Vitthalbhai Naranbhai Patel vs C.S.T. M.P. Nagpur on 6 September, 1960

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

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           CASE NO.:
Appeal (civil)  415 of 1957

PETITIONER:
VITTHALBHAI NARANBHAI PATEL

RESPONDENT:
C.S.T. M.P. Nagpur

DATE OF JUDGMENT: 06/09/1960

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

JUDGMENT:
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JUDGMENT AIR 1967 SC 344 The Judgment was delivered by HIDAYATULLAH, J.

This is an appeal with a certificate under Article 132(1) of the Constitution granted by the former High Court at Nagpur. During the course of the hearing, the appellant applied under Article 132(3) for leave to appeal to this Court on the ground that other questions had been wrongly decided. We shall refer to that petition later.

The appellant is the proprietor of a firm called C.P. General Agency, and held a sales tax registration certificate for the period, November 13, 1947, to November 1, 1948. For that period, he filed a return under the Central Provinces and Berar Sales Tax Act, showing a gross turnover of Rs. 73, 713-6-0, as sales of goods mentioned in schedule I of the Act, and Rs. 1, 28, 923-7-3, as sales of other goods. He also paid an advance tax of Rs. 2, 239-6-6. He was assessed on March 17, 1953, by the Assistant Commissioner of Sales Tax. His total turnover was computed at Rs. 13, 93, 635-10-6, and a total tax of Rs. 44, 153-3-6 was assessed. In the return filed by the appellant, he had claimed exemption on sales of bidis amounting to Rs. 12, 99, 389-9-9 on the ground that they were exported from the taxable territories before the contract for sale was entered into. The case of the appellant for exemption was that he had two godowns for bidis at Ujhani and Haldwani in Uttar Pradesh, which were managed by the Central Bank of India on his behalf, and that the goods were stored at these godowns, and were delivered against orders by the Central Bank of India, who also acted as the appellant's bankers.

Against the order of assessment, an appeal was filed before the Commissioner. By that time, the Sales Tax Act was amended making it incumbent upon the appellant to deposit the assessed tax as a condition precedent to the admission of the appeal. The appellant did not comply with this requirement of the law, and the appeal was dismissed.The appellant then moved the High Court at

Nagpur under Article 226 of the Constitution for a writ of mandamus compelling the Commissioner to hear and determine the appeal, without the deposit of the assessed tax as required by the amendment. In the grounds which were mentioned in the petition, the appellant had stated that the sales from the godowns in Uttar Pradesh were exempt both by virtue of explanation to section 2(g) of the Sales Tax Act and Article 286 of the Constitution. The petition, however, was for the only relief that the appeal should be ordered to be re-heard. The petition of the appellant was heard with orders, in which the constitutional point was in the forefront. The High Court disposed of all the petitions by a common order, and dismissed them, relying upon the United Motors case (1953 SCR 1069; 1953 (4) STC 133). It appears that the special point involved in this case was overlooked completely, and nothing was said about the competency of the appeal. It may be mentioned that when the petition was filed in the High Court, the decision of this Court in Hoosein Kasam Dada's case (1953 SCR 987; 1953 (4) STC 114) was already given, and was known.

When the appellant applied for a certificate to appeal to this Court, he set out the identical grounds which he had relied upon in the original petition. He made the petition under Article 132 and 133 of the Constitution, intending apparently to urge all the grounds before this Court. The High Court, however, gave the certificate only under Article 132(1), confining the appeal to the matters mentioned in that clause. It was because of the restricted certificate that the application to appeal on other grounds was filed during the course of the hearing which, on consideration, we decided to reject intimating the counsel that the reasons would be given later.To begin with, Dr. Barlingay urged that the interpretation of the definition of "sale" by the High Court was incorrect, and that a distinction must be made between a contract for sale and a completed sale under the Sale of Goods Act. He contended that his case was wrongly apprehended, inasmuch as there was no sale within the taxable territories but only a contract for sale, and the goods not being within the taxable territories at the material time, neither the definition of "sale" nor the Explanation to section 2(g) would apply. This point is not open for argument, in view of the fact that it does not involve an interpretation of the Constitution to which the certificate is limited. An application to urge other grounds could have been made a long time ago, and it would not be proper for us to allow an application to be made in the course of the hearing, which is likely to take the other side by surprise. Even if we were inclined to allow the application, on the record of the appeal before us there is hardly any material to show beyond the argument of counsel that sales or contracts of sale did not take place before the goods had left the taxable territories. There is a faint allusion to it in the assessment order of the Assistant Commissioner, and even the petition does not make sufficient averments to sustain this plea. In view of these reasons, we intimated counsel that we would dismiss the application to urge other grounds.

The question of interpretation of the Constitution hardly arose on the original petition as filed in the High Court. But for the fact that this petition was heard along with other petitions, the High Court need not have gone into a consideration of Article 286 at all. That point, therefore, does not arise in this appeal.That leaves over for consideration the question whether Hoosein Kasam Dada's case (1953 SCR 687; 1953 (4) STC

114), should be applied. That also presents some difficulty to us. We have before us the petition which was made in the High Court, and we cannot allow that petition to be amended. That petition

does not mention the dates on which the return was filed, so that we could apply the dictum of this Court in Hoosein Kasam Dada's case (1953 SCR 687; 1953 (4) STC 114). Dr. Barlingay deduces the date of the filing of the return from the dates on the challans accompanying the payment of tax in the treasury, and argues that this was prior to the amendment. He contends that this is sufficient for the application of the principle in the said case.

The decision in Hoosein Kasam Dada's case (1953 SCR 687; 1953 (4) STC 114) proceeded on the ground that when a lis commences, all rights get crystallised and no clog upon a likely appeal can be put, unless the law was made retrospective, expressly or by clear implication. From the record of this case, we cannot say when the lis commenced, and unless it can be proved conclusively that it was before the amendment of the law, the rule in Hoosein Kasam Dada's case (1953 SCR 687; 1953 (4) STC 114) cannot apply. There is no averment that a right of appeal had vested, and has been wrongly taken away.

For these reasons, we are of opinion that this appeal cannot succeed, and it is accordingly dismissed with costs.