

Firm Of A. Gowrishankar vs Sales Tax Officer Secunderabad & Anr on 3 April, 1958

Equivalent citations: AIR 1958 SUPREME COURT 883

Bench: S.K. Das, A.K. Sarkar

CASE NO.:

Appeal (civil) 256-60 of 1955

PETITIONER:

FIRM OF A. GOWRISHANKAR

RESPONDENT:

SALES TAX OFFICER SECUNDERABAD & ANR.

DATE OF JUDGMENT: 03/04/1958

BENCH:

S.R. DAS (CJ) & T.L.V. AIYYAR & S.K. DAS & A.K. SARKAR & V. BOSE

JUDGMENT:

JUDGMENT 1958 AIR (SC) 883 The Judgment of S. R. Das, C.J., Venkatarama Aiyar, S. K. Das, and Sarkar, JJ., was delivered by Sarkar, J. Bose, J., delivered a separate Judgment.

SARKAR, J. - The Hyderabad General Sales Tax Act, 1950, came into force on May 1, 1950. As it originally stood, sales of coarse and medium cloth were not liable to be taxed under it. The Act was amended by Hyderabad Act XXVII of 1952 which came into force on August 1, 1952, and as a result of the amendment, sales of coarse and medium cloth were made taxable under the principal Act. Thereafter, the Sales Tax Officer, Secunderabad, on different dates in the months of October, November and December, 1952, made five provisional orders of assessment, one in respect of each of the five appellants before us, whereby he levied a tax on the sales of the appellants including the sales of coarse and medium cloth made by them on and after August 1, 1952, being the date from which sales of coarse and medium cloth became taxable under the amendment earlier mentioned. The appellants appealed from these orders of assessment to the higher Sales Tax Authorities under the provisions of the Act. Pending the decision of the appeals each of the appellants moved the High Court at Hyderabad for the issue of a writ of mandamus or other appropriate writs directing the Sales Tax Officer not to collect tax on sales of coarse and medium cloth. The appellants contended that these goods had been declared essential goods and sales in respect of them were not liable to be taxed in view of Article 286(3) of the Constitution and Explanation (2) to section 2(k) of the Act, as the principal Act and the amending Act had not been reserved for the consideration of the President nor received his assent. The High Court delivered judgment on September 30, 1953, dismissing all the five applications. It however granted certificates under Article 132 of the Constitution. These appeals have come to us under these certificates. The High Court directed that as the point involved

in all the appeals was the same only the papers in one appeal might be printed to cover all. The question to be decided in these appeals is whether sales of coarse and medium cloth are liable to be taxed under the principal Act as amended by Hyderabad Act XXVII of 1952 (the amended Act being hereafter referred to as the principal Act) in view of Article 286(3) of the Constitution and certain other enactments to which reference will be presently made, declaring these varieties of cloth to be essential goods. It may here be stated that by a farman issued by H. E. H. the Nizam on November 23, 1949, it was directed that the Constitution of India, 1950 when promulgated would apply to the territories of Hyderabad. At the relevant period Hyderabad was one of the Part B States defined in the Constitution. The first enactment to which the appellants refer is the Essential Supplies (Temporary Powers) Act, XXIV of 1946. This Act declared cotton textiles to be essential goods and was applied to the Hyderabad State on August 17, 1950. The point is that in view of this declaration, under the provisions of Article 286(3) of the Constitution sales of coarse and medium cloth were not liable to be taxed. The learned Advocate for the appellants however stated that he did not wish to press this point. In any case for the reasons mentioned in our judgment in C.A. No. 192 of 1955 (Since reported as Konduri Buchirajalingam v. The State of Hyderabad and Others 1958 (9) STC 397) this point is without substance.

The appellants next relied on Act LII of 1952 which declared coarse and medium cotton cloth to be goods essential for the life of the community. This was a law passed expressly under the powers conferred on Parliament by Article 286(3). The appellants contend that in view of this Act which had come into force on August 9, 1952, the principal Act could not after its date impose any tax on the sales of coarse and medium cloth. Again, we are unable to agree. Article 286(3) states that the law of State shall not impose a tax on the sale or purchase of any goods which have been declared by Parliament by law to be essential for the life of the community and therefore it contemplates a law passed by a State after the Parliament law declaring goods to be essential. Neither the principal Act nor its amendment by Act XXVII of 1952 was passed after Act LII of 1952. Section 3 of Act LII of 1952 is set out below :

"Section 3. - No law made after the commencement of this Act by the legislative of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act 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."

This section clearly states that a law by a State Legislature made after the commencement of Act LII of 1952 shall not impose a tax on the sale or purchase of commodities declared essential by the Parliamentary Act. In doing this it is only carrying out the clear intention of Article 286(3). Therefore, a law made by a State Legislature before Act LII of 1952 commenced to operate is not at all affected by Article 286(3). The principal Act and its amending Act were such Acts and were hence effective in imposing a tax on coarse and medium cloth. It was stated that Hyderabad Act, XXVII of 1952, which enabled the principal Act to levy a tax on sales of coarse and medium cloth was enacted only 8 days before Act LII of 1952 was enacted and, in fact, the amending Act was enacted in a hurry to avoid the effect of Act LII of 1952 with full knowledge that the Bill for this Act was pending before the Parliament. It is said that the Hyderabad Act, XXVII of 1952, was passed only with a view to get

round the Parliamentary Act, LII of 1952. We have no sufficient materials in this case to accept that view. Besides, the validity of an Act depends on the legislature competency and if competency is not challenged, as it is not in this case, the Act must be a valid piece of legislation whatever may have been the intention which led to its enactment. We are not here concerned with a law which is not within the competency of the legislature but is disguised as such. As to such a law different considerations may apply. We are, therefore, unable to hold that Hyderabad Act, XXVII of 1952, was not a valid piece of legislation.

It remains to deal with the contention based on Explanation (2) of section 2(k) of the principal Act. That explanation is in these terms :

"Explanation (2) - Notwithstanding anything to the contrary in any other law for the time being in force, a transfer of goods, in respect of which no tax can be imposed by reason of the provisions contained in Article 286 of the Constitution, shall not be deemed to be 'sale' within the meaning of this clause."

It is said that the purpose and effect of this explanation was to make all sales of goods declared essential by Parliamentary enactment exempt from liability to tax under the principal Act. We do not think that such is the effect of the explanation. It only says that a sale of goods in respect of which no tax can be imposed by reason of Article 286(3) shall not be a sale liable to be taxed by the principal Act. Article 286(3) only prevents State Legislatures by a law passed after a Parliamentary Act declaring goods to be essential for the life of the community from taxing the sales of these goods. Therefore, a transfer of goods which under the explanation is not to be regarded as a sale within the meaning of the Act is a transfer of goods which cannot be taxed under an Act of a State Legislature passed after the Parliamentary Act declaring these goods to be essential for the life of the community. The Parliamentary Act declaring goods to be essential on which learned Advocate for the applicants relied for his present argument was Act LII of 1952. But after this Act, no Act was passed by the Hyderabad Legislature purporting to tax any sales of goods declared essential by Act LII of 1952. Therefore, it cannot be said that the transfers of coarse and medium cloth are not sales within the meaning of the principal Act.

The result is that the appeals must fail and they are dismissed with costs.

BOSE, J. - For the reasons given in my judgment in Civil Appeal No. 192 of 1955 (Konduri Buchirajalingam v. The State of Hyderabad and Others 1958 (9) STC 397) delivered today, I would allow these appeals.

Order BY THE COURT :- In accordance with the opinion of the majority these appeals are dismissed with costs.