

## **Bharat Sugar Mills Ltd. & Ors vs State Of Bihar & Anr on 27 September, 1960**

**Equivalent citations: AIR 1961 SUPREME COURT 1183**

**Bench: S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N.R. Ayyangar**

CASE NO. :

Appeal (civil) 338-340 of 1958

PETITIONER:

BHARAT SUGAR MILLS LTD. & ORS.

RESPONDENT:

STATE OF BIHAR & ANR.

DATE OF JUDGMENT: 27/09/1960

BENCH:

S.K. DAS & M. HIDAYATULLAH & K.C. DAS GUPTA & J.C. SHAH & N.R. AYYANGAR

JUDGMENT:

JUDGMENT 1961 AIR 1183 With Civil Appeal Nos. 791 and 792 of 1957 and 3 of 1960 The Judgment was delivered by SHAH, J. :

SHAH, J. - In these six appeals, the constitutional validity of section 2(g) of the Bihar Sales Tax Act, 1947 (Act XIX of 1947), as amended by the Bihar Sales Tax (Amendment) Act, 1949 (Act VI of 1949), is challenged.

To appreciate the grounds on which the contention is raised by the appellants, it is necessary to set out the legislative provisions applicable to the sales in respect of which tax was sought to be levied by the State of Bihar under the Bihar Sales Tax Act, 1947. In exercise of the legislative power conferred by entry 48 in List II of the Government of India Act, 1935, the Legislature of the Province of Bihar enacted the Bihar Sales Tax Act, 1947 (Act XIX of 1947, which was brought into operation on July 1, 1947. The Act was amended by the Bihar Sales Tax (Amendment) Act, 1949 (Act of VI of 1949). Section 4(1) of the Act (which is the charging section) as amended, provided, is so far as it is material, that :

"Subject to the provisions of sections 5, 6, 7 and 8 and with effect from the commencement of this Act, every dealer whose turnover during the year immediately preceding the date of such commencement, on sales which have taken place both in and outside Bihar exceeded Rs. 10, 000 shall be liable to pay tax under this Act on sales which have taken place in Bihar on and from the date of such commencement."

Section 2(g) defined "sale" as meaning "with all its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods involved in the execution of contract, but does not include a mortgage, charge or pledge :

Provided .....

Provided further that notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930 (Act III of 1930), the sale of any goods

-(1) which are actually in Bihar at the time when, in respect thereof, the contract of sale as defined in section 4 of that Act is made, or (2) which are produced or manufactured in Bihar by the producer or manufacturer thereof, shall, wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Bihar."

Sale is under the definition undoubtedly transfer of property in the goods for consideration; but even if the transfer takes place, under the rules governing sale of goods under the Sales of Goods Act, outside the taxable territory, for the purposes of the Bihar Sales Tax Act, the situs of the sale is to be regarded as taking place in Bihar if at the time of the contract of sale the goods were actually in Bihar or the goods has been produced or manufactured in Bihar by the producer or manufacturer thereof.

The competence of the State Legislature to enact section 2(g) as amended by Bihar Act VI of 1949 in exercise of authority under entry 48 in List II of the Seventh Schedule of the Government of India Act, 1935, was challenged in *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1958 SCR 1355; 1958 (9) STC 267). Chief Justice Das in dealing with the legislative competence of the Bihar State Legislature observed at pp. 1367-68 :-

"Both before and after the amendment of section 2(g) the principal part of the definition meant the transfer of the property in goods. All that the second proviso did was not to extend the definition of 'sale', but only to locate the 'sale' in certain circumstances mentioned in that proviso in Bihar. The basis of liability under section 4(1) remained as before, namely, to pay tax on 'sale'. The fact of the goods being in Bihar at the time of the contract of sale or the production or manufacture of goods in Bihar did not by itself constitute a 'sale' and did not by itself attract that tax. The taxable event still remained the 'sale' resulting in the transfer of ownership in the thing sold from the seller to the buyer. No tax liability actually accrued until there was a concluded sale in the sense of transfer of title. It was only when the property passed and the 'sale' took place that the liability for paying sales tax under the 1947 Act arose. There was no enlargement of the meaning of 'sale' but the proviso only raised a fiction on the strength of the facts mentioned therein and deemed the 'sale' to have taken place in Bihar. Those facts did not by themselves constitute a 'sale' but those facts were used for locating the situs of the sale in Bihar. It follows, therefore,

that the provisions of section 4(1) read with section 2(g), second proviso, were well within the legislative competency of the Legislature of the Province of Bihar."

The learned Chief Justice, in considering the question whether the presence of goods in Bihar constituted a real and pertinent nexus to the subject matter of taxation, observed at page 1377 :-

"It is unnecessary in this case to lay down any hard and fast test as to the sufficiency of nexus which will enable a State to impose a tax or to enumerate the instances of such connection. For the purpose of the present case it is sufficient to state that in a sale of goods, the goods must of necessity play an important part, for it is the goods in which, as a result of the sale, the property will pass. In our view the presence of the goods at the date of the agreement for sale in the taxing State or the production or manufacture in that State of goods the property wherein eventually passed as a result of the sale wherever that might have taken place, constituted a sufficient nexus between the taxing State and the sale. In the first case the goods are actually within the State at the date of the agreement for sale and the property in those goods will generally pass within the State when they are ascertained by appropriation by the seller with the assent of the purchaser and delivered to the purchaser or his agent. Even if the property in those goods passes outside the State the ultimate sale relates to those very goods. In the second case the goods, wherein the title passes eventually outside the State, are produced or manufactured in Bihar and the sale wherever that takes place is by the same person who produced or manufacture the same in Bihar. The producer or manufacturer gets his sale price in respect of goods which were in Bihar at the date when the important event of agreement for sale was made or which were produced or manufactured in Bihar. These are relevant facts on which the State could well fasten its tax."

In the Tata Iron & Steel Co.'s case 1958 SCR 1355; 1958 (9) STC 267), the course of dealing between the manufacturer and the purchaser was described as follows :-

"The intending purchaser has to apply for a permit to the Iron and Steel Controller at Calcutta, who forwards the requisition to the Chief Sales Officer of the assessee working in Calcutta. The Chief Sales Officer thereafter makes a 'works order' and forwards it to Jamshedpur. The 'works order' mentions the complete specification of the goods required. After the receipt of the 'works order' the Jamshedpur factory initiates a 'rolling' or 'manufacturing' programme. After the goods are manufactured, the Jamshedpur factory sends the invoice to the Controller of Accounts who prepares the forwarding notes, and on the basis of these forwarding notes, railway receipts are prepared. The goods are loaded in the wagon at Jamshedpur and despatched to various stations, but the consignee in the railway receipt is the assessee itself and the freight also is paid by the assessee. The railway receipts are sent either to the branch offices of the assessee or to its bankers, and after the purchaser pays the amount of consideration, the railway receipt is delivered to him. These facts are admitted and the correctness of these facts are not disputed by the State of Bihar."

In that case, it is to be noted that the goods sold at Calcutta were not in existence at the time when the requisition was made by the Iron and Steel Controller. Again, the requisition made by the Controller and the manufacture of the goods in pursuance thereof by the company did not result in a contract between the company and the purchaser and the situs of the sale had to be determined by applying the second part of the second proviso. Even if it be assumed that the requisition and manufacture of goods in pursuance thereof resulted in a contract, the situs of the sale had still to be determined on the plain words used by the Legislature under the second part of the second proviso to the definition of sale in section 2(g). This Court, by a majority, in *Tata Iron & Steel Co.'s case* 1958 SCR 1355; 1958 (9) STC 267 held that the provisions of section 4(1) read with section 2(g), second proviso, of the Bihar Sales Tax Act as amended by the Bihar Sales Tax (Amendment) Act, VI of 1949, were within the legislative competence of the Legislature of the Province of Bihar, on the ground that the second proviso added by the amending Act did not extend the meaning of the expression "sale" so as to include a contract of sale : what it actually did was to lay down certain circumstances in which a sale, although completed elsewhere, was to be deemed to have taken place in Bihar. It was observed that, "the goods must necessarily play an important part. The circumstances mentioned in the proviso to section 2(g) of the Act, namely, the presence of the goods in Bihar at the date of the agreement of sale or their production or manufacture there must be held to constitute a sufficient nexus between the taxing Province and the sale whether that might take place."

In view of that judgment, the question as to the legislative competence of the State of Bihar to enact section 2(g) as amended by Bihar Act VI of 1949 is not open to be canvassed in these appeals, and it must be held that even though at the time when the property in the goods passed, the goods were not within the State of Bihar, they were still, according to the law applicable at the material time, liable to pay sales tax if the goods were produced or manufactured in Bihar by the producer or manufacturer. We may observe that the vires of section 2(g) of the Bihar Sales Tax Act fell in *Tata Iron & Steel Co.'s case* 1958 SCR 1355; 1958 (9) STC 267) to be determined in the light of the provisions of the Government of India Act, 1935, and the Court was not concerned to decide the legislative competence in the light of Article 286 of the Constitution. Similarly in all the appeals before us the question of vires has to be adjudged in the light of the provisions of the Government of India Act and not the Constitution.

We may now proceed to deal with the facts which give rise to these six appeals which fall in four groups.

#### CIVIL APPEAL NO. 338 OF 1958.

The appellant in this appeal is the Bharat Sugar Mills Ltd., a public limited company which has its registered officer at Calcutta and its factory for manufacturing sugar at Sidhwalia in the district of Saran in Bihar. The appellant was registered as a "dealer" under the Bihar Sales Tax Act. For the period of assessment 1949-50, (April 1, 1949, to March 31, 1950) the Superintendent of Sales Tax, Chapra, determined the gross turnover of the appellant at Rs. 82, 79, 207-4-6 and the taxable turnover at Rs. 66, 33, 155-8-3. In computing the taxable turnover, the Sales Tax Officer included sales of the value of Rs. 16, 33, 959-5-3 in respect of goods despatched for sale by the appellant to its registered office at Calcutta and sales of goods of the value of Rs. 7, 25, 965-11-6 delivered after

January 25, 1950, in other States for consumption therein. Against the order of assessment by the Superintendent of Sales Tax, the appellant preferred an appeal to the Deputy Commissioner of Sales Tax. The appellate officer modified the order of assessment and excluded from the taxable turnover the amount of Rs. 16, 33, 959-5-3 being the value of goods despatched for sale to the head office at Calcutta. In the view of the appellate officer, mere transfer of goods from one branch to another of a dealer "did not come under the definition of sale". The appellant then preferred a revision application to the Board of Revenue, Bihar, challenging its liability to pay tax in respect of the sales of goods of the value of Rs. 7, 25, 965-11-6 outside the State of Bihar on or after the 26th January, 1950. The Board of Revenue upheld the contention of the appellant with regard to this amount holding that the same was not liable to be included in the taxable turnover; but it *sup motu* proceeded to revise the order of the Deputy Commissioner in so far as it related to goods of the value of Rs. 16, 33, 959-5-3 despatched to Calcutta for sale from the manufacturing centre. In the view of the Board of Revenue these goods were liable to be taxed under section 2(g) even though the sales were effected outside the taxable territory. The Board of Revenue therefore remanded the case with a direction to examine and ascertain the actual sales made within the period in question, i.e., from April 1, 1949, to January 25, 1950, out of the despatched outside Bihar made in that period, regardless of whether these despatches were made in pursuance of any previous contract and to include the sum so determined in the turnover for assessment to sales tax. The appellant then obtained an order from the High Court of Judicature at Patna directing the Board of Revenue to make a reference under section 25(3) of the Bihar Sales Tax Act and the Board of Revenue referred to the following question :-

"Whether the second proviso of section 2(g) of the Bihar Sales Tax Act as it stood prior to the amendment by Bihar Act VII of 1951 was constitutionally valid and whether the assessment of sales tax upon the assessee for the period from the 1st of April, 1949, to the 25th of January, 1950, is in the circumstances of the case, legally valid."

The High Court was of the view that the question raised in the reference was covered by its judgment in *Messrs Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1956 (7) STC 158; 1956 AIR(Pat) 92) and answered the question against the appellant and in favour of the State of Bihar. Against the order passed by the High Court this appeal was preferred with special leave under Article 136 of the Constitution. In the meantime, the judgment of the High Court in *Messrs Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1956 (7) STC 158; 1956 AIR(Pat) 92) was brought in appeal before this Court with special leave and this Court substantially agreed with the view of the Patna High Court, and for reasons already stated, held that section 2(g) of the Bihar Sales Tax Act as it stood at the material time was constitutionally valid and that the assessee in that case was properly taxed for the period 1st April, 1949, to 25th January, 1950 (see *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1958 SCR 1355; 1958 (9) STC 267)).

In view of the decision of this Court, the judgment of the High Court must be affirmed. This appeal is therefore dismissed with costs.

CIVIL APPEALS NOS. 339 AND 340 OF 1958.

The appellant, the Tata Iron & Steel Co., Ltd., is a manufacturer of iron and steel, and has a factory at Jamshedpur in the State of Bihar. The registered office of the appellant is in Bombay and its head sales office is in Calcutta in the State of West Bengal. It has branch sales offices and stockyards in various States. Iron and steel are controlled commodities and are sold pursuant to the instructions issued by the Iron and Steel Controller. When requisition for supply of steel and iron is received from the Controller, the appellant proceeds to manufacture according to a rolling programme settled by the Controller. Evidently, at the time of the requisition, the goods are not in existence. The goods manufactured according to the requisition are despatched to various places where they are sold to purchasers on whose behalf the requisition is made. The appellant is registered as a "dealer" under the Bihar Sales Tax Act. For the period between April 1, 1949, to March 31, 1950, the appellant filed a return under the Bihar Sales Tax Act before the Sales Tax Officer, Singhbhoom Circle, Jamshedpur showing a gross turnover of Rs. 25, 68, 51-124-1-6. The appellant claimed exclusion of a sum of Rs. 13, 35, 51, 870-12-0 out of the gross turnover on the ground that the goods were delivered and consumed outside the State of Bihar though manufactured at Jamshedpur. The appellant contended that property in the goods passed outside the State of Bihar, that the entire transaction of sale took place outside the State of Bihar and even the delivery was given outside that State. The appellant also claimed a deduction of Rs. 56, 48, 434 from the gross turnover of railway freight charged to the purchasers on the ground that the price of materials supplied was fixed by the Iron and Steel Controller and to that amount the appellant was allowed to add permissible freight charges. The Sales Tax Officer disallowed the claim made by the appellant, and his order was confirmed by the Deputy Commissioner of Sales Tax, Bihar. In exercise of its revisional jurisdiction, the Board of Revenue modified the order of assessment and directed that tax could not be levied on goods despatched outside Bihar on or after January 26, 1950. The appellant preferred an appeal with special leave under Article 136 of the Constitution against the order of the Board of Revenue. The appellant also obtained an order from the High Court directing the Board of Revenue to refer seven questions to the High Court under section 25 of the Bihar Sales Tax Act. The questions substantially related to the vires of section 2(g) of the Bihar Sales Tax Act as amended by Bihar Act VI of 1949 and the liability of the appellant to pay sales tax on "the railway freight collected with the prices" of the materials sold. The High Court was of the view that in dealing with the first six questions relating to the vires of section 2(g) of the Bihar Sales Tax Act as amended by Bihar Act VI of 1949 and the liability of the appellant to be assessed to tax in respect of goods manufactured in Bihar but sold outside, they were bound by their judgment in *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1956 (7) STC 158; 1956 AIR(Pat) 92). The High Court accepted the contention of counsel for the appellant that the railway freight collected by it was not to be included in the taxable turnover and accordingly directed that if the appellant satisfied the taxing authorities as to what amount was spent towards the cost of freight and collected as such, the appellant would be entitled to deduction of that amount from the calculated turnover. Against the order passed by the High Court in so far as it related to the rejection of its plea that section 2(g) was ultra vires and that it was not liable to be taxed in respect of sales effected outside Bihar merely on the ground that the goods were manufactured in the State of Bihar, the appellant appealed to this Court with special leave under Article 136 of the Constitution. These two appeals - one against the order of the High Court and the other against the order of the Board of Revenue - raise the identical question which was decided in *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1958 SCR 1355; 1958 (9) STC 267). We are bound by the judgment in that case. We accordingly hold that the appeals fail and are dismissed with costs. There will be one

hearing fee.

CIVIL APPEAL NO. 3 OF 1960.

C. & E. Morton (India) Ltd., is the appellant in this appeal. The appellant carries on the business of manufacturing confectionery at Marhowrah in the district of Saran in Bihar. Its registered officer is in Calcutta and it sends the manufactured goods to Calcutta for sale to its consumers. The appellant is a registered dealer under the Bihar Sales Tax Act. For the period of assessment 1949-50, i.e., from April 1, 1949, to March 31, 1950, the Superintendent of Sales Tax, Chapra, assessed the taxable turnover at Rs. 30, 60, 737-11-9. In that amount was included an amount of Rs. 10, 66, 537-8-0 being the value of goods sent to the head office at Calcutta and Rs. 3, 72, 777-10-0 delivered outside the State of Bihar on or after January 26, 1950, in other States of consumption. The order of assessment was challenged by the appellant by an appeal to the Deputy Commissioner of Sales Tax, Bihar, Patna. That officer excluded from the taxable turnover the amount of Rs. 10, 66, 577-8-0 holding that "mere transfer of goods from one branch to another of a dealer" did not fall within the definition of sale. He also directed that the claim of the appellant to immunity from tax of the amount of Rs. 3, 72, 777-10-0 being the value of goods sold outside the State of Bihar on or after January 26, 1950, be examined in the light of the judgment of this Court in the State of Bombay and Another v. The United Motors (India) Ltd. and Others 1953 SCR 1069; 1953 (4) STC 133). In a revision application preferred by the State of Bihar to the Board of Revenue, it was held that the amount of Rs. 10, 66, 577-8-0 being the price of the goods transferred for sale from the manufacturing centre to Calcutta was liable to be included in the taxable turnover. The High Court directed the Board of Revenue to state a case with regard to the question arising out of the order of assessment and the Board of Revenue referred a question as to the vires of section 2(g) of the Bihar Sales Tax Act and the liability of the appellant to pay sales tax in respect of sales between April 1, 1949, and January 25, 1950. At the hearing of the reference, the High Court following its judgment in Tata Iron & Steel Co., Ltd. v. The State of Bihar 1956 (7) STC 158; 1956 AIR(Pat) 92) decided the reference against the appellant. Against that order, this appeal with special leave has been preferred under Article 136 of the Constitution. As the order passed by the Patna High Court in Tata Iron & Steel Co., Ltd. v. The State of Bihar 1956 (7) STC 158; 1956 AIR(Pat) 92) has been confirmed by this Court, vide Tata Iron & Steel Co., Ltd. v. The State of Bihar 1958 SCR 1355; 1958 (9) STC 267), this appeal must fail and is dismissed with costs.CIVIL APPEALS NOS. 791 AND 792 OF 1957.

M/s. Debijhora Tea Co., Ltd., the appellant, is a limited liability company having its registered office at Jalpaiguri in the State of West Bengal. It carries on the "business of production, manufacture and export of tea" and owns a tea garden in the district of Purnea situated in the State of Bihar. The appellant is registered as dealer under the Bihar Sales Tax Act, 1947. For the period of assessment between April 1, 1949, to March 31, 1950, the appellant's taxable turnover was estimated by the Assistant Superintendent of Sales Tax, Kishunganj Circle, Bihar, at Rs. 4, 68, 853 and the appellant was directed to pay sales tax on that amount. The appeal filed by the appellant against the order of assessment to the Commissioner of Sales Tax was dismissed by that officer. In a revision application to the Board of Revenue, the liability of the appellant to pay sales tax in respect of goods manufactured in the State of Bihar but not sold in that State was restricted to the period between April 1, 1949, and January 25, 1950. The High Court at Patna directed the Board of Revenue to refer

two questions under section 25(3) of the Bihar Sales Tax Act. The questions related to the vires of section 2(g) of the Bihar Sales Tax Act, 1947, as amended by Act VI of 1949 and the liability of the appellant to pay sales tax on the sales of commodity outside the State of Bihar.

The appellant was also assessed for the period between October 1, 1948, and March 31, 1949, on a taxable turnover of Rs. 2, 95, 680 to pay sales tax and penalty. The appellant's appeal to the Additional Commissioner was dismissed and the order was confirmed in revision by the Board of Revenue. At the direction of the High Court at Patna, the Board of Revenue referred two questions for the opinion of the High Court. The questions referred were the same as those referred in respect of the period between April 1, 1949, and January 25, 1950. The High Court at the hearing of the reference held, following its judgment in *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1956 (7) STC 158; 1956 AIR(Pat) 92, that the sales of commodities manufactured in Bihar were liable to be taxed even though they were effected in Calcutta, and that section 2(g) as amended by Bihar Act VI of 1949 was not ultra vires. Against the order passed by the High Court, these two appeals have been preferred with special leave under Article 136 of the Constitution. The High Court followed their earlier decision and that earlier decision has been confirmed by this Court : vide *Tata Iron & Steel Co., Ltd. v. The State of Bihar* 1958 SCR 1355; 1958 (9) STC 267). For reasons set out therein, these two appeals must fail and are dismissed with costs. There will be one hearing fee.