

Kailash Nath & Anr vs State Of U.P. & Ors on 22 February, 1957

Equivalent citations: AIR 1957 SUPREME COURT 790

Bench: N.H. Bhagwati, B. Jagannadhadas, S.J. Imam, P.G. Menon, J.L. Kapur

CASE NO.:

Writ Petition (civil) 94 of 1956

PETITIONER:

KAILASH NATH & ANR.

RESPONDENT:

STATE OF U.P. & ORS.

DATE OF JUDGMENT: 22/02/1957

BENCH:

N.H. BHAGWATI & B. JAGANNADHADAS & S.J. IMAM & P.G. MENON & J.L. KAPUR

JUDGMENT:

JUDGMENT AIR 1957 SC 790 The Judgment was delivered by GOVINDA MENON, J. :

GOVINDA MENON, J. - This petition under Article 32 of the Constitution raises the question as to whether the 1st respondent, the State of Uttar Pradesh, illegally and unauthorisedly levied sales tax on the 2nd petitioner-firm, under the Uttar Pradesh Sales Tax Act (U.P. Act XV of 1948) with regard to the cloth manufactured by the 2nd petitioner, with a view to exporting such cloth outside the territories of India, by customers of the 2nd petitioner called "indentors".

The 1st petitioner is the director of Messrs Cawnpore Textiles Limited, a public limited company, having its registered office in Kanpur, the 2nd petitioner being the company itself, whose business is the manufacture of cotton cloth and yarn intended for sale in India, as also for export abroad. In the course of that business, the 2nd petitioner sells quantities of cloth to persons styled as indentors who after dyeing and hand-printing them, export them overseas. The 2nd petitioner is a dealer as defined in section 2(c) of the Uttar Pradesh Sales Tax Act, which by section 3 lays down that every dealer shall, subject to the provisions of the Act, in every assessment year, pay a tax on his turnover of each year which shall be determined in such manner as may be prescribed. Under section 4 of that Act, the State Government has been empowered either to exempt certain kinds of transactions from the payment of sales tax completely, or to allow a rebate of a portion of the tax payable. In pursuance to that, the Uttar Pradesh Government on 3rd December, 1949, issued a Notification No. ST-6499-X-902(20)48, that with effect from 1st December, 1949, the provisions of section 3 of the Act (relating to the levy of sales tax) shall not apply to the sales of cotton cloth or yarn manufactured in Uttar Pradesh, made on or after 1st December, 1949, with a view to export such cloth or yarn outside the territories of India on the condition that the cloth or yarn is actually exported and proof

of such actual export is furnished. This notification having been made in accordance with the power conferred by the statute has statutory force and validity and therefore the exemption is as if it is contained in the parent Act itself. The question for decision in this petition is whether the petitioners are entitled to avail themselves of this exemption and whether therefore the levy of tax is illegal. During the assessment years 1952-53, 1953-54 and 1954-55, the petitioners had sold quantities of cotton cloth to constituents of theirs who thereafter printed such cloth with hand-made apparatus and exported them overseas as hand-printed cloth. Such customers are known as indentors who had placed orders with the petitioners for the manufacture of cloth. The modus operandi followed by the indenter in the transaction of business is to the following effect :- Having received orders for the supply of hand-printed cloth from merchants overseas, the indenter applies to the Chief Controller of Export and Import, Ministry of Commerce, Government of India, for the grant of an export licence which, when granted, permits him to export cotton piece-goods to be manufactured by a textile mill, specified in such a licence. The licence also names the mills where the cotton cloth is to be manufactured and further descriptions of the cloth are also given. A copy of the licence is given to the indenter and another copy is sent to the textile mill named in the licence which is to manufacture the cloth. Thereafter the mill receives the order from the indenter to manufacture the cloth intended for export under the licence and the required quantity is delivered to the indenter after manufacture in the mills. On delivery the indenter pays the excise duty of the Central Government and removes the goods to his actual place of business. The cloth is then printed by hand-printing and exported. It is to this kind of cloth manufactured with a view to export overseas for which a licence has already been granted by the Central Government, that the exemption from sales tax referred to in the notification above-mentioned applies.

According to the petitioners, during the three years, namely, 1953, 1954 and 1955, they had been assessed to sums of money on this account which they should not have been because of the exemption. Samples of export licence as well as the intimation to the manufacturers were placed before the Court and no objection was taken by the counsel appearing on behalf of the State Government to their correctness. The conditions on which the licence has been granted are that the licence is valid only for export by the named consignor to the particular ultimate consignee named therein, and if the original transaction licensed breaks down or if any change of consignee is initiated by the exporter or any middleman without proper authority, the goods consigned are liable to be detained en route. When the Sales Tax Officer attempted to assess the petitioners for the three years referred to above, along with other items on the quantity of cloth sold by them to the indentors for the purpose of hand-printing and export overseas, he did not accept the objections raised in the footing of the exemption and passed the final assessment order in each case.

With regard to the years 1952-53 and 1954-55, the Sales Tax Officer did not find that as a matter of fact the quantities sold to the indentors had actually been exported, with the result that the exemption clauses could not be availed of. We are told that appeals against those two years of assessment are pending before the Judge of Appeals, Sales Tax. With regard to the year 1953-54 also, there was an appeal and in those proceedings the Appellate Judge after finding that cloth had actually been exported, came to the conclusion that what was exported was not such cloth because after purchase by the indentors, the cloth had been prepared and processed so that the resulting article was not the same as that sold by the petitioners. That being the case, in the opinion of the

Sales Tax Appellate Judge exemption clause would not apply, as it would be applicable only if the cloth in the exact condition and manner without any kind of change, transformation or alternation, had been exported.

In the affidavit filed in this Court on behalf of the State Government, paragraph 12 is as follows :-

"That it is submitted that the exemption from tax was refused on the legal ground that sales of this nature, even if the processed cloth was ultimately exported, were not covered by the exemption; but the fact of the actual export of the processed cloth was not gone into and even if it is held that the exemption is permissible in respect of such sales, then it will have to be established as a fact that the cloth sold by the petitioner was actually exported out of India."

This contention cannot be accepted in toto because the order of the Appellate Sales Tax Judge for the year 1953-54 proceeds on the footing that there had actually been export of cloth for that particular year. In these circumstances, we propose to discuss the validity of the assessment for the year 1953-54 only, for the reason that with regard to the other two years the fact of export itself is disputed. It has to be mentioned that it is only on facts admitted or taken as proved that the question of the violation of a fundamental right can be decided by this Court under Article 32, because when facts are in dispute, the matter has to be enquired into and decided by proper legal proceedings.

Confining ourselves, therefore, to the legality of the levy of tax for the year 1953-54, the question is whether the State had any authority to impose the tax in the circumstances. If a tax is levied without due legal authority on any trade or business, then it is open to the citizen aggrieved to approach this Court for a writ under Article 32, since his right to carry on a trade is violated, or infringed by the imposition and such being the case, Article 19(1)(g) comes into play.

An objection has been taken on behalf of the State Government that the imposition of an illegal tax will not entitle the citizen to invoke Article 32; but he must resort to remedies available under the ordinary law or proceed under Article 226 of the Constitution, in view of the fact that the right to be exempted from the payment of tax cannot be said to be a fundamental right which comes within the purview of Article 32. This argument has no force in view of the decision of this Court in *Bengal Immunity Company Limited v. The State of Bihar & Others* 1955 (2) SCR 603, 618; 1955 (6) STC 446), where a Full Bench dealing with the Bihar Sales Tax Act, 1947, observed as follows :-

"We are unable to agree with the above conclusion. In reaching that conclusion the High Court appears to have overlooked the fact that the main contention of the appellant company, as set forth in its petition, is that the Act, in so far as it purports to tax a non-resident dealer in respect of an inter-State sale or purchase of goods, is ultra vires the Constitution and wholly illegal. In the impugned Act there are various provisions laying down conditions which dealers must comply with or submit to, namely, to give only a few instances, compulsory registration of dealers (section 10), filing of returns (section 12), attendance and production of evidence in support of the

return (section

13), production, inspection and seizure of books of account or documents and search of premises (section 17). Section 26 prescribes penalties for contravention of the provisions of the Act. These and other like provisions in the Act undoubtedly constitute restrictions on the fundamental right to carry on business which is guaranteed to every citizen of India by Article 19(1)(g) of the Constitution. If, as contended, the Act is ultra vires the Constitution and consequently void these onerous conditions can never be justified as reasonable restrictions within the meaning of clause (6) of that article as this Court held in the case of Mohammed Yasin v. The Town Area Committee, Jalalabad (1952 3 S.C.R. 572). The same view was also expressed in *The State of Bombay v. The United Motors (India) Ltd.* (1953 4 S.C.R. 1069, 1077; 1953 (4) STC 133), and again only recently in *Himmatlal Harilal Mehta v. The State of Madhya Pradesh* (1954 5 S.C.R. 1122, 1127; 1954 (5) STC 115)."

In addition to the cases cited above, there is a more recent authority dealing with the subject, viz., *Bidi Supply Co. v. The Union of India and Others* 1956 SCR 267, 277). What we have, therefore, to ascertain is whether the interpretation put upon the exemption clause by the Sales Tax Authorities with regard to the quantity of cloth sold during the year 1953-54, to the indentors is sound in law. One of the arguments advanced on behalf of the State is that the quantity of cloth sold was not specifically manufactured for that purpose because there is an observation by the Sales Tax Officer that it was admitted before him that from the existing manufactured cloth available with the manufacturers the quantity intended for export was sold and that there was no manufacture in accordance with the directions given in the licence. It is urged that in such a case the exemption cannot be availed of. In our opinion, it is not necessary for the application of the exemption clause that there should be an initial manufacture with a view to make a sale for export but that the exemption will be satisfied even if already existing manufactured cloth is sold with a view to export. All that is essential is the sale of cotton cloth or yarn made on or after 1st December, 1949, with a view to export. The exemption will be attracted if the sale is made on or after the particular date for the specific purpose. The essential pre-requisite is that the sale must be made with a view to export as the emphasis is on the word "sale" and its time and purpose and not the manufacture of the cloth at a particular time for a particular purpose. Three conditions are necessary to be fulfilled in order to attract the exemption under the notification. They are (1) cloth must be manufactured in U.P.; (2) the sale should be on or after 1st December, 1949, with a view to export, and (3) there should be actual export of such cloth. On the facts admitted or found there has been a sale and also that export has taken place of such cloth but what is urged is that the thing exported is not the same, and reliance is placed upon the words "such cloth". Mr. Mathur contends that when the quantity of cloth sold by the petitioners is printed, coloured or dyed, it gets transformed into some other material and therefore what is exported is not the same cloth. By such printing and dyeing the original cloth gets metamorphosed into a different material with incidents not the same and appearance and colour changed. We are of the opinion that this argument is unsound. By using the word "such" what the Legislature has laid down is not that the identical thing should be exported in bulk and quantity or that any change in appearance would be crucial to alter it. Mr. Mathur relied upon *State of Travancore-Cochin and Others v. Shanmugha Vilas Cashew-Nut Factory and Others* 1954 SCR 53;

1953 (4) STC 205), wherein this Court held that where cashew-nuts were purchased, conditioned and processed for export abroad, the exported article is not the same as the one purchased and therefore the exemption under Article 286 would not apply. It seems to us that there is a vast difference between prepared cashew-nuts and printed cloth and the observations there can, by no stretch of imagination, have any application to this case. We are of the view that the words "such cloth or yarn" would mean the cloth or yarn manufactured in U.P. and sold. It has nothing to do with the transformation by printing and designs on the cloth. The cloth exported is the same as the cloth sold with this variation or difference that the colour has changed by printing and processing. In the view which we take that the cloth exported is the same as the cloth sold by the petitioners, there can be no question about the exemption clause not applying to it and if the exemption applies, then the tax has been levied without jurisdiction. The disputed levy of sales tax for the year 1953-54 is not according to law and to that extent the levy of tax is hereby quashed. The parties will bear their own costs in this Court.