

Hanuman Mining Corporation Ltd. vs The Commissioner Of Sales Tax, Madhya ... on 11 February, 1969

Equivalent citations: (1969)3SCC648, [1970]25STC60(SC)

Author: V. Ramaswami

Bench: A.N. Grover, J.C. Shah, V. Ramaswami

JUDGMENT

V. Ramaswami, J.

1. The appellant is a company incorporated under the Indian Companies Act and carries on business of mining manganese ore and selling the same to various buyers in India. For the calendar year 1st January, 1958, to 31st December, 1958, the appellant was assessed to sales tax under the C.P. and Berar Sales Tax Act, 1947 (since repealed by the Madhya Pradesh General Sales Tax Act, 1958). During the said period the appellant had sold manganese ore to eight different parties outside the State of Madhya Pradesh under written contracts. It was contended on behalf of the appellant before the sales tax authorities that these contracts occasioned movement of the sold goods from the State of Madhya Pradesh to the State of Maharashtra so that all the sales were exempt from tax under the C.P. and Berar Sales Tax Act, 1947, and also under the Madhya Pradesh General Sales Tax Act, 1958 (2 of 1959), which repealed the former. The Sales Tax Officer, Chhindwara, rejected the contention of the appellant and assessed all the sales to tax by his order of assessment dated 5th April, 1960, on a taxable turnover of Rs. 2,22,918 and odd. The appellant took the matter in appeal to the Appellate Assistant Commissioner of Sales Tax but his appeal was dismissed. The appellant preferred a second appeal before the Board of Revenue, Madhya Pradesh. The Board of Revenue allowed the appeal holding that all the sales were exempt from tax under the C.P. and Berar Sales Tax Act, 1947. At the instance of the Commissioner of Sales Tax, Madhya Pradesh, the Board of Revenue stated a case to the High Court under Section 44 of the Madhya Pradesh General Sales Tax Act, 1958, on the following question of law :

Whether on the facts and circumstances of the case the sales of manganese ore by the non-applicant were in the course of inter-State trade and therefore exempt from tax under the old Act or were intra-State sales in this State and therefore liable to tax under the old Act ?

2. By its judgment dated 6th December, 1967, the High Court answered the question against the appellant holding that the sales in question were intra-State sales and liable to be taxed under the C.P. and Berar Sales Tax Act, 1947.

3. The sales of manganese ore were effected during the period 1st January, 1958, to 31st December, 1958. Before the commencement of this period Article 286 of the Constitution was amended on 11th September, 1956, by the Constitution (Sixth Amendment) Act, 1956. By the amendment, the explanation to the first clause to Article 286 was omitted and for Clauses (2) and (3) the following clauses were inserted :

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in Clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

4. By the Constitution (Sixth Amendment) Act, 1956, a new clause in Article 269 was added giving to Parliament the power to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce. In order to carry into effect the conferment of this power, the Constitution (Sixth Amendment) Act inserted a new entry, entry 92-A, in List I of the Seventh Schedule and amended entry 54 of the State List. In exercise of this power under entry 92-A, Parliament enacted the Central Sales Tax Act, 1956, which came into force on the 5th January, 1957. Section 3 of the Central Sales Tax Act, 1956 (74 of 1956), provides as follows :

3. A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(a) occasions the movement of goods from one State to another ; or

(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

5. The interpretation of Section 3(a) of the Central Sales Tax Act was the subject-matter of consideration by this Court in *Tata Iron & Steel Co. Ltd. v. S.R. Sarkar* [1960] 11 S.T.C. 655, and *Shah, J.*, speaking for the majority of the Bench, observed as follows :

In our view, therefore, within Clause (b) of Section 3 are included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto; Clause (a) of Section 3 covers sales, other than those included in Clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and

property in the goods passes in either State.

6. This observation of Shah, J., was cited with approval by this Court in Cement Marketing Co. v. State of Mysore [1963] 14 S.T.C. 175, and again in State Trading Corporation v. State of Mysore [1963] 14 S.T.C. 188. In the latter case Sarkar, J., observed thus :

The question then is, did the sales occasion the movement of cement from another State into Mysore within the meaning of the definition ? In Tata Iron & Steel Co. Ltd. v. S. R. Sarkar [1960] 11 S.T.C. 655, it was held that a sale occasions the movement of goods from one State to another within Section 3(a) of the Central Sales Tax Act, when the movement 'is the result of a covenant or incident of the contract of sale'. That the cement concerned in the disputed sales was actually moved from another State into Mysore is not denied. The respondents only contend that the movement was not the result of a covenant in or an incident of the contract of sale.

7. In that case the court held that the movement of goods was a result of the covenant of the contract of sale or an incident of such contract and so the sale must be treated as inter-State sale as defined in Section 3(a) of the Central Sales Tax Act, 1956. The court did not go into the question as to whether the property had passed before the movement of the goods or not and this was because according to the decision in Tata Iron & Steel Co. Ltd. v. S. R. Sarkar [1960] 11 S.T.C. 655, it did not matter whether the property passed in one State or another. The same principle was reiterated by this Court in K. G. Khosla & Co. (P.) Ltd. v. Deputy Commissioner of Commercial Taxes, Madras Division [1960] 17 S.T.C. 473.

8. In the present case the entire turnover of the appellant consisted of sale of manganese ore to eight firms outside the State, some of Bombay and some of Nagpur. There was a written contract of sale between the appellant and each of these firms, on more or less identical terms, the only material difference being that under two of the contracts the rate was fixed f.o.r. Bombay and under the rest f.o.r. Katanjhari, which is in the State of Madhya Pradesh. There is no dispute that the ore was loaded by the appellant into wagons at Katanjhari indented by the buying firm. There is also no dispute that the wagons went out of the State to Nagpur and Bombay respectively, the buyer acting as consignor and consignee. The only question to be examined is whether the movement of goods from the State of Madhya Pradesh into the State of Maharashtra was occasioned by the terms of the respective contracts. There was an important stipulation in each of the contracts that the first weight at Gondia weigh-bridge shall be the weight for the purpose of the contract. This stipulation in the contract necessitated the movement of the wagons from the State of Madhya Pradesh to the Gondia weigh-bridge for the fulfilment of the terms of the contract as to the payment of the price. Gondia weigh-bridge is outside the State of Madhya Pradesh. On a scrutiny of the terms of the contract, it is clear that the first weighment at the Gondia weigh-bridge was the basis of the fixation of price of the manganese ore and therefore the parties necessarily contemplated the movement of the goods to the Gondia weigh-bridge and the weighment of the goods at Gondia in performance of the terms of the contract. In our opinion, the movement of goods across the frontier was a direct and necessary consequence of the important covenant with regard to the fixation of price. It follows that the sales under the eight contracts were inter-State sales within the language of Section 3(a) of the Central

Sales Tax Act and were not liable to be taxed under the Madhya Pradesh General Sales Tax Act. In our opinion, the present case falls within the ratio of the decision of this Court in Commissioner of Sales Tax, M.P. v. Allwyn Cooper Civil Appeal No. 1208 of 1996 decided on 21-8-1968, since reported at [1970] 25 S.T.C. 26, in which the relevant clauses of the contract of sale were almost identical with the terms of the contract of sale in the present case. The High Court has followed its previous . decision in Commissioner of Sales Tax, Madhya Pradesh v. Nathani Brothers [1968] 21 S.T.C. 465. But for the reasons already given we consider that the decision in Commissioner of Sales Tax, Madhya Pradesh v. Nathani Brothers [1968] 21 S.T.C. 465 was not correct.

9. For these reasons we hold that in the facts and circumstances of this case the sales of manganese ore by the appellant were in the course of inter-State trade and therefore exempted from tax under the C.P. and Berar Sales Tax Act, 1947, and the question of law referred to the High Court must be answered in favour of the appellant and against the Commissioner of Sales Tax, Madhya Pradesh. Accordingly we set aside the judgment of the Madhya Pradesh High Court dated 6th December, 1967, in Misc. Civil Case No. 168 of 1964 and allow this appeal with costs.