

Shri Duli Chand Kheria And Anr. vs State Of Uttar Pradesh And Ors. on 3 November, 1955

Equivalent citations: [1956]7STC70(ALL)

ORDER

Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The petitioner No. 1 carries on the business of commission agency in the name and style of petitioner No. 2 and the place of business is No. 18, Amartolla Street, Calcutta. The petitioner supplies goods to the traders in Uttar Pradesh and also other places in India. On the 21st of October, 1954, the petitioner No. 2 received a notice from the Sales Tax Officer, U.P., (Calcutta) to file a return of the complete turnover of the previous year, under the U.P. Sales Tax Act of 1948. The petitioner No. 1 was registered previously as a "dealer" under Section 8A of the U.P. Sales Tax Act and this registration was valid upto 31st March, 1955. The notice was followed by a press note dated 21st November, 1954, issued by the Deputy Commissioner of Sales Tax, U.P., in which it was stated that the ex. U.P. dealers were also liable to pay sales tax on the goods that were delivered in the territory of the State of U.P. for consumption therein. Certain concessions were to be granted to these traders if they carried out the directions contained in the press note and submitted the returns and paid the dues within a reasonable time. A copy of the press note was sent to the petitioner as well by the Sales Tax Officer at Calcutta, drawing the petitioner's attention to the concessions contained in the press note. It appears that the petitioner did not file any return and on the 21st February, 1955, the Sales Tax Officer, Special Circle, Kanpur, issued an order to the petitioner asking him to file the return of his turnover and to appear before the Officer on 24th March, 1955. On the 2nd March, 1955, the petitioner sent a cheque for Rs. 500 in part payment of the tax due for the period 1st October to 31st December, 1954. This cheque was sent through the Kirana Commission Agents Association, and was accompanied by a letter in which it was stated that the petitioner's cheque along with certain others was being sent, but the payments were made without prejudice to the rights of these traders to challenge the imposition of the U.P. sales tax upon them. The present petition was filed on the 13th of April, 1955, and the prayers contained in the petition are that the notices issued by the Sales Tax Officer be quashed and a writ of mandamus be issued prohibiting the opposite parties from taking proceedings against the petitioners under the U.P. Sales Tax Act.

3. The contention of the learned counsel for the petitioners is that they are carrying on business in Calcutta and they work as commission agents. Orders are placed with them for the supply of the goods by constituents in Uttar Pradesh and the petitioners then forward the goods to these constituents which are delivered to them at the places where the constituents carry on their business. The transaction of the purchase is said to be completed in Calcutta though the goods are

delivered in the State of U.P. and other places. It is argued that on these facts the U.P. State has no jurisdiction to levy a tax on these sales and the U.P. Sales Tax Act would not be valid if it really provides for the imposition of sales tax on the petitioners who carry on their business outside the State, the business being in the nature of inter-State trade. It is said that Article 286 of the Constitution prohibits the imposition of any such tax on a trade of this nature. It is also argued that the petitioners are not dealers within the meaning of Section 2(c) of the U.P. Sales Tax Act, nor was the appointment of a Sales Tax Officer by the U.P. Government in Calcutta a valid appointment. The latter two points are mainly based on the ground that the U.P. Government has no jurisdiction to register persons carrying on their trade outside the State as dealers, nor have they any jurisdiction to appoint Sales Tax Officers in territories outside Uttar Pradesh.

4. The first contention is the main contention that has been argued by the learned counsel. In reply the learned counsel for the State argued that the petitioners were carrying on business in the State of Uttar Pradesh, that Article 286 of the Constitution did not prohibit the imposition of sales tax on ex. U.P. traders, and that the petition is premature inasmuch as no tax has yet been imposed.

5. I shall first consider the question whether the petitioners have any place of business inside the State of Uttar Pradesh. In paragraph 2 of the affidavit filed along with the petition it is stated that the place of the petitioners' business is in Amartolla Street in Calcutta. In the subsequent paragraphs it is stated that they supply goods to persons in the State of Uttar Pradesh and other places in India on receipt of orders for the purchase of the goods; that they have no place of business in Uttar Pradesh nor do they carry on any business in this State; that the petitioners received orders from the constituents in Uttar Pradesh and the transaction of purchase is completed outside the State and the goods are then sent to Uttar Pradesh. In the counter-affidavit it has been stated that the petitioners admitted before the Commercial Tax Officer, Bengal, that they purchased goods in Calcutta for the purpose of reselling them and obtained an exemption from the Bengal sales tax on that ground. The goods are then despatched by train and delivery takes place inside the State of Uttar Pradesh. Besides this assertion, there is also a vague denial of some of the paragraphs of the affidavit filed along with the petition, but there is no suggestion anywhere in the counter-affidavit that the petitioners have any place of business in the State of Uttar Pradesh or that they have ever carried on any business from any place in Uttar Pradesh. On the other hand, it appears from the averments made in paragraph 4 of the counter-affidavit that the petitioners despatch goods by train from Bengal and delivery of the goods takes place inside the State of Uttar Pradesh, for the purpose of consumption of those goods in this State. I may also refer to the press note, a copy of which is marked annexure '2' to the affidavit filed along with the petition. It is addressed to "To all ex. U.P. dealers exporting goods to U.P. and liable to U.P. sales tax". It says that the ex. U.P. traders are liable to pay sales tax according to the decision of the Honourable Supreme Court contained in the case of *State of Bombay v. United Motors (India) Ltd.*, Bombay [1953] 4 S.T.C. 133. A copy of this press note was sent to the petitioners and it is quite clear from this conduct of the respondents themselves that they were treating the petitioners as ex. U.P. dealers. It is now idle for the learned standing counsel to argue that the petitioners have a place of business inside U.P. and that they are not ex. U.P. dealers. The system according to which the petitioners carry on their trade is that orders are placed with them at Calcutta and they despatch goods from Calcutta by rail against the orders which are accepted there. The question is whether on these facts the petitioners can be assessed to

the payment of sales tax by the U.P. Government.

6. Previously the State of U.P. was not charging any sales tax from the traders who had no place of business in the State of U.P. and merely sent their goods for consumption in the State. The Government was persuaded to levy sales tax on these traders because of a decision of the Honourable Supreme Court of India contained in the case of *State of Bombay v. The United Motors (India) Limited* [1953] 4 S.T.C. 133. In this case, the Supreme Court had held, by a majority decision, that the State Legislature could impose a sales tax on the sale or purchase of goods which were delivered in the State for the purposes of consumption in that state and reliance for this view was placed on the explanation to Article 286(1) of the Constitution. It was as a result of this decision that the State of U.P., as well as some other States, tried to recover sales tax on sales or purchases of goods delivered within their territories for purposes of consumption. The U.P. Government appointed its Sales Tax Officers in Bombay, Calcutta and Delhi and these officers approached the different traders who were exporting their goods to U.P. asking these traders to submit their returns of turnover with a view that the sales tax may be duly assessed upon the turnover. The petitioners were also asked to submit their returns, but they did not do so. They sent a cheque for Rs. 500 in part payment of the tax. In the meantime the matter again came up before the Honourable Supreme Court and the Supreme Court, by a majority decision, has now clearly held that their previous decision referred to above could not be accepted as well-founded on principle or authority. The majority disagreed with the view taken in that decision and it has also held that it was open to the Supreme Court to disagree with a previous decision of its own and to declare it as not good law, (vide *Bengal Immunity Company Limited v. The State of Bihar* [1955] 6 S.T.C. 446). In this case it has been held, by the majority of the learned Judges, that Article 286 lays down a number of bars against the imposition of tax on inter-State trade by State Legislatures and these bars are contained in clauses (1), (2) and (3) of Article 286. It is said that the provisions may overlap in some cases, but they are intended to deal with different topics and one provision cannot be projected or read into another. They have held that the explanation to Clause (1) of Article 286 is confined in its operation to Sub-clause (a) of Clause (1) and it has no application to the provisions contained in clauses (2) and (3) of the Article. Clause (2) of this Article says that no law of a State shall impose 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 except in so far as the Parliament may by law otherwise provide. This clause has been held to prohibit the making of any law by the Legislature of a State imposing a tax on sale or purchase made in the course of inter-State trade or commerce. The facts of the Supreme Court case were similar to the facts of the instant case and their Lordships have held that it was a case of inter-State trade and the Legislature of the State could not impose any sales tax on such trade, as the Parliament had not so far provided otherwise by any law. In the case before the Supreme Court it was proved that the petitioner company carried on the business of manufacturing and selling goods and had its registered office and factory in West Bengal. It has neither any agent nor manager in Bihar nor any office or godown in that State. The company despatched goods by rail, steamer or road against orders accepted by it in West Bengal. On these facts, they held that the company could not be made liable to pay sales tax on the goods despatched by it for consumption in the State of Bihar. The facts of the instant case cannot be distinguished from the facts of the case mentioned above and it must accordingly be held that the U.P. Legislature had no power to frame any law imposing a tax on such sales or purchases and the Government of U.P. consequently cannot realise

this tax from the petitioners. The argument of the learned standing counsel that the case is distinguishable has no force and the facts of the Supreme Court case mentioned above are similar to the facts of the instant case and the decision contained in that case therefore must be followed in deciding the instant case. The other argument of the learned standing counsel that the application is premature has also no force. Attempts are being made to impose a tax on the petitioners, the imposition of which contravenes Article 286(2) of the Constitution. The imposition of such a levy interferes with the fundamental right of the petitioners to carry on their trade. The Sales Tax Officers have no jurisdiction to levy the tax and it would be a meaningless procedure to direct the petitioners to submit their returns and to permit the Sales Tax Officers to levy taxes on the petitioners and then direct the petitioners to file appeals against the assessment orders. The legal position is amply clear and the action of the Sales Tax Officers being in contravention of the Constitution the petitioners are entitled to relief under Article 226 of the Constitution.

7. The other two points argued by the learned counsel for the petitioners do not arise in view of my decision on the first point.

8. In the result, this petition is allowed. A writ of mandamus shall be issued to the respondents Nos. 1 to 3 directing the said respondents not to take any proceedings against the petitioners under the U.P. Sales tax Act, either by demanding the returns or by imposing any sales tax, until the Parliament by law provides otherwise.

9. In view of the change of law during the pendency of this petition, I think it is a fit case where parties should be ordered to bear their own costs.