

## **The Sales Tax Officer, Navgaon, And Anr. vs Timber And Fuel Corporation on 22 February, 1973**

**Equivalent citations: AIR1973SC2350, (1973)2SCC292, [1973]31STC585(SC), AIR 1973 SUPREME COURT 2350, 1973 2 SCC 292, 1973 TAX. L. R. 2425, 1973 JABLJ 1053, 31 S T C 585, 1973 31 STC 585, 1973 SCC (TAX) 496**

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**Bench: H.R. Khanna, K.S. Hegde, P. Jaganmohan Reddy**

### **JUDGMENT**

K.S. Hegde, JJ.

1. In this appeal by certificate, three contentions were advanced, namely:

(1) the High Court was not justified in interfering with a proceeding that was pending before the tax department, by exercising its extraordinary jurisdiction under Article 226 of the Constitution ;

(2) the High Court erred in holding that the transfer of timber from Madhya Pradesh to Uttar Pradesh did not amount to sale; and (3) the High Court further erred in holding that sales effected by the assessee in Madhya Pradesh were not first sales.

2. The facts of the case lie within a narrow area. The assessee is a registered dealer under the Madhya Pradesh Sales Tax Act. It was a forest contractor which had purchased large quantity of timber from the forest department of the Madhya Pradesh in the auctions held by the department. The assessee was at the first instance assessed by the Assistant Sales Tax Officer, who accepted the return of the assessee and came to the conclusion that the assessee was not liable to be taxed at all. Thereafter, the Sales Tax Officer started assessment proceedings against the assessee. He came to the conclusion that the sales effected by the assessee in Madhya Pradesh are first sales (the turnover relating to those sales amounted to rupees one lakh) and the same was liable to be taxed under the Madhya Pradesh Sales Tax Act. He further came to the conclusion that the timber transported by the assessee from Madhya Pradesh to Uttar Pradesh of the value of Rs. 9,62,450 must also be considered as sales for the purpose of levying sales tax. Aggrieved by that decision, the assessee went up in appeal. Even when the appeal was pending, the assessee moved the High Court of Madhya Pradesh to quash the order of the Sales Tax Officer on the ground that he had no jurisdiction to initiate any assessment proceedings against it.

3. The High Court came to the conclusion that though it was open to the assessee to proceed under the provisions of the Sales Tax Act as against the impugned order, under the circumstances of the

case it was appropriate for it to interfere with the impugned order at that stage itself and quash the proceedings. The question whether the petition should have been entertained or not was entirely within the discretion of the High Court. It is true that it was open to the High Court to decline to interfere with the proceedings at that stage. It could have directed the assessee to proceed under the provisions of the Sales Tax Act. But in our opinion the High Court rightly, on the facts and circumstances of the case, thought that this was a fit case where it should interfere with the order made by the Sales Tax Officer. Hence, we see no reasons to interfere with the discretion exercised by the High Court.

4. We shall now take up the question whether the High Court was justified in coming to the conclusion that the transfer of the timber effected by the assessee from Madhya Pradesh to Uttar Pradesh was not sale. The Sales Tax Officer did not come to the conclusion that the assessee had sold any timber to any purchaser in Uttar Pradesh. The case of the assessee was that he had a storing place at Uttar Pradesh and that he had transported certain quantity of timber purchased by him at Madhya Pradesh to Uttar Pradesh. The Sales Tax Officer did not reject that contention. It was not urged before the High Court that the assessee had sold any timber to anyone in Uttar Pradesh. All that was contended before the High Court was that the transfer of timber by the assessee from Madhya Pradesh to Uttar Pradesh amounted to sale under the Madhya Pradesh Sales Tax Act. To say the least, this contention has no merit whatsoever. As the High Court very rightly held that a mere transfer of the goods by the owner from one place to another cannot amount to sale. No provision of the Madhya Pradesh Sales Tax Act supporting a different conclusion was pointed out to us. Hence, nothing more need be said on this point.

5. Now we are left with the sales effected by the assessee in Madhya Pradesh, the turnover of which amounted to rupees one lakh. On this question, there is no dispute about facts. The only question is whether those sales were first sales or second sales. Under the Madhya Pradesh Sales Tax Act, only first sales of timber could be taxed. The second sales were exempt. The period which we are concerned in this case is from October 8, 1959, to February 22, 1962. During that period, the forest department of Madhya Pradesh was considered as a dealer liable to pay tax under the Madhya Pradesh Sales Tax Act. On this point, there is no dispute. There is also no dispute that, as the law stood at the relevant time, the sales of timber by the Madhya Pradesh Forest Department were first sales, which were not exempt from the levy of sales tax. Hence when the taxing events took place, namely, when the sales in question took place, the assessee was not liable to pay any tax in respect of those sales, as the sales effected by him were second sales. But on June 1, 1963, the Madhya Pradesh Government issued a notification exempting the forest department from paying any sales tax in respect of the sales effected by it as from April 1, 1959, to November 2, 1962 (both days inclusive). On the basis of this notification, it is contended that the assessee became retrospectively liable to pay sales tax in respect of the sales effected by it. The question is whether the exemption given to the forest department creates a fresh levy on the assessee with retrospective effect. As mentioned earlier, when the taxing events took place, the assessee was not liable to be taxed. Its liability has to be determined as on those dates. Once we come to the conclusion that it was not liable to pay any sales tax when the sales took place, the fact that the forest department was retrospectively exempted from paying tax from an earlier date cannot make the assessee liable to pay tax which he was otherwise not liable to pay. The Government had no power to levy tax either prospectively or

retrospectively. The power of the Government was merely to exempt one or more dealers from paying tax. That power cannot be used directly or indirectly to retrospectively levy tax on someone else. Hence, we see no substance in any of the contentions advanced on behalf of the appellant. In the result, this appeal fails and is dismissed with costs.