

ANDHRA PRADESH HIGH COURT

Government of Andhra

Vs

Nooney Govindarajulu

(K Subba Rao, C.J. M Ansari, J.)

31.01.1957

JUDGMENT

K. Subba Rao, C.J.

1. This revision is filed against the order of the Andhra Sales Tax Appellate Tribunal and it raises the question of the scope of the Sales Tax Laws Validation Act, 1956.

2. The relevant facts may be briefly stated. The assessee was carrying on business in cotton yarn at Chirala. On 17th September, 1954, the Deputy Commercial Tax Officer, Chirala, determined the assessee's turnover of business in cotton yarn that was purchased from non-resident dealers from 1st October, 1953, to 31st March, 1954, at Rs. 32, 360-8-6. Out of the said amount, a turnover of Rs. 19, 756-10-6 represented the transactions in respect of which delivery was given to the assessee in Chirala for consumption and payment was made through Bank at Chirala. The balance represented sales in respect of goods delivered to the agent of the assessee at Madras and booked by him there from to Chirala. On appeal, the Tribunal held that the assessee was the first dealer liable to tax in respect of the latter turnover and that he was not liable to tax on the former. Though the former transaction had inter-State elements as the goods were delivered for consumption in the Andhra State, the Tribunal, relying upon *The State of Bombay v. United Motors (India) Ltd*¹. held against the assessee. On that finding, the Tribunal gave a direction to the assessing authority to revise the assessment. The Government filed the aforesaid revision questioning the finding of the Tribunal in so far as it was against them.

3. Learned Government Pleader contends that the decision of the Tribunal in so far as it held that the turnover representing sales possessing inter-State elements was liable to be taxed was wrong as it was based upon The State of Bombay v. United Motors (India) Ltd. (1953 4 S.T.C. 133)(Supra), which was overruled by the Supreme Court in *Bengal Immunity Co. Ltd. v. State of Bihar*² Learned counsel for the assessee, while conceding that on the basis of the Bengal Immunity case (1955 6 S.T.C. 446)(Supra), the finding of the Tribunal may be wrong, seeks to

sustain the said finding on the foot of the Sales Tax Laws Validation Act (VII of 1956). Section 2 of the Sales Tax Laws Validation Act, 1956, reads :

"Notwithstanding any judgment, decree or order of any Court, no law of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period shall be deemed always to have been validly levied or collected in accordance with law."

4. It may be convenient at this stage to narrate briefly the circumstances under which the said Act had to be passed by the Parliament. Even after the Constitution came into force, Sales Tax Authorities purporting to act under the provisions of the Sales Tax Act were imposing tax on sales possessing inter-State element if the goods were delivered for consumption in the State. The Supreme Court in *The State of Bombay v. United Motors (India) Ltd*³. on a construction of the provisions of Article 286 of the Constitution, sustained the power of the States to tax such transactions. But the same Court in the Bengal Immunity case (1955 6 S.T.C. 446) (Supra) came to a contrary conclusion. The Supreme Court, in the latter case, held that the Explanation to clause (1)(a) of Article 286 could not be extended to clause (2) and, therefore, except in so far as Parliament provided otherwise, no State law could impose or authorize the imposition of any tax on sales or purchases when such sales or purchases took place in the course of inter-State trade or commerce. This decision had the effect of invalidating assessment made by Sales Tax Authorities in respect of sales taking place in the course of inter-State trade and of bringing about serious economic crises in various States. To get over the effect of the said decision and with a view to bring about the economic stability of the States the said Validation Act was passed. It purported to validate laws imposing a tax on the sale or purchase of any goods in the course of inter-State trade or commerce during the prescribed period, namely between 1st April, 1951, and 6th September, 1955. The question, therefore, is whether under law during the prescribed period sales or purchases, which took place in the course of inter-State trade or commerce, were liable to be taxed. The law that governed the imposition of tax on sales was embodied in the Madras General Sales Tax Act, 1939. It is, therefore, necessary to scrutinise that Act to ascertain if sales tax on such transactions was leviable. The material provisions of that Act read as follows :-

"Preamble. - Whereas it is expedient to provide for the levy of a general tax on the sale of goods in the State of Madras :

Section 2. - (h) 'Sale' with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes also a transfer of property in goods involved in the execution of a works contract, but does not include a mortgage, hypothecation, charge or pledge :

Explanation 2. - Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, the sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this State, wherever the contract of sale or purchase might have been made,

(a) if the goods were actually in this State at the time when the contract of sale or purchase in respect thereof was made, or

(b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this State at any time after the contract of sale or purchase in respect thereof was made."

5. Explanation 2 to the definition was added as a result of the amendment effected to the original Madras General Sales Tax Act, 1939, by the amending Act of 1947. On 2nd July, 1952, the President promulgated the Adaptation of Laws (Fourth Amendment) Order, 1952, by which section 22 was introduced into the Madras General Sales Tax Act. It says :

"Act not deemed to impose or authorise taxation in certain cases. - Nothing contained in this Act shall be deemed to impose, or authorise the imposition of, a tax on the sale or purchase of any goods, where such sale or purchase takes place -

(a) (i) outside the State of Madras, or

(ii) in the course of the import of the goods into the territory of India or of the export of the goods out of such territory, or

(b) except in so far as Parliament may by law otherwise provide, after the 31st day of March, 1951, in the course of inter-State trade or commerce, and the provisions of this Act shall be read and construed accordingly.

Explanation. - For the purposes of clause (a)(i), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State, notwithstanding the fact that under the general law relating to sale of goods, the property in the goods has by reason of such sale or purchase passed in another State."

6. It is not disputed that, under the Madras General Sales Tax Act, only sales in the State of Madras which at that time included the entire area were liable to be taxed. The Sales Tax Act was enacted by the Provincial Legislature under the Government of India Act, 1935, and the Legislature could only make laws under the Act for the Province in respect of matters enumerated in the Provincial List. It is, therefore, obvious that the law made by the said Legislature could only affect the sales held within the State (then the Province of Madras). Explanation 2 only introduced a fiction whereby the sale or purchase of any goods, wherever the contract of sale or purchase might have been made, should be deemed to have taken place in that State if the goods were actually in that State at the time when the contract of sale or purchase in respect thereof was made or in case the contract was for the sale or purchase of future goods by description, then if the goods are actually produced in that State at any time after the contract of sale or purchase in respect thereof was made. A sale, which took place in the course of any inter-State trade or commerce, was not a "sale" within the State factually or fictionally and, therefore, was not liable to be taxed under the Act. Learned counsel called in aid the provisions of section 22 and contended that the Explanation to that section must be read as an Explanation to the definition of the word "sale" in the Act and, if so read, a sale or purchase would be deemed to have taken place in the State in which the goods were actually delivered as the direct result of such sale or purchase. Section 22 in terms did not create a liability to tax if a transaction was not liable to be taxed under the Act. The opening words of the section, viz., "Nothing contained in this Act shall be deemed to impose, or authorise the imposition of, a tax on the sale or purchase of any goods", indicate that the section was intended as a restriction on the power conferred under the Act and not to enlarge the scope of that power. The said section was in effect a verbal reproduction of Article 286(1) and (2) of the Constitution of India. Its object was to bring the Act in conformity with the Constitution. The section is in pari materia with Article 265 of the Constitution. The interpretation put upon Article 265 of the Constitution by the Supreme Court in the Bengal Immunity case (1955 6 S.T.C. 446) (Supra) would govern the interpretation of this section. Das, Acting, C.J., in construing the provisions of Articles 286, made the following observations at page 471 :

"These several bans may overlap in some cases but in their respective scope and operation they are separate and independent. They deal with different phases of a sale or purchase but, nevertheless, they are distinct and one has nothing to do with and is not dependent on the other or others."

7. After reviewing the case law on the subject, the learned Chief Justice, who expressed the majority view, concluded his discussion at page 491 thus :

"For all the foregoing reasons we are definitely of opinion that, until Parliament by law

made in exercise of the powers vested in it by clause (2) provides otherwise, no State can impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce and the majority decision in The State of Bombay v. United Motors (India) Ltd. in so far as it decides to the contrary cannot be accepted as well-founded on principle or authority".

8. If, under Article 286 of the Constitution, all the bans imposed therein are to be read separately, for the same reasons, section 22 which, as we have already stated, is a reproduction of the said Article, must be construed in a similar way. If so construed, clauses (a) and (b) of section 22 are separate and independent bans and though a sale is within the State within the meaning of the Explanation, the ban imposed by clause (b) exempts it from taxation if it is held in the course of inter-State trade or commerce. Therefore, even after the introduction of section 22 into the Madras General Sales Tax Act, sales or purchases made in the course of inter-State trade or commerce were not liable to tax though the goods were delivered for the purpose of consumption in the State. If that was the position, it follows that there was no pre-existing State law imposing or authorising the imposition of a tax on the sale or purchase of any goods in the course of inter-State trade or commerce. Section 2 of the Sales Tax Laws Validation Act, 1956, operates on the pre-existing law mentioned therein and, when there is none, it cannot obviously be invoked. We are not able to appreciate the argument of the learned counsel that the Explanation to clause (a)(i) of section 22 should be treated as an Explanation to the definition of "sale" under the Act. If the Legislature intended to introduce the Explanation as one to the definition of the word "sale" in the Act, it would have done so instead of adding it to section 22. It offends all canons of construction to transplant the Explanations added to one section to another. As we have already pointed out, section 22 only introduced with immaterial variations the constitutional bans embodied in Article 286(1) and (2) of the Constitution of India and its object was nothing more than to indicate that the power conferred on the State under the Act to levy sales tax was subject to those constitutional fetters. The fetters imposed could not enlarge the power conferred on the State under the Act to impose sales tax. Learned counsel for the respondent relied upon the judgment of the Bombay High Court in *Dialdas Parmanand Kripalani v. Talwalkar and Others*⁴ There, the effect of the relevant sections of the Bombay Sales Tax Act (III of 1953) is stated by Chagla, C.J., at page 684 thus :

"Sections 8 and 9 deal with sales tax and section 10 with purchase tax, and in the definition of 'sale' which is contained in section 2(13) the Explanation to Article 286 is incorporated. In other words, by reason of the charging section and by reason of the definition of 'sale' accompanied by the provisions of the Explanation, it is clear that the Legislature charged to tax sales within the State including those sales which may be outside the State but by the legal fiction of the Explanation were deemed to be sales

within the State. Now, section 46 exempted from tax expressly (a) sales outside the State of Bombay or in the course of the import of the goods into the territory of India, or the export of the goods out of such territory, or (b) in the course of inter-State trade or commerce, except in so far as Parliament may by law otherwise provide."

9. The learned Chief Justice gives the cumulative effect of the said provisions at page 685 thus :

"In our opinion, the proper view to take of this legislation is that there was an imposition of tax on all sales including inter-State sales, but the imposition on inter-State sales was not effective until the restriction under Article 286 was removed, and that is exactly what section 46(b) provided. It did not exempt inter-State sales or purchases altogether, but the tax was to operate upon the sales or purchases if Parliament by law so provided, and therefore when the restriction was removed retrospectively we must read this Act and construe it as if before the passing of the Act Parliament had provided that the State Legislature may impose tax on inter-State sales and purchases. Therefore, reading the charging sections and section 46 and the validating Act, there can be no doubt that on the validating Act being passed the inter-State sales and purchases were subjected to tax and they came within the operation of the charging sections 8, 9 and 10."

10. It will be noticed from the aforesaid observation that the Explanation making the delivery State as that in which the sale is deemed to have taken place was added to the definition of sale itself and, therefore, but for section 46, which corresponds to section 22 of the Madras General Sales Tax Act, the tax was exigible under the State law in respect of such sale. The learned Judges held that the conditional ban imposed by section 46 was retrospectively removed by the validating Act, and, therefore, the said sale was subject to tax. This judgment cannot be invoked in support of the respondent's contention as in the Madras Act the Explanation was not added to the definition of "sale" and, therefore, a sale covered by the Explanation was not liable to tax under the charging sections.

11. The decision of Division Bench of the Madras High Court in *Mettur Industries Limited v. The State of Madras*⁵ directly covers the point raised before us. Adverting to the argument based upon section 22 of the Madras General Sales Tax Act, Rajagopalan and Rajagopala Ayyangar, JJ., observed at page 701 :

"As we have already indicated, the effect of section 22 was to render a sale 'within the State' one which fell under the Explanation to Article 286(1)(a), so that, from that date, such sales became taxable under the Sales Tax Act, notwithstanding that in some cases, an inter-State element might have been involved in the transaction. This really did not affect the enforceability of the levy in view of the decision of the Supreme Court in the

United Motors case (1953 4 S.T.C. 133) which held that 'Explanation sales' were outside the fetter imposed by Article 286(2). But when this view was overruled by the Supreme Court in the Bengal Immunity case (1955 6 S.T.C. 446), the position which emerged was, that though these sales were 'inside' sales for the purposes of the Sales Tax Act, the tax upon them became obnoxious to the provisions of Article 286(2), and, therefore, they would have been exempt from tax. The Ordinance, therefore, applies to such sales, and the tax liability arising thereon, and after the Ordinance, the exemption based upon Article 286(2) would no longer be applicable. The conditions of the Ordinance are therefore fully satisfied."

12. With great respect we cannot agree with the aforesaid observations. The reasoning of the learned Judges was based upon the assumption that the Explanation added to section 22 could be read as an Explanation to the definition of sale. We regret our inability to share the same opinion.

13. In the result, as the Sales Tax Laws Validation Act is not applicable, the respondent must be deemed to be the first dealer in this State and is, therefore, liable to tax. The order of the Tribunal is set aside and the respondent will pay the costs of the petitioner. Advocate's fee Rs. 50.

14. Order set aside.

Cases Referred.

- 1(1953 4 S.T.C. 133)
- 2(1955 6 S.T.C. 446)
- 3(1953 4 S.T.C. 133)
- 4(1956 7 S.T.C. 675)
- 5(1956 7 S.T.C. 691)