entitled to recover costs from the respondents. There will be only one set of hearing fee.