SHREE BAJRANG JUTE MILLS LTD.

v.

STATE OF ANDHRA PRADESH

1964
February 6.

(P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH AND N. RAJAGOPALA AYYANGAR JJ.)

Sales Tax—Goods delivered to places outside State for consumption in those States—Liability .to tax—"Explanation Sales"—Expression "Actually delivered", meaning of—Constitution of India, Art. 286(1)(a)—*Indian Sale of Goods Act,* 1930, *s.* 39.

The appellant, carrying on business as a manufacturer of jute goods with its factory at Guntur, used to send jute bags by railway to the cement factories of the A.C.C. outside the State of Andhra. For securing a regular supply of jute bags, the A.C.C. entered into a contract with the appellant and under the despatch instructions from that company, the appellant loaded the goods in the railway wagons, obtained railway receipts in the name of the A.C.C. as consignee and against payment of the price, delivered the receipts to the Krishna Cement Works, Tadepalli, which was for the purpose of receiving the railway receipt and making payment, the agent of the A.C.C. From the amounts shown as gross turnover in the return for the assessment year 1954-55, the appellant claimed reduction of certain amounts in respect of the goods supplied by rail to the A.C.C. outside the State of Andhra Pradesh under its despatch instructions. The Commercial Tax Officer and the Deputy Commissioner of Commercial Taxes disallowed the claim and held that as the railway receipts were delivered to the agent of the buyer within the State of Andhra, and price was also realized from the agent of the buyer within the State, goods must be deemed to have been delivered to the buyer in the State of Andhra Pradesh, and the appellant was liable to pay tax on the sales. On appeal, this order was reversed by the Appellate Tribunal. In revision the High Court restored the order of the Deputy Commissioner of Commercial Taxes. The question for determination in this appeal was whether the sales to the A.C.C. by the appellant may be regarded as "non-Explanation sales", *i.e.* falling outside the Explanation to Art. 286(1).

Held: (i) If the goods were delivered pursuant to the contracts of sale outside the State of Andhra for the purpose of consumption in the State into which the goods were delivered, the State of Andhra could have no right to tax those sales by virtue of the restriction imposed by Art. 286(1)(a) read with Explanation.

To attract the Explanation, the goods had to be actually delivered as a direct result of the sale, for the purpose of consumption in the State in which they were delivered. The expression "actually delivered" in the context in which it occurs, can only mean physical delivery of

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the goods, or such action as puts the goods in the possession of the purchaser; it does not contemplate mere symbolical or notional delivery.

C. Govindarajulu Naidu & Co. v. *State of Madras*, A.I.R. 1953 Mad. 116, *M/s. Capco Ltd.* v. *Sales Tax Officer*, A.I.R. 1960 All. 62 and *Khaitan Minerals* v. *Sales Tax Appellate Tribunal for Mysore*, A.I.R. 1963 Mysore 141, followed.

Poppat Lal Shah v. *State of Madras*, [1953] S.C.R. 677, *Tata Iron & Steel Co. Ltd.* v. *State of Bihar*, [1958] S.C.R. 1355, *Tobacco Manufacturers (India) Ltd.* v. *Commissioner of Sales Tax, Bihar*, [1961] 2 S.C.R. 106, *Indian Copper Corporation Ltd.* v. *State of Bihar*, [1961] 2 S.C.R. 276 and *State of Kerala* v. *Cochin Coal Co. Ltd.*, [1961] 2 S.C.R. 219, referred to.

(ii) Section 39 of the Indian Sale of Goods Act will not make mere delivery of the railway receipts representing title to the goods, actual delivery of goods for the purpose of Art. 286. The rule contained in s. 39(1) has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States entrusts exclusive power to levy sales tax to the State in which the goods, have been actually delivered for the purpose of consumption.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 542 of 1962.

Appeal from the judgment and order dated April 7, 1960, of the Andhra Pradesh High Court in Tax Revision case No. 27 of 1958.

M. C. Setalvad, K. Srinivasamurthy and *Naunit Lal*, for the appellant.

A. Ranganadham Chetty and *B. R. G. K. Achar*, for the respondent.

February 6, 1964. The Judgment of the Court was delivered by

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SHAH, J.—With certificate of fitness granted by the High Court of Andhra Pradesh this appeal is preferred by Shree Bajrang Jute Mills Ltd.

The appellant is engaged in the manufacture of jute goods, and is a registered dealer under the Madras General Sales Tax Act. For the assessment year 1954-55 the appellant submitted its return for sales-tax claiming a deduction of Rs. 21,80,118-1-3 from the turnover in respect

of the jute goods supplied by rail to the Associated Cement Company Ltd.—hereinafter for the sake of brevity called 'the A.C.C.' under despatch instructions from that Company. The Commercial Tax Officer rejected the claim of the appellant for deduction and that order was confirmed in appeal to the Deputy Commissioner of Commercial Taxes. In appeal to the Sales Tax Appellate Tribunal, the order was reversed, the Tribunal holding that the appellant was entitled to exemption in respect of the turnover for the goods supplied to the A.C.C. A revision petition presented against the order to the High Court of Andhra Pradesh was heard with a large number of other petitions which raised certain common questions. The High Court reversed the order of the Tribunal and restored the order passed by the Deputy Commissioner of Commercial Taxes.

The factory of the appellant is situated at Guntur. The A.C.C. owns cement factories at many places (including one at Tadepalli in the State of Andhra called the Krishna Cement Works) and for the purpose of marketing its products it requires jute packing bags. For securing a regular supply of jute bags, the A.C.C. entered into a contract with the appellant of which the following four conditions are material :

"1. All the goods are sold F.O.R. Guntur unless otherwise expressly stated in this contract.

2. Goods to be packed.... well pressed and marked in.... bound bales of.... per each.

3. Payments to be made in cash, in exchange for Mills Delivery Order on sellers on due date or for Railway receipts or for Dock receipts, or for Mate's receipts, (which Dock receipts or Mate's receipts are to be handed by a Dock's or Ship's Officer to the seller's representative).

4. The buyers agree that the property in the goods sold shall not pass from the sellers to the buyers so long as the sellers are in possession of any bills of lading, railway receipts, dock-warrants or Mate's receipts or any other document of

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title whether such documents are in the names of sellers or buyers, until payment is made in full.

(a) The buyers agree that the risk of loss, deterioration or damage in the goods during transit whether by land or canal or sea or when the goods are in the custody of the seller or any third person in a warehouse, dock or any premises shall be borne by the buyers notwithstanding that the property in the goods does not pass to the buyers during such transit or custody."

As and when the gunny bags were needed for packing its products the A.C.C. issued despatch instructions calling upon the appellant to send jute bags by railway to the cement factories of the A.C.C. outside the State of Andhra. Pursuant to those instructions the appellant loaded the goods in the railway wagons, obtained railway receipts in the name of the A.C.C. as consignee and against payment of the price, delivered the receipts to the Krishna Cement Works, Tadepalli—which, it is common ground, was for the purpose of receiving the railway receipts and making payment, the agent of the A.C.C. It is also common ground that the jute bags were sold to the A.C.C. for the purpose of packing cement by the factories of the A.C.C. to which they were sent and not for any other purpose.

The assessing authority and the Deputy Commissioner held that as the railway receipts were delivered to the agent of the buyer within the State of Andhra, and price was also realized from the agent of the buyer within the State, the goods must be deemed to have been delivered to the buyer in the State of Andhra, and the appellant was liable to pay sales-tax on the price of the goods sold. With tnat view the High Court agreed.

Under the Government of India Act, 1935, the Legislatures of every Province could legislate for levying tax on sales of goods in respect of all transactions, whether the property in the goods passed within or without the Province, provided the Province had a territorial nexus with one or more elements constituting the transaction of sale : *Poppat*

Lal Shah v. *The State of Madras*(1) and *The Tata Iron & Steel Company Ltd.* v. *State of Bihar*(2). But this resulted in simultaneous levy of sales tax by many Provinces in respect of the same transaction each fixing upon one or more element constituting the sale, with which it had a territorial nexus. With the dual purpose of maintaining an important source of revenue to the States, and simultaneously preventing imposition of an unduly heavy burden upon the consumers by multiple taxation upon a single transaction of sale, the Constitution made a special provision imposing restrictions upon the legislative power of the States in Art. 286 which as originally enacted ran as follows:

"(1) 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—

(a) outside the State; or

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

Explanation.—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.

(2) Except in so far as Parliament may by law otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce:

Provided that the President may by order direct that any tax on the sale or purchase of goods which

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(1) [1953] S.C.R. 677. (2) [1958] S.C.R. 1355

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was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951.

(3) No law made by the Legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

After the enactment of the Constitution, by a Presidential Order the Provincial Sales Tax Acts were made to accord with the restrictions imposed by Art. 286 of the Constitution. It is manifest that by Art. 286 the legislative authority of the States to impose taxes on sales and purchases was restricted by four limitations—in respect of sales or purchases outside the State, in respect of sales or purchases in the course of imports into or exports out of India, in respect of sales or purchases which take place in the course of inter-State trade or commerce and in respect of sales and purchases of goods declared by Parliament to be essential for the life of the community. These limitations may overlap, but the power of the State to tax sale or purchase transactions may be exercised only if it is not hit by any of the limitations. The restrictions are cumulative.

The sales in the present case are not sales, which have taken place in the course of inter-State trade or commerce. The only point of contest is whether they are "outside the State" of Andhra. It is now well-settled that by Art. 286(1) (as it stood before it was amended by the Constitution Sixth Amendment Act, 1956) sales as a direct result of which goods were delivered in a State for consumption in such State *i.e.* the sales falling within the Explanation to Art. 286(1) were fictionally to be regarded as inside that State for the purpose of cl. (1)(a) and so within the taxing

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power of the State in which such delivery took place and being outside all other States exempt from sales-tax by those other States : *Tobacco Manufacturers (India) Ltd.* v. *The Commissioner of Sales-tax, Bihar, Patna*(1): *Indian Copper Corporation Ltd.* v. *The State of Bihar and others*(2): and *The State of Kerala and others* v. *The Cochin Coal Company Ltd.*(3). But the Explanation is not exhaustive of what may be called "inside sales". Clause (1)(a) excludes from the reach of the power of the States sales outside the State but it does not follow from the Explanation that it localises the *situs* of all sales. The power of the State under Entry 54 List II of the Seventh Schedule to tax sales [not falling within cls. (1)(b), (2) and (3)] which are outside the Explanation, and which may for the sake of brevity be called 'non-Explanation' sales, remains unimpaired. It is not necessary for the purpose of this case to express an opinion, whether the theory of territorial nexus of the taxing State, with one or more elements which go to make a completed sale authorises since the promulgation of the Constitution the exercise of legislative power under Entry 54, List II of the Seventh Schedule to tax sales, where property in goods has not passed within the taxing State.

The question which then falls to be determined is whether the sales to the A.C.C. by the appellant may be regarded as "non-Explanation sales". There can be no doubt that if the goods were delivered pursuant to the contracts of sale outside the State of Andhra for the purpose of consumption in the State into which the goods were delivered, the State of Andhra could have no right to tax those sales by virtue of the restriction imposed by Art. 286(1)(a) read with the Explanation.

The facts found by the taxing authorities clearly establish that property in the goods despatched by the appellant passed to the A.C.C. within the State of Andhra when the railway receipts were handed over to the agent of the A.C.C. against payment of price. The question still remains : were

(1) [1961] 2 S.C.R. 106 (2) [1961] 2 S.C.R. 276

(3) [1961] 2 S.C.R. 219.

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the transactions 'non-Explanation sales' *i.e.* falling outside the Explanation to Art. 286(1)? To attract the Explanation, the goods had to be actually delivered as a direct result of the sale, for the purpose of consumption in the State in which they were delivered. It is not disputed that the goods were supplied for the purpose of consumption outside the State of Andhra, and in the States in which they were supplied. It is submitted that the goods were actually delivered within the State, when the railway receipts were handed over to the agent of the buyer. But the expression "actually delivered" in the context in which it occurs, can only mean physical delivery of the goods, or such action as puts the goods in the possession of the purchaser : it does not contemplate mere symbolical or notional delivery *e.g.* by entrusting the goods to a common carrier, or even delivery of documents of title like railway receipts. In *C. Govindarajulu Naidu & Company* v. *State of Madras*(1) Venkatarama Ayyar, J., dealing with the concept of actual delivery of goods, so as to attract the application of the Explanation to Art. 286(1)(a) rightly observed :

> "In the context it can mean only physical delivery and not constructive delivery such as by transfer of documents of title to the goods. The whole object of the Explanation is to give a power of taxation in respect of goods actually entering the State for the purpose of use therein and it will defeat such a purpose if notional delivery of goods as by transfer of documents of title to the goods within the State is held to give the State a power to tax, when the good are actually delivered in another State."

A similar view has been expressed in two other cases : *M/s. Capco Ltd.* v. *The Sales Tax Officer and another*(2): and *Khaitan Minerals* v. *Sales Tax Appellate Tribunal for Mysore*(3).

(1) A.I.R. 1953 Mad. 116. (2) A.I.R. 1960 All. 62.
(3) A.I.R. 1963 Mysore 141.

Counsel for the respondent-State relied upon s. 39 of the Indian Sale of Goods Act, 1930, which provides in so far as it is material, by the first sub-section that where, in pursuance of a contract of sale, the seller is authorised to send the goods to the buyer, delivery of the goods to a carrier, for the purpose of transmission to the buyer, is *prima facie* deemed to be delivery of the goods to the buyer. But that provision will not make mere delivery of the railway receipts representing title to the goods, actual delivery of goods for the purpose of Art. 286. The rule contained in s. 39(1) of the Indian Sale of Goods Act raises a *prima facie* inference that the goods have been delivered if the conditions prescribed thereby are satisfied: it has no application in dealing with a constitutional provision which while imposing a restriction upon the legislative power of the States entrusts exclusive power to levy sales tax to the State in which the goods have been actually delivered for the purpose of consumption.

The High Court was therefore in error in inferring from the fact that the property had passed within the State of Andhra against delivery of the railway receipts, that the goods were actually delivered within the State. If the inference raised by the High Court that the goods were actually delivered within the State of Andhra cannot be accepted, on the facts found there is no escape from the conclusion that the State of Andhra had no authority to levy tax in respect of those sale transactions in which the goods were sent under railway receipts to places outside the State of Andhra and actually delivered for the purpose of consumption in those States.

The appeal must therefore be allowed. The order of the High Court is set aside and the order of the Appellate Tribunal is restored. The appellant to get its costs in this Court and the High Court from the respondent-State.

Appeal allowed.