

# ANDHRA PRADESH HIGH COURT

Fairmacs Trading Company

Vs

The State of Andhra Pradesh

(Gopal.Rao Ekbote, C.J. and A.K Rao, J.)

12.02.1974

## JUDGMENT

**Gopal Rao Ekbote, C.J.**

1. This revision petition is from the order of the Sales Tax Appellate Tribunal, Andhra Pradesh, given in Tribunal Appeal No. 778 of 1970 on 26th September, 1972.

2. The essential facts are that the petitioners are dealers in liquors, cigarettes, etc., and also are ship-chandlers. They submitted returns of their turnover for the year 1967-68 showing Rs. 2,19,972.82 as gross turnover and Rs. 97,462.58 as net turnover. They claimed exemption on transactions totalling Rs. 1,22,510.24. The said claim included Rs. 72,061.69 comprising of sales of "bonded warehouse ship-stores". According to the petitioners, the ship-stores were imported from foreign countries, kept in bonded warehouses of the customs department and later sold and delivered to ships' masters for consumption aboard the ships. They claimed that such sales were not exigible to tax under the Andhra Pradesh General Sales Tax Act, 1957, hereinafter called the Act, being sales outside the State of Andhra Pradesh. In the reply, which the petitioners gave on 29th January, 1969, to the pre-assessment notice dated 16th January, 1969, they set up their claims as follows :We procure the ship-store goods from foreign countries after obtaining the approval of the Reserve Bank of India, and on arrival, the goods were examined by the customs authorities and restricted to bonded warehouse. These goods were only intended to be supplied as ship-stores to vessels bound for foreign destinations. These goods were supplied on orders received from the ships' masters/authorised personnel and until delivery inside the ships were watched by the customs authorities. The preventive officer of the customs accompanies the ship. The stores are locked in the lockers and the customs preventive officer seals the locker. The seals are subsequently broken by the ships' personnel while the vessels are at sea and well away from the port boundary limit of 15 miles. So the sales are not effected within the State since these goods procured by us from the foreign countries are not imported into the State but they are kept in the bonded warehouse without assessment or levy of customs duty, and they are delivered to the ocean-going vessels and so the sales were outside the Andhra Pradesh. These sales were not either inside State sales or inter-State sales, but were outside State sales. These goods were not assessed to duty as per Sections 17(2) and 85 of the Sea Customs Act, 1962, and so the warehousing of such goods in the bonded warehouse will not amount to be an import of such goods as they were intended for supply to the outgoing foreign vessels and as the goods were

delivered to the steamers, the sales are outside the customs frontier and hence not taxable by the Andhra Pradesh. These goods were allowed to be warehoused without the goods being assessed to duty on the declaration made by us that the goods are intended to be supplied as ship-stores to foreign going vessels. In these cases, the customs duty has never been paid and so these do not come under actual import for sale. As these goods were exempt from Sections 17(2) and 85 of the Sea Customs Act of 1962, they cannot be considered as actual imports, on which customs duty is levied, and so these are exempted from Andhra Pradesh sales tax, and we are therefore entitled for the exemption on our ship-stores business of Rs. 72,061.69 claimed now.

3. The Deputy Commercial Tax Officer, by his order dated 19th January, 1969, held that since the goods were within the State at the time of the sale, the transactions are exigible to tax. He taxed the petitioners accordingly.

4. On appeal, the Assistant Commissioner, disagreeing with the view of the Deputy Commercial Tax Officer, held that the customs duty was never levied as the goods were intended to be supplied as stores to vessels and since the goods were not assessed to duty, the goods must be deemed to have been imported into Andhra Pradesh. The sales in question were sales in the course of import of the goods which had not crossed the customs barrier. The appeal was accordingly allowed.

5. On a further revision, suo motu, the Deputy Commissioner held that the order of the Assistant Commissioner was bad. He therefore set it aside and restored the order of the Deputy Commercial Tax Officer.

6. Against the said order of the Deputy Commissioner, an appeal was preferred to the Sales Tax Appellate Tribunal. By the order under revision, the Tribunal found that the claim of the assessee that the sales were in the course of import cannot be accepted. The appeal was dismissed.

7. In this revision, Sri K. Srinivasamurthy, the learned counsel for the assessee, firstly contended that the sale transactions took place outside the State and therefore the Andhra Pradesh State cannot tax these transactions. Secondly, he contended that the sales in question took place in any case in the course of the import or the export of the goods out of the territory of India.

8. In order to appreciate these contentions, it is useful to keep in view the legislative history of Article 286 of the Constitution.

9. *In Tata Iron and Steel Company Limited v. S.R. Sarkar*<sup>1</sup> the Supreme Court referred in detail to such a history and we consider it unnecessary to repeat the same here.

10. In the light of the amended Article 286(2), Section 4 of the Central Sales Tax Act laid down as to when a sale or purchase of goods can be said to take place outside a State. According to that section, a sale or purchase of goods shall be deemed to take place inside a State if the "goods are within the State (a) in the case of specific or ascertained goods, at the time of the contract of sale is made ; and (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

11. It is common ground that Clause (b) is inapplicable to the instant case. If Clause (a) applies

then what is to be seen is whether the goods in question were within the State at the time of the contract of sale. That the goods in question were specific or ascertained was not in doubt. The goods in question were stored in the bonded warehouses located within the territory of Andhra Pradesh was also not disputed. When the owners of these goods sold the same to the ship's authorities with an intent that they can be consumed during the course of voyage by those who are on the ship, the contract of sale of these goods thus took place when the goods were within the State. What follows is that the requirement of Section 4(2) (a) is fully satisfied. We are therefore clear in our view that since the sales took place within the State of Andhra Pradesh, it cannot be validly contended that the sales took place outside the State within the meaning of Article 286(1)(a).

12. After the explanation attached to Article 286(1) was omitted in September, 1956, and Article 286 was amended in the present form, the Constitution steered clear of all the previous controversies arising out of the omitted explanation. It is unnecessary to go into such controversies. We therefore reject the first contention.

13. We then turn to the second contention. As can be seen Article 286(1) (b) provides that no law of a State shall impose or authorise the imposition of tax on the sale or purchase of goods where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India.

14. In pursuance of sub-article (2) of Article 286, Section 5 of the Central Sales Tax Act enacts as to when a sale or purchase of goods can be said to take place in the course of import or export. According to that section, a sale or purchase 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.

15. We are not called upon in this revision to consider whether the sales in question took place in the course of the import of the goods into the territory of India. The argument was that the goods were imported from outside India and were stored in the bonded warehouses as above and goods thereafter were exported in pursuance of the contract of sale and therefore we should hold that the sales occasioned such export and consequently are not exigible to tax. The argument was that although the contract of sale took place and the goods were delivered to the ships' authorities and the ships' authorities put their locks on the lockers in which such stores were kept, yet the excise authorities had put their seals on those locks. The ships' authorities were permitted to break these seals only when the ship crosses the territory of India. The moment the ships so cross the territory, the transactions amounted to export and even though the liquor may be consumed during the voyage, it would be deemed that it was so consumed only after it reached its destination of export. It was submitted that since it was not possible to sell the liquor so imported within the territory of India as no excise duty was paid, we should hold that the transactions occasioned export of the liquor and therefore was exempt from sales tax.

16. *In Burmah Shell Oil Storage and Distributing Co. of India Limited v. Commercial Tax Officer*<sup>2</sup>, a similar argument was advanced. It was contended that the aviation spirit was delivered outside the customs barrier, that aviation spirit was taken out of the territories of India and that the sales occasioned the export.

17. Repelling the contention, the Supreme Court said that every sale or purchase preceding the export is not necessarily of export. The sales or purchases for the purpose of export are not protected unless the sales or purchases themselves occasioned the export and are an integral part of it. It was observed that the test is that the goods must have a foreign destination where they can be said to be imported, It matters not that there is no valuable consideration from the receiver at the destination and the crucial ,fact is the sending of the goods to a foreign destination where they would be received as imports. The two notions of export and import, thus, go in pairs.

18. It was found in that case that the aviation spirit loaded on board an aircraft for consumption though taken out of the country is not exported since it has no destination where it can be said to be imported, and so long as it does not satisfy the test, it cannot be said that the sale was in the course of export. It was said that the customs duty drawbacks have nothing to do with the sale of aviation spirit which takes place in West Bengal.

19. It would immediately be seen that the said decision of the Supreme Court covers on all fours the instant case. The liquor in the instant case was sold with an intention of the parties that it may be consumed during the voyage. It had, therefore, no destination in any foreign country where they could be received as imports. The customs barrier argument and the sealing of the locks are matters which are not relevant for the purpose of deciding the matter in issue. Respectfully following the said decision, we have no hesitation in rejecting the said contention.

20. *State of Kerala v. Cochin Coal Company Limited* <sup>3</sup>. related to coal trimmed into the steamships and which was meant to be consumed during the course of voyage. A similar contention was advanced in that case. It was rejected holding that it was not sufficient that the goods should be intended to be transported to a destination beyond India, so that they were in the course of import into some other locality outside India and consequently the coal sold to the steamship for enabling its voyage on the sea out of the country was not export. It was said that a mere movement of the goods out of the country following a sale would not render the sale one in the course of export within Article 286(1)(b) of the Constitution. The existence of two termini as those between which the goods are intended to move or between which they are intended to be transported is necessary. A mere movement of goods out of the country without any intention of their being unloaded in specie in some foreign port is not enough. It would thus be plain that this decision also supports the view which we have taken.

21. For the reasons given, we dismiss the tax revision case with costs. Advocate's fee Rs. 250.

Cases Referred.

1[1960] 11 S.T.C. 656 (S.C)

21961 S.C. 315

31961 S.C. 408