

ANDHRA PRADESH HIGH COURT

Government of Andhra

Vs

N. Nagendrappa

(K.S Rao, CJ. and Viswanatha Sastry, J.)

20.03.1956

ORDER

Viswanatha Sastry, J.

1. The question that arises in these cases relates to the levy of sales tax in respect of transactions in untanned hides and skins under the Madras General Sales Tax Act and the Turnover and Assessment Rules made thereunder, hereinafter referred to as "the Act" and "the Rules" respectively.

2. Untanned hides and skins purchased by licensed dealers within the State were sent to commission agents outside and sold and exported by those agents to foreign buyers. The State sought to levy sales tax upon the dealers in the State on the amounts for which they bought the untanned hides and skins sold and exported out of India. The dealers objected to the levy of the tax and their objection was upheld by the Sales Tax Appellate Tribunal in some cases but overruled in others. The State and the assesseees have preferred revision petitions in so far as the order of the Tribunal was adverse to them. It is common ground that the assesseees are licensed dealers carrying on business in hides and skins in the State and are not exempt from taxation under section 3(3) of the Act. The tax is sought to be levied on them as the last dealers who bought untanned hides and skins in the State on the amounts for which they were bought, the said amounts being included in their total turnovers. Two questions arise for our decision :

(1) Whether the levy of the tax is authorized by the Act and the Rules and (2) Whether, even if so authorized, the Act and the Rules are not repugnant to Article 286(1)(b) of the Constitution.

3. Mr. N. Rajeswara Rao, the learned Advocate for the assesseees, referred to the title and preamble as well as to the definition of "sale" in section 2, clause (h), of the Act in support of his contention that the Act contemplated a tax only on sales and not on purchases and that liability was illegally sought to be imposed by the rules on the purchasers of untanned hides and skins.

This argument, however, was not further developed. Sales tax, as observed in *Province of Madras v. Boddu Paidanna*¹ is a tax levied on the occasion of the sale of goods and is a tax on the proceeds thereof, whether taken individually or collectively. Whether the tax is levied on the seller or the purchaser, its ultimate incidence is on the consumer. Under normal conditions, the tax is regarded by the dealer as an addition to cost and is added to selling prices. Whether the tax is collected in the first instance from sellers or purchasers, it would normally be passed on to the consumers and the tax would be really a tax on sales. The legislative competency of the Provincial Legislature to make the law relating to sales tax was derived from Entry No. 48 in List II of the Seventh Schedule to the Government of India Act, 1935, which related to "taxes on the sale of goods". The contention, that the aforesaid provision did not authorize any law with respect to tax on the purchase of goods, was negated by the Supreme Court in *Syed Mohammad & Co. v. State of Andhra*² and it was held that on a proper construction, Entry No. 48 in List II of the Seventh Schedule to the Government of India Act, 1935, was wide enough to authorize a law imposing tax on purchasers as well as sellers of goods. It makes no difference therefore whether the tax is imposed on buyers or sellers. The provisions of the Act and the rules relevant for our present purpose may briefly be referred to. I refrain from lengthening this judgment by quoting the provisions in extenso. Section 2(b) of the Act defines a "dealer" as any person who carries on the business of buying and selling goods. Section 2(h) defines "sale" as meaning every transfer of property in goods by one person to another in the course of trade or business for a price. Section 2(i) defines "turnover" as the aggregate amount for which goods are either bought by or sold by a dealer. The identification of the subject-matter of the tax is found in what has been referred to as the charging section. Section 3 which provides that, subject to the provisions of the Act, every dealer shall pay for each year a tax on his total turnover for such year, the turnover to be determined as prescribed by the rules. Section 3(5) further provides that in respect of the same transaction of sale, either the buyer or the seller, but not both, as might be determined by the rules, shall be taxed and that a dealer taxed in respect of the purchase of any goods, shall not be taxed again in respect of the sale of such goods effected by him. As a result of the aforesaid provisions, multipoint taxation or levy of tax on each occasion of sale of the goods is allowed. But section 5 introduces exceptions to this rule, one of which relates to hides and skins. Section 5, clause (vi), provides that "the sale of hides and skins, whether tanned or untanned, shall be liable to tax under section 3(1) only at a single point in the series of sales by successive dealers as may be prescribed." Section 19 gives the power to the State Government to make rules. In these cases we are concerned with rules 4 and 16. Rule 4(2), so far as it is relevant, runs as follows :

"4. (2) In the case of the under mentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer.

(c) untanned hides and skins bought by a licensed tanner in the State and

(d) untanned hides and skins exported outside the State by a licensed dealer in hides and skins."

4. Rule 16 is the crucial rule fixing the points at which sales tax on hides and skins is leviable. The relevant portion of rule 16 is as follows :

"16. (1) In the case of hides and skins the tax payable under section 3(1) shall be levied in accordance with the provisions of this rule.

(2) No tax shall be levied on the sale of untanned hides or skins by a licensed dealer in hides or skins except at the stage at which such hides or skins are sold to a tanner in the State or are sold for export outside the State.

(i) In the case of all untanned hides or skins sold to a tanner in the State, the tax shall be levied from the tanner on the amount for which the hides or skins are bought by him.

(ii) In the case of all untanned hides or skins which are not sold to a tanner in the State but are exported outside the State, the tax shall be levied from the dealer who was the last dealer not exempt from taxation under section 3(3) who buys them in the State on the amount for which they were bought by him".

5. The rules have also prescribed forms for return of the turnover in the case of dealers in hides and skins.

6. Form No. A-5 is the relevant form and it runs as follows :

"To The Assessing Authority.

Sir, I/We furnish below a statement showing my/our transactions for the month of

Name(s) and postal address(es) of dealer(s)Place or places of business

STATEMENT.

(a) For dealers in untanned hides or skins :-

Amount for which goods have been sold to tanneries in the State. Amount for which goods have been sold to other dealers in State. the State.

(1) (2) Amount for which goods have been sold goods falling under on export
outside column (3) were the State. purchased by the dealer(s).

(3) (4)"

7. It may be observed from the foregoing provisions that section 5(vi) of the Act postulates a series of sales by successive dealers and the fixing of a single point in such series of sales at which the tax is to be levied. The rules therefore fix the single point for taxation as required by section 5(vi) and also specify whether it is the buyer or the seller that is liable to be taxed in respect of a sale as required by section 3(5). It is only by reason of these rules that the charging provisions become effective and the tax is exigible.

8. The scheme of taxation which emerges from the rules is this : Raw hides and skins could either be tanned in this State or exported for tanning to foreign countries. The tanning of raw hides and skins is a manufacturing process as a result of which the product that emerges is different from the raw material. Tax on untanned hides and skins is leviable at a single point in the series of sales by successive dealers. Rule 4(2)(d) prescribes that the turnover of a dealer in untanned hides and skins is the amount for which the goods are bought by him. In other words, the tax is levied on the purchaser or at the purchase point. In the case of untanned hides and skins exported abroad rule 16(2)(ii) provides for the levy of tax from the dealer who was the last dealer who bought untanned hides and skins in the State, on the amount for which they were bought by him. For the purpose of fixing the single point in the series of sales, the last purchase of untanned hides and skins for sale and export outside the State was taken. Whether for reasons of practical convenience or otherwise, the framers of the rules fixed the single point at the stage of export of the goods, when the series of sales of untanned hides and skins as such would have come to a termination. The single point is selected by making the last purchaser in the series of sales liable for the tax and it is only when the stage of export is reached in the series of sales by successive dealers, that the tax becomes exigible. But it is not the transaction of export sale on which the tax is levied. The tax is levied on the purchase which precedes the export sale. The taxable event is really the purchase and this is shown by fixing the quantum of the turnover at the price paid by the dealer for the purchase and not the price realized by him on the export sale. The fact that unless the goods were exported, liability to tax would not fasten does not lead to the inference that what is taxed is the export sale. It is immaterial, therefore, that the sales for export were effected outside the State in these cases. Interpreting rules 4(2)(d) and 16(2) as they stand, it is fairly clear that in the case of untanned hides and skins bought by a dealer within the State and exported by him outside the State, he is liable for payment of sales tax on the amount for which the goods were bought by him and his liability to pay the tax is founded not on his being the seller for export but on being the last purchaser in the series of sales of the goods effected within

the State. The export by the dealer merely marks the final stage of series of purchases by one licensed dealer from another and it is at that stage that the taxable event, namely, the last purchase, and the person who is liable to pay the tax, namely, the last purchaser, are both determined. In other words, the tax is really one on the transaction of purchase anterior to the sale for export or export sale. The turnover which is taxable under the Act may be the sale or purchase turnover and the State has the option to collect the tax from the dealer on his purchase turnover. There is nothing illegal therefore in making the purchase turnover taxable under the rules.

9. It was argued that the Act being a taxing statute should be construed strictly and where the tax has not been levied in clear and unmistakable terms, the benefit of doubt should be given to the taxpayer. In our opinion, if the rules construed in a reasonable manner create a liability and apply to the persons sought to be charged, the tax has to be paid irrespective of any question of hardship. The proper approach is to give the words of the rule their ordinary meaning without straining them one way or the other, either to impose a liability to tax or to help avoidance of the tax. So construed, rule 16(2)(ii) makes it clear that the assesseees in these cases are liable to tax on their purchase turnover of untanned hides and skins. The further argument of the learned counsel for the assesseees is that rule 16(2), which had been framed before the Constitution, was repugnant to Article 286(1)(b) and had therefore become void and inoperative. This argument was accepted by the learned Judges of the Madras High Court who decided *State of Madras v. Rallis (India) Ltd., Madras*³ There was an earlier decision of a Bench of that Court in *Govindarajulu Naidu & Co. v. State of Madras*⁴ to the contrary. Both these cases related to the levy of sales tax on untanned hides and skins sold and exported outside the State. On account of this conflict, the point was referred to a Full Bench of the Madras High Court in *State of Madras v. Chambers Ltd*⁵. The Full Bench decided that sales tax on the purchase of untanned hides and skins by a licensed dealer, levied under rules 4(2)(d) and 16(2) of the Act, is not illegal by reason of any contravention of Article 286(1)(b) of the Constitution. It was suggested by the learned counsel for the assesseees that as the decision of the Full Bench was rendered after the constitution of the Andhra High Court, it was not binding upon us while the decision of the Division Bench in *State of Madras v. Rallis (India) Ltd. (1954 5 S.T.C. 199)(Supra)*, having been rendered before 1st July, 1954, should be accepted by us and that if we felt any doubts about the correctness of that decision, we should refer these cases to a Full Bench of this Court. In our opinion, this course is unnecessary because there are pronouncements of the Supreme Court which are decisive on this point. Article 286(1)(b) runs in these terms :

"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 - (b) in the course of the import of the goods into, or export of the goods out of, the territory of India."

10. The interpretation of this provision has been the subject of some difference of opinion among the learned Judges of the Supreme Court but we are bound to follow the opinion of the majority. The question is whether the exemption from tax under Article 286(1)(b) should be limited to sales or purchases under which the goods are actually exported or imported or does it extend further and include not merely the particular transaction under which the export or import of goods takes place but the earlier transactions of sale or purchase entered into with the object of exporting or importing the goods or with the knowledge that they would be exported or imported. What do the words "in the course of the import of the goods into, or export of the goods out of, India" mean ? Is the exemption limited to sales by export and purchases by import, that is to say, those sales and purchases which occasioned the export or import as the case may be or does it extend to other transactions directly or immediately connected in intention or purpose with such sales or purchases ? Could it be said that in addition to the sales and purchases of the kind described above, the exemption covers the last purchase by the exporter and the first sale by the importer, as being so directly and proximately connected with the export sale or import purchase as to form part of the same transaction ? If this last question is answered in the affirmative, rule 16(2)(ii) would be repugnant to Article 286(1)(b) of the Constitution. It is unnecessary for us to embark upon a lengthy discussion of this topic in view of the decisions of the Supreme Court to which reference will presently be made. The earliest case of the Supreme Court in this connection is *State of Travancore-Cochin v. The Bombay Co., Ltd*⁶. The actual decision in that case was that sales and purchases which themselves occasioned the export or import of the goods out of or into the territory of India, fell within Article 286(1)(b) of the Constitution even though property in the goods might pass to a foreign buyer and the sale in that sense might be said to have been completed within the State before the goods commenced their outward journey. Such a sale was nevertheless regarded as having taken place in the course of the export and exempted under Article 286(1)(b) of the Constitution. In the case last cited, the learned Chief Justice delivering the judgment of the Supreme Court observed :-

"A sale by export thus 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 resultant export form parts of a single transaction."

11. Learned counsel for the assessee relied upon this passage and argued that the process of export did not commence with the journey of the goods to their foreign destination but extended to a stage anterior to the transit and included the agreement for sale to the foreign merchant. The agreement for sale which occasioned the export in the case cited above was in point of time anterior to the handing over of the goods to a common carrier for taking the goods out of the

country; but, nevertheless, such a sale was held to have taken place in the course of export and therefore exempt from taxation by the State under Article 286(1)(b). It was therefore argued that the commencement of the "course" of export could be traced back and purchase made by an exporting dealer within the State to implement his agreement with a foreign buyer or in the hope or expectation of receiving orders from foreign buyers in the usual course of trade, formed an essential and integral step in the exportation of goods outside India and therefore such purchases were entitled to the benefit of the exemption under Article 286(1)(b). It might be that in the earlier sales or purchases in the chain, neither the sellers nor the purchasers are personally concerned with, or interested in, the actual export of the goods and in this sense, the earlier sales or purchases might be held to be too remote and might not be regarded as integral parts of the process of export in the sense in which the last purchase of the goods by the exporting dealer could be so regarded. If a purchase is factually related to the export in the sense that a dealer in the State in order to enable him to perform a contract of sale entered into with a foreign buyer, purchases the goods which he subsequently exports, it could reasonably be argued that the purchase was in the course of export or was an activity so closely integrated with the act of export as to be regarded as having taken place in the course of the export. This view was forcibly put forward in the dissenting judgment of Das, J., in *State of Travancore-Cochin v. Shanmugha Vilas Cashew-Nut Factory*⁷ The view of the majority of the learned Judges was, however, different and their decision was to the effect that the last purchase of goods made by the exporter for the purpose of exporting them to implement orders already received from a foreign buyer or expected to be received subsequently in the course of business, was not within the protection of Article 286(1)(b). A purchase for the purpose of export was regarded only as an act preparatory to export and was not regarded as an act done in the course of the export of the goods out of the territory of India. The Court was of the opinion that a sale in the course of export 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 the exportation of the goods out of the country but also as part of, or connected with, such activities. The Court refused to regard a purchase for export as an activity so integrated with the exportation that the former could be regarded as done "in the course of" the latter. This decision completely negatives the argument based on an integration between the last purchase and the succeeding export sale. In *Govindarajulu Naidu & Co. v. State of Madras* (1952 3 S.T.C. 405) the assesseees were taxed as the last purchasers within the State, of untanned hides and skins, who also exported the goods and the tax was imposed on the price which they paid to their sellers. Exemption was claimed by them in respect of such purchases as being made in the course of export within the meaning of Article 286(1)(b) of the Constitution. The learned Judges held that the prohibition in the Article was limited to the period covered by the actual exportation or importation of the goods and that the power of the State to impose tax at any stage before or after was not affected. This decision was affirmed by the Supreme Court on

appeal and the argument that "the purchases of untanned hides and skins made by the dealers were with a view to their ultimate export and were therefore exempt from taxation on the ground of their having been purchased in the course of export" was rejected, in view of the decision in State of Travancore-Cochin v. Shanmugha Vilas Cashew-Nut Factory (1953 4 S.T.C. 205)(Supra). In that case, as in the cases before us, tax was levied from the dealer who was the last dealer who bought the untanned hides and skins in the State on the amount for which they were bought by him. There is still more recent decision of the Supreme Court in *State of Madras v. Gurviah Naidu & Co., Ltd*⁸. where Das, Officiating, C.J., delivering the judgment of the Supreme Court, held that dealers who, after securing orders for supply of untanned hides and skins to London buyers, went about purchasing untanned hides and skins of the requisite kinds and quantities in the State in order to implement such orders, were liable to pay sales tax on the amount of their purchases. The following passage from the judgment brings out the gist of the decision :

"Such purchases were, it is true, for the purpose of export, but such purchases did not themselves occasion the export and consequently did not fall within the exemption of Article 286(1)(b) of the Constitution as held by this Court in *State of Travancore-Cochin v. The Bombay Co., Ltd.* (1952 3 S.T.C. 434)(Supra). Nor did such purchases in the State by the exporter for the purpose of export, come within the ambit of Article 286(1)(b) as held by the decision of the majority of a Constitution Bench of this Court in State of Travancore-Cochin v. Shanmugha Vilas Cashew-Nut Factory (1953 4 S.T.C. 205).Supra) In this view of the matter, there could be no question that these purchases were liable to be included in the turnover and assessed to sales tax."

12. In view of the decision of the Supreme Court cited above, it must now be taken to be finally established that the exemption under Article 286(1)(b) does not apply to dealers in the position of the assesseees in these cases.

13. It was stressed by the learned counsel for the assesseees that the sales of untanned hides and skins were effected outside the State by the employment of commission agents doing business outside the State and the deliveries were made by those commission agents outside the State through the normal commercial channels. It was argued that the export sales having been effected outside the State, the State was incompetent to tax such sales under the Act. The transactions that are sought to be taxed are not the export sales but the purchases preceding the export sale made by the assesseees within the State. As already stated, the Act and the Rules permit the levy of sales tax at the point of purchase of untanned hides and skins by licensed dealers who sell and export them to foreign buyers. To attract the liability to tax, it is not sufficient if there is an intention to export or a plan which contemplates exportation at the time when untanned hides and skins were

purchased by a licensed dealer but there must be a sale which occasions the export of the goods outside the State. It is true that as a return is required each month for the transactions of the preceding month, there may at times be hides and skins bought in the preceding month with the intention of exporting but for some reason or other not exported in that month. The dealer, in such cases, would not be taxable in respect of the quantity not exported but would be liable for tax on the purchase price in the succeeding month when the goods are sold for export. If the dealer after making the return showing the amount for which he purchased untanned hides and skins for the purpose of export, changes his mind at the last moment and does not export them but sells them within the State, it will be open to him to claim an adjustment of the tax already paid on the purchase price. This is provided by rule 15(5) of the rules. For these reasons, we are of the opinion that Tax Revision Cases Nos. 25, 41 and 44 of 1955 should be allowed and Tax Revision Cases Nos. 26 of 1956 and 45 of 1955 should be dismissed with costs. Advocate's fee Rs. 50 in each of the revision cases.

Cases Referred.

1(1942 F.C.R. 90; 1 S.T.C. 104)

2(1954 5 S.T.C. 108 at. p. 111)

3(1954 5 S.T.C. 199)

4(1952 3 S.T.C. 405)

5(1955 6 S.T.C. 157)

6(1952 3 S.T.C. 434)

7(1953 4 S.T.C. 205)

8(1955 6 S.T.C. 717)