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Court : Andhra Pradesh

Decided On : Jun-27-1958

Reported in : [1958]9STC761(AP)

Judge : Bhimasankaram, J. and ;Sanjeeva Rao Nayudu

Acts : [Constitution of India](#)

Appeal No. : O.S. No. 94 of 1952 and Appeal No. 1034 of 1953

Appellant : Sri Rama Purchase and Sale Society Limited

Respondent : State of Madras (Now Andhra Pradesh)

Advocate for Pet/Ap. : S. Ramamurthy, ;M. Ramachandra Raju and ;M. Bhujanga Rao, Advs.

Disposition : Appeal partly allowed

Judgement :

Bhimasankaram, J.

1. The plaintiff, a society represented by its secretary, is the appellant. The original defendant was the State of Madras, but it is the State of Andhra Pradesh that it

now interested in this litigation. The suit was filed for recovery of a sum of nearly Rs. 9, 800 on the ground that it represented a sum illegally collected from the plaintiff by the State under the Madras General Sales Tax Act. The aforesaid amount represents the total of three sums collected respectively for the years 1947-48, 1948-49 and 1949-50.

2. It is not seriously disputed before us that the tax levied for the period commencing from 1st January, 1948, and ending with 26th January, 1950, was properly leviable having regard to the decision of this Court in *Peri Kameswararao v. The State of Madras* represented by the Deputy Commercial Tax Officer, East Godavari, Kakinada (1955 6 S.T.C. 143; 1955 A.L.T. 168), which followed a decision of the Madras High Court in *Louis Dreyfus & Co. Ltd., Madras v. The State of Madras* (1954 5 S.T.C. 307; 1954 2 M.L.J. 326). The correctness of these decisions, it is said, is being questioned before the Supreme Court. But the view taken in these decisions has not been attacked before us.

3. Mr. Ramamurthy has questioned the legality of the levy in regard to two periods alone - the first period ending with 1st January, 1948, on which date the amended section 2(h) of the Madras General Sales Tax Act (amended by the insertion of a new Explanation by Madras Act XXV of 1947) came into effect and the period starting from 26th January, 1950, and ending with 31st March, 1950.

4. Before we discuss the merits of the appellant's contentions, we must dispose of an objection which was raised on behalf of the Government in the Court below although it has not been seriously repeated before us. The trial Court held that the suit was barred by time under section 18 of the Act because it was filed beyond the period of six months limited thereby. Its view is inconsistent with the decision of the Divisional Bench of this High Court in *Santhanna v. State* (1957 2 An. W.R. 260; 9 S.T.C. 80), where it was pointed out that section 18 was confined to suits for compensation or damages and did not apply to cases where the imposition, levy or collection of tax was impugned as illegal. In that case, it was stated that the learned Advocate for the Government did not contest that proposition. We may also state that the authority of that decision has not been questioned on behalf of the Government. We must hold therefore that the lower Court was in error in

holding that the suit was barred by limitation. The transactions with which we are concerned, it may be stated, relate to dealings between the appellant who was doing business during the relevant periods within the Madras State and customers who were residing outside it. The appellant impeaches the levy, so far as his transactions relating to the first period are concerned, on the ground that there was no transfer of property in the goods inside the State within the meaning of the unamended section 2(h) of the Act and that therefore the transactions were not attracted by the changing section. The general pattern of every transaction is as follows :

The plaintiff's customers who are residents outside the State, as already stated, place orders with the plaintiff by post or by telephone message or through a representative for despatch of certain commodities, in which the appellant is dealing, by rail. Where the order is placed through a representative who comes to Anakapalle, the plaintiff's place of business, he examines the goods, and is present when they are weighed, packed and loaded in the railway wagon at Anakapalle railway station. The plaintiff takes a railway receipt made out to self. Simultaneously with the loading of the goods, a patti or invoice is prepared showing the price of goods and the incidental expenses incurred in despatching them and is duly sent to the customer. The railway receipt together with a hundi drawn for the amount mentioned in the patti is sent through a local bank at Anakapalle to a bank at the customer's place with instructions to the latter that the railway receipt should be delivered to the consignee only on receipt of the amount for which the hundi was drawn. At the other end the customer pays the amount into the bank, takes over the railway receipt and obtains delivery of the goods from the railway authorities. When there is no representative but an order is placed by post or a phone call, the same procedure is adopted except that there is nobody on behalf of the customer to examine the goods or to see that they are properly weighed and packed. It is true it was held in *Poppatlal Shah v. The State of Madras* (1952 3 S.T.C. 396; 65 L.W. 1024) that considerations arising under the Sales Tax Act are altogether different from those arising under the Sales of Goods Act and that the point of time when property in the goods actually passed was immaterial from the point of view of the levy of tax provided there is a completed sale; that the word 'sale' had both a legal and a popular sense, and that the Sales

Tax Act was not concerned with the legal sense as defined by the Sale of Goods Act. That view has however been upset by the Supreme Court in *Poppatlal Shah v. The State of Madras* (1953 4 S.T.C. 188; 1953 S.C.R. 677). The result is that we must consider the question when, in transactions following the course above described, title to the property in the goods passes to the buyer, a question which can only be decided in the light of the relevant provisions of the Sale of Goods Act. Now sections 19 to 24 of the Indian Sale of Goods Act relate to transfer of property in the goods sold from the seller to the buyer. Section 19 says that 'Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred'.

5. It also lays down that for the purposes of ascertaining such intention, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. The next section relevant for our purpose is section 23, sub-section (2) of which is as follows :

'Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract.'

6. Sub-section (1) of that section provides that where there is such unconditional appropriation, the property in the goods passes to the buyer.

7. It is also necessary to refer to section 25 and the particular sub-section appropriate to the present case is sub-section (1) of that section which is as follows :

'Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed

by the seller are fulfilled.'

8. Applying these provisions to the suit transactions, we find that there are two circumstances attending them that indicate clearly that the seller retained his right of disposal until he was fully paid by the buyer. The first of them is that the railway receipt is taken out not in the name of the customer but in the name of the plaintiff, the consignor. Secondly, it is not to go into the hands of the customer until he honours the hundi which has been drawn. The railway receipt will have to be in the hands of the buyer to enable him to obtain possession of the goods and he would not get the receipt unless he had retired the hundi. In these circumstances, it seems to us clear that property in the goods could not have passed to the buyer at any time before he paid the money mentioned in the invoice. The only circumstance upon which reliance is placed on behalf of the State in support of their contention that the property in the goods passes within the Madras State is that the seller in his accounts debited the buyer with the amount due under the hundi. We think that this circumstance has no real bearing upon the question as to the intention of the parties in regard to the passing of title to the goods. Indeed, a similar view has been taken by a Divisional Bench of this High Court in *State of Madras v. Venkataramaniah & Sons* (1957 2 An. W.R. 378; 9 S.T.C. 54), wherein the learned Judges observed as follows :

'Unless the contrary intention could be inferred from other circumstances or the conduct of the parties, the consignment of the goods to the seller is a pointer to the conclusion that he intended to remain the owner thereof till he realised the balance of the purchase money. The fact that the seller debited the buyer with the balance or that the goods were taken out of the stock register does not establish a contrary intention. These debits seem to have been made in accordance with trade usage.'

9. We must therefore hold that the sales relating to the period ending with 1st January, 1948, took place outside the Province of Madras and that the Government of Madras could not charge the plaintiff with sales tax in respect of such transactions. The amount of tax relation to this period which has been collected from the appellant will have to be refunded to it.

10. As regards the period from 26th January, 1950, to 31st March, 1950, the argument turns on the effect of Article 286 of the [Constitution of India](#). Reliance is placed on behalf of the State upon the President's Order dated 26th January, 1950, called 'The Sales Tax Continuance Order, 1950' under clause (2) of Article 286 of the Constitution which is as follows :

'In exercise of the powers conferred by the proviso to clause (2) of Article 286 of the [Constitution of India](#), the President is pleased to make the following Order, namely :-

(1) * * *(2) Any tax on the sale or purchase of goods which was being law-fully levied by the Government of any State immediately before the commencement of the [Constitution of India](#) shall, until the thirty-first day of March, 1951 continue to be levied notwithstanding that the imposition of such tax is contrary to the provisions of clause (2) of article 286 of the said Constitution.'

11. But, in our opinion, this Order makes no difference to the position of the State in regard to the transactions with which we are concerned. As has been pointed out by the Supreme Court in the Bengal Immunity Company Limited v. The State of Bihar and Others : [1955]2SCR603 , the ban imposed under Article 286(1)(a) read with the Explanation is a ban independent of the ban imposed by cause (2) of Article 286, although transactions falling within the latter clause may also fall within the category of transactions covered by the former. The President's Order could have the effect only of lifting the ban under clause (2) because the proviso which enabled the issue of such an order is a proviso only to that clause. This position has been made clear by the later decision, also of the Supreme Court, in Ram Narain Sons Limited v. Assistant Commissioner of Sales Tax : [1955]2SCR483 . It was therein held that there being two different bans, one against taxing outside sales or purchases and another against taxing a sale or purchase of any goods where such sale or purchase is in the course of inter-State trade or commerce, the removal of one ban does not operate to remove the other restriction upon the taxing power of a State.

12. It is however argued on behalf of the Government, placing reliance upon a decision of the Patna High Court reported in Indian Steel and Wire Products

Limited v. Superintendent of Commercial Taxes : AIR1957 Pat112 that the plaintiff cannot succeed unless he proves that the goods were actually delivered as a direct result of such sale for the purpose of consumption in the other State within the meaning of the Explanation contained in clause (1) of Article 286 of the Constitutions. The argument so far as we can make it out is this :

'The Explanation provides by means of a legal fiction that the State in which the goods sold or purchased are actually delivered for consumption is to be considered the State in which the sale or purchase took place, although the property in the goods passed elsewhere. The State in which such delivery is made, otherwise called the delivery State, is the only State which can impose taxation. The sale or purchase shall be deemed to have taken place inside that State and outside all other States. The object of the Explanation is to define an outside sale or purchase by stating what an inside sale is. Unless a sale could be shown to be a sale inside a particular State within the meaning of the Explanation, it cannot be predicated what States are debarred from taxing on specific transactions. In order that the prohibition embodied in Article 286(1)(a) may apply, it is necessary to show that there is a State within which the sale or purchase could be said to have taken place in accordance with the legal fiction embodied in the Explanation.'

13. We are unable to accede to this contention. It is true that the decision of the Patna High Court lends support to the contention; but, with great respect to the learned Judges, we find ourselves unable to adopt that view. There can be little doubt that under the general law, normally a sale takes place in the State in which property in the goods passes. That general rule is by the Explanation cut into to the extent specified and no more; but, it does not seem to us that there cannot be an outside sale or purchase with reference to a particular State unless it can be postulated that there is a State in respect of which a particular transaction is an inside sale by reason of the Explanation. We cannot therefore accept this contention urged on behalf of the Government supported as it is by the authority of the Patna High Court. In the result, the appeal succeeds so far as the two items abovementioned are concerned. The parties will prepare a memo of calculation on the basis of our decision in order that the amount to be refunded to the plaintiff by

he defendant may be embodied in the decree. The plaintiff will be entitled to interest from the date of the suit till the date of payment on the amount so refundable to him at 6 per cent per annum. The parties will pay and receive proportionate costs throughout.

14. This appeal coming on this day (27th June, 1958), for orders as to the ascertainment of the amount refundable to the appellant (plaintiff), upon perusing the memo of calculation filed by the appellant showing the amount refundable to him, the Court made the following order :

A decree will be prepared on the basis of the figures furnished by Mr. S. Ramamurthy in his memo. A copy of this memo has been served on the Government Pleader quite a long time ago and nothing has been said on behalf of the Government against the correctness of the figures therein.

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