

MYSORE HIGH COURT

Khaitan Minerals

Vs

Sales Tax Appellate Tribunal for Mysore

Civil Revn. Petn. No. 864 of 1959, 853, 854 and 1508 of 1960, in Case No. S.T.A. 165 of 1958

(K.S. Hegde and Mir Iqbal Husain, JJ.)

30.01.1962

JUDGMENT

K.S. Hegde, J.

1. When these cases were posted on the Board, they were not clubbed together for hearing. We happened to hear these revision petitions together under circumstances to be mentioned hereinafter. They raise common questions of law and therefore they could be conveniently dealt with in one judgment. We shall first take up C. R. P. No. 864/1959.
2. The turnover of the business of the petitioner, who is a dealer in Manganese Ore in Sandur, Bellary District was held liable to be assessed to sales tax, by the Commercial Tax Officer, Bellary. His order was affirmed by the Deputy Commissioner of Commercial Taxes. The petitioner's appeal to the Mysore Sales Tax Appellate Tribunal, Bangalore in Case No. S. T. A. 165/1958 ended unsuccessfully. Hence this revision petition.
3. The contention of the petitioner is that the disputed turnover is protected by Article 286 of the Indian Constitution as it stood prior to its amendment in 1956 and Section 27 of the Mysore Sales Tax Act which is but a faithful reproduction of Article 286. The plea advanced on behalf of the petitioner both before the Authorities below and in this Court is that the disputed transactions are sales effected outside the Mysore state and therefore the turnover relating to them is exempt from any sales tax in view of Article 286 (1)(a); in the alternative they should be considered as interstate sales protected by Article 286(2).
4. The admitted facts of the case are : (1) the disputed turnover relates to sales of manganese ore; (2) when the contract of sale was entered into, the ore in question was in the State of Mysore; (3) the ore sold had to be analyzed by Messrs. Essen and Co., Bangalore, and their report was binding on both the parties; (4) the approved ore was stocked at the railway sidings situate in Mysore State; (5) as per the terms of the contract the railway weighment was final; (6) the price fixed was F. O. R. Vizgapatnam Port or some other Port; (7) the buyer was to arrange for railing the contracted ore; (8) the payments were to be made monthly on the submission of bills together with Railway Receipts and assay reports; and (9) the ore was in fact carried put of the Mysore

State.

5. On the basis of these facts, the Mysore Sales Tax Appellate Tribunal in agreement with the taxing authorities came to the conclusion that the ore in question was sold and delivered in Mysore State and therefore they are liable to be taxed under the Mysore Sales Tax Act. In arriving at that conclusion, they proceeded on the basis that a delivery to a common carrier is "actual delivery" as contemplated in the Explanation to Article 286(1) (a). They also opined that a purchase by an "outside" buyer for the purpose of transporting the same to some other State is not the same thing as purchase of goods in the course of inter-state trade or commerce. As the Sales Tax Appellate Tribunal came to the conclusion that a delivery to a common carrier is "actual delivery" under Article 286(1) (a), it did not address itself to the question whether in fact the purchaser or any agent of his had taken delivery of the manganese ore sold, within the State of Mysore; nor did it consider the question whether the goods in question were transported outside the State as a part of the contract of sale.

6. The scope of Article 286 prior to its amendment in 1956 has been the subject of much debate both in the Supreme Court and in the several High Courts. It cannot be said that all the controversies relating to the scope and the effect of that Article have been set at rest.

7. We shall first deal with Article 286(1)(a) which says that no law of a State shall impose, or authorize, the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place outside the State. As observed by the Supreme Court in *State of Bombay v. United Motors (India) Ltd¹*, that a local sale is a troublesome concept, for, a sale is a composite transaction involving as it does several elements such as agreement to sell, transfer of ownership, payment of the price, delivery of the goods and so forth, which may take place at different places; it is difficult to say that any one of the ingredients mentioned above is more essential to a sale or purchase than the others. With a view to solve that difficulty, the Constitution makers provided the Explanation to Article 286(1)(a) which reads :

"For the purposes of sub-clause (a), 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." The sales or purchases falling within the scope of this Explanation have now attracted themselves to the appellations : "Explanation sales or purchases" or "inside sales or purchases". I shall refer to them hereinafter as "Inside sales" or "Inside purchases."

8. The Explanation provided by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption therein is the State in which the sale or purchase is to be considered to have taken place, notwithstanding

¹ AIR 1953 SC 252

the property in such goods passed in another State. The test of sufficient territorial nexus is thus replaced by a simpler and more easily workable test. Are the goods actually delivered in the taxing State, as a direct result of a sale or purchase, for the purpose of consumption therein? Then, such sale or purchase shall be deemed to have taken place in that State and outside all

other States. The latter States are prohibited from taxing the sale or purchase; the former alone is left free to do so. Multiple taxation of the same transaction by different States is also thus avoided.

9. Before a sale could be considered as an "inside" sale, two elements must be established, i.e. (i) the goods sold must have been actually delivered as a direct result of such a sale in a State; and (ii) for the purpose of consumption in that State. At one time the Supreme Court thought that the Explanation in question also controlled Article 286(2). It was observed in the *United Motors (India) Ltd.*'s case, AIR 1953 SC 252 that Article 286(1) (a) read with the Explanation prohibits all taxes of sales or purchases involving inter-State elements by all States except the State in which the goods were delivered for the purpose of consumption therein, the expression "consumption" being understood as having reference not merely to the individual importer or purchaser but as contemplating distribution eventually to consumers in general within the State; thus all buyers within the State of delivery front out of State sellers, except those buying for reexport out of the State will be within the scope of the Explanation and liable to be taxed by the State on their inter-State transactions.

The majority of the Judges in the *United Motors (India) Ltd.*'s case AIR 1953 SC 252 held that clause (2) of Article 286 stands excluded as a result of the legal fiction enacted in the Explanation and the State in which the goods are actually delivered for consumption can impose tax on inter-State sales or purchases; the effect of the Explanation with regard to inter-State dealings is to invest, what, in truth an inter-State transaction with an intra-State character in relation to the State of delivery, and clause (2) can, therefore, have no application. They further held that it is true that the legal fiction is to operate "for the purposes of sub-clause (a) of clause (1)", but that means merely that the Explanation is designed to explain the meaning of the expression "outside the State" in clause (1) (a); when once however it is determined with the aid of the fictional test that a particular sale or purchase has taken place within the taxing State, it follows as corollary, that the transaction loses its inter-State character and falls outside the purview of clause (2), not because the definition in the Explanation is used for the purpose of clause (2) but because such sale or purchase becomes in the eye of the law a purely local transaction. This view was over-ruled by the majority of the Judges composing the Bench in *Bengal Immunity Co., Ltd. v. State of Bihar*², etc. Therein it was held by a majority that there are four separate and independent restrictions placed upon the legislative competency of the State to make a law with respect to matters enumerated in Entry 54 of List II of the 7th Schedule; in order to make the ban effective and to leave no loophole the Constitution makers have considered the different aspects of sales or purchases of goods and placed checks on the legislative power of the States at different angles; thus in clause (1) (a) of Article 286 the question of the situs of a sale or purchase engaged their attention and they forged a fetter on the basis of such situs to cure the mischief of multiple taxation by the States on the basis of the nexus theory.

² AIR 1955 SC 661

10. In clause (1) (b) they considered sales or purchases from the point of view of our foreign trade and placed a ban on the States' taxing power in order to make our foreign trade free from any interference by the State by way of a tax imposed. In Clause (2) they looked at sales or purchases in their inter-state character and imposed another ban in the interest of the freedom of internal trade. Finally in Clause (3) the Constitution makers' attention was rivetted on the character and quality of the goods themselves and they placed a fourth restriction on the States' power of imposing tax on sales or purchases of goods declared to be essential for the life of the

community.

11. 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 the sale or purchase but, nevertheless they are distinct and one has nothing to do with and is not dependent on the other or others. The State's Legislative power with respect to a sale or purchase may be hit by one or more of these bans.

12. It was further observed by the majority of the Judges therein that the legal fiction set out in the Explanation is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field; the Explanation created a legal fiction; legal fictions are created only for some definite purpose; here the avowed purpose of the Explanation is to explain what an outside sale referred to in sub-Clause (a) is; the Explanation to clause (1) (a) cannot be legitimately extended to clause (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of clause (2).

13. To find out whether a particular sale is a "inside" sale, we have to see whether goods sold "have actually been delivered as a result of such sale" and that "for the purpose of consumption in that State." What is meant by "actual delivery inside a State"? This question was not considered in the United Motors (India) Ltd's case, AIR 1953 SC 252. Nor was it considered by the majority of Judges in the Bengal Immunity Co.'s case AIR 1955 SC 661. Venkatarama Ayyar, J. who wrote a dissenting judgment in the Bengal Immunity Co.'s case, AIR 1955 SC 661 went into that question. According to him, "delivery to a common carrier" does not amount to "actual delivery" as contemplated in the Explanation to Article 286(1)(a). Under Section 39(1) of the Sale of Goods Act, 1930 (Act 3 of 1930), the common carrier is deemed to be the agent of the purchaser, and that therefore delivery of the goods to the railway authorities amounts to delivery to the buyer. But that is only a fictional delivery and not an "actual delivery" and consequently such a delivery is not "actual delivery" contemplated by the Explanation to Article 286 (1) (a). A similar view was taken by a Bench of the Allahabad High Court in *Capoo Ltd. v. Sales Tax Officer*³, It was held therein that the delivery to the common carrier is only a constructive delivery and not an "actual delivery". A Bench of the old Mysore High Court also took the same view in the matter of Deputy Commissioner of Sales Tax, Bangalore, AIR 1957 Mysore 14. The word "actual" before the word "delivery" used in the Explanation cannot be considered as a superfluous word. If the Constitution makers intended to include delivery to common carrier within the ambit of the Explanation to Article 286 (1) (a) then they would not have used the expression "actual delivery" therein. Therefore, I respectfully adopt the view taken by Venkatarama Ayyar, J. in

³ AIR 1960 All 62

that regard.

14. The material on record is not sufficient to come to the conclusion whether the manganese ore sold was "actually" delivered in the Mysore State to the buyer or his agent. This aspect of the question has not been investigated into by the Mysore Sales Tax Appellate Tribunal. Even if no "actual" delivery had taken place within the State of Mysore, so long as it is not established that "actual" delivery for consumption had taken place in some other State, the power of the Mysore State to tax under Entry 54 of List II of the 7th Schedule is not taken away by Article 286 (1) (a). In *Burmah Shell Oil Storage and Distributing Co., of India Ltd. v. Commercial Tax Officer*⁴, the

Supreme Court held that the Explanation (to Article 286 (1) (a)) can apply only if more than one State is involved in the same transaction; when there is no other State in which the goods can be said to be delivered for consumption, apart from the State where the property in the goods passed, the Explanation is not needed as a key; the power to tax in those circumstances which is exercisable by virtue of transfer of title to the property, can only be taken away if there be some other State in which the goods as a direct result of the sale were delivered for consumption; but if there is no such other State, the question does not arise.

15. Similar was the view taken by the Supreme Court in *India Copper Corporation Ltd. v. State of Bihar*⁵, The majority of the Judges in that case held that where the terms of the Explanation to Article 286 (1) as it stood before its amendment in 1956, were satisfied inter-State sales were by a fiction deemed to be "inside" the State of delivery-cum-consumption and therefore "outside" all other States : in such cases, therefore, only the State "inside", which the sale is deemed to take place by virtue of the Explanation, is exempt from the ban imposed by Article 286 (1) (a); all other States would be subject to that ban in respect of such sales; where however, the property in the goods passes within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Article 286 (1) (a), unless the Explanation operates; the opening words of clause (1) and Explanation to Article 286 indicate that it is the passing of property within the State that is intended to be fastened upon, for the purpose of determining, whether the sale in question is "inside" or "outside" the State and therefore, subject to the operation of the Explanation, the State in which property passes would be the only State which would have the power to levy a tax on the sale.

16. From what has been said above, it follows that a State has a right to tax not only "inside" sales but also sales by means of which the properties in the goods sold passes within the State to the buyer so long those sales are not covered by the Explanation (to Article 286 (1) (a)). Therefore, in the instant case, the Mysore Sales Tax Appellate Tribunal ought to have considered whether the disputed sales were "inside" sales; if not, whether as a result of these sales, the property in the goods sold passed inside the state to the buyer if those sales do not fall within the scope of the Explanation to Article 286 (1) (a).

17. The expression "consumption" found in the Explanation to Article 286 (1) (a) is

⁴ AIR 1961 SC 315

⁵ AIR 1961 SC 347

not used to denote destruction or even user as understood in the ordinary parlance. It is used as a term in economics, comprehending the diverse use of the goods in question. The distribution of the goods as in the case of re-sale, is also consumption falling within the meaning of that expression.

18. We have next to consider whether the disputed transactions are "inter-State" transactions.

19. The provisions contained in Article 286 (1) (b) and those contained in Article 286 (2) can be termed as kindred provisions. The former provision deals with sales or purchases of goods in the course of import into or export out of the territory of India, whereas the latter provision deals with sales or purchases of goods in the course of inter-State trade or commerce. Hence the decisions interpreting the scope of clause (b) of Article 286 (1) are of assistance in interpreting the scope of Article 286 (2). What did the Constitution makers mean when they used the

expression "sale or purchase in the course of the import or export" or "sale or purchase in the course of inter-State trade or commerce ?"

20. In *State of Travencore-Cochin v. Bombay Co., Ltd*⁶, various tests were put forward by the learned counsel appearing for the parties to determine the true meaning of the expression "in the course of". The Supreme Court did not precisely say what the import of that expression is. It contented itself by saying that whatever else may or may not fall within Article 286 (1) (b), sales and purchases which themselves occasion the export or the import of the goods, as the case may be, out of or into the territory of India, come within that expression. The learned Chief Justice who delivered the judgment of the Court, observed in paragraph 10 of his judgment :

"We are clearly of opinion that the sales here in question, which occasioned the export in each case, fall within the scope of the exemption under Article 286 (1) (b). Such sales must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say, by employing the machinery of export. 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. Of these two integrated activities, which together constitute an export sale, whichever first occurs can well be regarded as taking place in the course of the other. Assuming without deciding that the property in the goods in the present cases passed to the foreign buyers and the sales were thus completed within the State before the goods commenced their journey as found by the Sales Tax Authorities, the sales must, nevertheless, be regarded as having taken place in the course of the export and are, therefore, exempt under Article 286 (1) (b). That clause, in deed, assumes that the sale has taken place within the limits of the State and exempts it if it takes place in the course of the export of the goods concerned."

⁶ AIR 1952 SC 366

From this decision, it follows that in finding out whether a particular "sale or purchase" had taken place in the course of export or import, the test of passing of the property in the goods is not relevant.

21. Now coming to the positive side of the rule laid down, an export sale must of necessity be put through by transporting the goods by rail or ship or both out of the territory of India, that is to say by employing the machinery of export. What exactly is the connotation of the expression "sales or purchases which occasion the export or the import of the goods as the case may be"?

22. In the *State of Travencore-Cochin v. Shanmugha Vilas Cashew-nut Factory*⁷, the Supreme Court was called upon again to consider the scope of Article 286 (1) (b). In that case, the respondents were dealers in cashew-nuts in the taxing State; their business consisted in importing raw cashew-nuts from abroad; they also used to purchase cashew-nuts from the neighboring districts in the State of Madras in addition to purchases made in the local market; the cashew-nuts purchased were converted by means of certain processes into edible kernels and those kernels

were exported to other countries, mainly America; the oil removed from the pressed shells was also exported. The question that came up for consideration was whether the respondents were entitled to the benefit of Article 286 (1) (b). The majority of the Judges constituting the Court held : (1) sales by export and purchases by import fall within the exemption under Article 286 (1) (b); (2) purchases in the State by the exporter for the purpose of export as well as sales in the State by the importer after the goods have crossed the customs frontier are not within the exemption and (3) sale in the State by the exporter or importer by transfer of shipping documents while the goods are beyond the customs frontier are within the exemption assuming that the State-power of taxation extends to such transactions.

23. We next come to the decision of the Supreme Court in *Ram Narain Sons Ltd. v. Asst. Commr. of Sales Tax*⁸. In that case, the assessee was a firm registered as to a "dealer" under the Central Provinces and Berar Sales Tax Act, 1947 and carrying on business at Amravati and at other places in Madhya Pradesh; after the Cotton Control Order, 1949 came into force on 12-9-1949, the assessee entered into agreements with several mills situated outside Madhya Pradesh by which they undertook to purchase "kapas" in the various markets in Madhya Pradesh as their agents on their account and on their behalf; the kapas after purchase was to be ginned and pressed into bales and sent to the mills; all the expenses involved in the process were to be borne by the mills which were also to be credited with the sale proceeds of the cotton seeds and the assessee was entitled to commission on a percentage basis; the assessee worked as such agents for the period 1-10-1949 to 30-9-1950. The question for the Court's consideration was whether the assessee was liable to pay sales tax. The Court held that those transactions were effected in the course of inter-State trade or commerce and were hit by the ban of Article 286 (2).

24. The scope of Article 286 (1) (b) again came up for consideration before the Supreme Court in *State of Madras v. Guruviah Naidu and Co., Ltd*⁹.

⁷ AIR 1953 SC 333

⁹ AIR 1956 SC 158

⁸ AIR 1955 SC 765

assesseees were merchants dealing in hides and skins in Salem; their business consisted mainly in the purchase of hides and skins and exporting the same to foreign countries; they were assessed to sales tax in different amounts on their respective turnovers of purchases of skins made by them in pursuance of orders placed with them by foreign buyers for the supply of the same. The question for consideration was whether they were liable to pay tax. The Court held :

"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 AIR 1952 SC 366. 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 the AIR 1953 SC 333."

That very view was reiterated by the Supreme Court in the *State of Mysore v. Mysore Spinning and Manufacturing Co., Ltd*¹⁰. In the course of their Judgment, Vivian Bose, J., who spoke for the Bench observed :

"The learned High Court Judges also held that if a particular commodity is manufactured

"with the main intention for export" then the ultimate sale of that article must be taken as having been effected "in the course of export". Here again, there is an assumption of a fact that is not warranted by the record. There is nothing to show that these goods were manufactured with "the main intention for export" beyond the fact that they were sold to exporters and marked "for export" at the time of dispatch. But even if the facts were as stated, that would not help because, as we have already pointed out, this Court has decided that only the sale to the exporter that preceded it is not, even if it was made "with a view to" or "for the purpose of", export".

25. Next we come to the decision of the Supreme Court in *Gordhandas Lalji v. B. Banerjee*¹¹, In that case, the facts found are; the property in goods (tea) purchased by the dealer in West Bengal had passed in favour of the Bombay merchants long before the goods left West Bengal; soon after the goods were purchased by the dealer they were appropriated to his contract with the Bombay parties; the dealer on advise from the Bombay parties applied for and obtained requisite licenses for the export of the said goods from the appropriate authority, and the said licenses were all in the names of the Bombay parties; thereafter in the usual course of business, the dealer put the said goods into ships through clearing or shipping agents and the goods were bound for export overseas; thus the goods were shipped from Calcutta to destinations outside the territories of India in the course of foreign or international trade. On those facts, the Court held that the dealer would not be entitled to claim the protection of Article 286 (1) (b), once it was held that the title to the goods had passed in favour of the Bombay parties long before the goods were entrusted to the carrier and that in fact there was no privity between the dealer and the foreign merchants to whom the goods were ultimately exported.

¹⁰ AIR 1958 SC 1002

¹¹ AIR 1958 SC 1006

26. The last decision of the Supreme Court bearing on this point and brought to our notice is the *Burman S. O. S. and D. Co.'s case*, AIR 1961 SC 315 wherein their Lordships held that every sale or purchase proceeding the export is not necessarily to be regarded as within the course of export; it must be inextricably bound up with the export, and a sale or purchase unconnected with the ultimate export as an integral part thereof is not within the exemption; sales or purchases for the purpose of export are not protected unless the sales or purchases themselves occasion the export and are an integral part of it.

27. In *Singareni Collieries Co., Ltd. v. State of Andhra Pradesh*¹², a bench of the Andhra Pradesh High Court held that in order to constitute inter-State trade or commerce within the meaning of Article 286 (2) of the Constitution prior to its amendment by the Constitution (sixth amendment) Act, 1956, it is not sufficient if there is a sale and transportation of goods across the State's frontiers; there should also be a related connection between the sale and the movement of goods; the terms of sale should provide for the delivery being effected in another State.

28. The same view was taken by the Madras High Court in *The Indian Coffee Board, Batlagundu v. State of Madras*¹³, and *Ashok Leyland Ltd., Ennore v. The State of Madras*¹⁴, Some of the aspects arising for determination in this case have been considered by us in C. R. Ps. 877 to 879 of 1960. The *Coffee Borad Bangalore v. The State of Mysore* and we came to the conclusion that "sale" or "purchase" for the purpose of export is not "sale" or "purchase" in the course of export.

29. From the foregoing discussions, the following conclusions are available : (1) before a sale can be considered as an "inside sale", actual delivery to the purchaser or to his agent should have taken place inside the taxing State; (2) a delivery to the common carrier as such is not "actual delivery" within the contemplation of the Explanation to Article 286 (1) (a); (3) the Explanation to Article 286 (1) (a) can apply only if more than one State is involved in the same transaction; when there is no other State in which the goods are said to have been consumed apart from the State where the property in the goods passed, the Explanation is not needed as the key; the power to tax in those circumstances is exercisable by virtue of transfer of title to the property; (4) where the property in the goods passed within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Article 286 (1) (a) unless the Explanation operates; (5) the expression "consumption" found in the Explanation to Article 286 (1) (a) is not used to denote destruction or user as understood in ordinary parlance; it is used as a term in economics, comprehending the diverse use of the goods in question; e. g. the distribution of the goods as in the case of re-sale is also consumption coming within the meaning of that expression; (6) sale or purchase for the purpose of export or for the purpose of inter-State trade is not a sale or purchase in the course of export or import or in the course of inter-State trade; (7) sales in the course of export or in the course of inter-State trade must of necessity be put through by transporting the goods by rail or ship or other means of communication. In other words, sale or purchase must occasion the export or inter-State trade or commerce. To put it differently, the sale or purchase must inextricably

¹²(1961) 12 STC 765

¹⁴(1957) 8 STC 210 : AIR 1957 Mad 263

¹³(1956) 7 STC 135 : AIR 1956 Mad 449

be bound up with the export or import or with inter-State trade or commerce and must form an integral part thereof.

30. Before concluding we must notice one other point urged by the learned Government Pleader. He contended that the ban on the State's power to tax inter-State sales stood lifted in view of the validating Act (Act 7 of 1956) enacted by Parliament, on all sales that took place before 6-9-1955. This position is not contested by the opposite side. The decision of the Supreme Court in *Sundaramier and Co. v. State of Andhra Pradesh*¹⁵, concludes that question.

31. The points involved in C. R. Ps. Nos. 853, 854 and 1508 of 1960 are similar to those that came up for consideration in above C. R. P. (C. R. P. No. 864/59). So the conclusions reached above govern those cases also.

32. The Mysore Sales Tax Appellate Tribunal did not examine the cases bearing in mind the principles enunciated above. The material on record is not sufficient for us to go into the questions of fact arising in these cases and decide, for ourselves the true character of the disputed transactions.

33. Now coming to the question of costs, costs so far as C. R. Ps. 853, 854 and 1508 of 1960 are concerned, will abide by the result of those cases before the Mysore Sales Tax Appellate Tribunal and shall be provided therein.

34. So far as C. R. P. No. 864/1959, is concerned I propose to disallow the costs of the petitioner in this Court, even if he ultimately succeeds before the Mysore Sales Tax Appellate Tribunal. But, he would be liable to pay the costs of the respondent in this Court, if he fails before that

Tribunal. My reason for departing from the normal rule is :- Sri S. K. Venkataranga Iyengar, who is appearing for the Petitioner in that case was not present when the case was taken up for hearing, which by no means is an unusual feature. Sri Chabria, one of his juniors argued the case for the petitioner. He was neither properly briefed nor was he aware of the complexities of the case. After hearing him, we did not feel it necessary to call upon the learned Government Pleader to reply. Thereafter, I proceeded to dictate the judgment. When I began dictating the judgment, Sri D. M. Chandrasekhar, the learned Government Pleader, with his characteristic fairness stopped us and informed us that the case had its own complexities and we should do well to examine the various points involved in the case. Then we asked him to take us through the relevant facts and the questions of law involved in the case. He did so. We are obliged to him. We are also obliged to Sri E. S. Venkataramiah, who came to the rescue of the petitioner. At his suggestion we took up for hearing the other cases dealt with in this judgment wherein identical questions of law arose for consideration. But for the fairness of the learned Government Pleader and the timely assistance given by Sri E. S. Venkataramaiah, C. R. P. No. 864/59 would have been dismissed. Hence there is no justification in awarding any costs to the petitioner therein.

35. In the result, the orders of the Mysore Sales Tax Appellate Tribunal are set aside and these cases will be remitted to that Tribunal for disposal in accordance with the
¹⁵ AIR 1958 SC 468
above findings and directions.

Mir Iqbal Husain, J.

36. I agree.

Order accordingly.