

Supreme Court of India

State Of Madras vs Gurviah Naidu & Co. Ltd on 28 October, 1955

Bench: S.R. Das, V. Bose, B. Jagannadhadas, S.J. Imam, N.C. Aiyar

CASE NO. :

Appeal (crl.) 107-110 of 1954

PETITIONER:

STATE OF MADRAS

RESPONDENT:

GURVIAH NAIDU & CO. LTD.

DATE OF JUDGMENT: 28/10/1955

BENCH:

S.R. DAS & V. BOSE & B. JAGANNADHADAS & S.J. IMAM & N.C. AIYAR

JUDGMENT:

JUDGMENT AIR 1956 SC 158 The Judgment was delivered by S. R. DAS, ACTG. C.J Per S. R. Das, Actg. C.J. This judgment will dispose of the four Criminal Appeals Nos. 107 to 110 of 1954.

2. These appeals have been filed by the State of Madras under certificates granted under Article 134(1)(c) of the Constitution by the High Court of Madras which, by its judgment in revision dated the 12th February, 1954, reversed the order dated the 29th December, 1952 passed by the Additional First Class Magistrate II, Salem, and acquitted the accused.

3. The respondents are merchants dealing in hides and skins in Salem. Their business consists mainly in the purchase of hides and skins and exporting the same to foreign countries. The respondents were assessed to sales tax in different amount on their respective turnovers of purchases of skins made by them in pursuance of orders placed with them by foreign buyers for the supply of the same. The respondents having failed to pay the entirety of the amounts of sales tax so assessed, complaints were laid against them under Section 15(b) of the Madras General Sales Tax Act.

4. Before the Magistrate it was contended on behalf of the respondents that the purchases of skins sought to be taxed having taken place in the course of their export out of the territory of India, no sales tax could be levied thereon by reason of Article 286(1)(b) of the Constitution and that, as such, the assessments were illegal and, therefore the non-payment of such illegal impositions was no offence at all. The answer of the prosecution was that the purchases of skins for the purpose of implementing the order of the foreign buyers were not purchases in the course of export within the meaning of Article 286(1)(b) and that, in any event, under Section 16A of the Madras General Sales Tax Act the validity of the assessment could not be questioned in any criminal court in any prosecution or other proceeding whether under the Act or otherwise.

5. After noting the contention of the prosecution that the purchases in question were not in the course of export within the meaning of Article 286(1)(b) but without deciding the same, the learned

Magistrate went on to discuss the second contention of the prosecution, namely, that under Section 16A it was not open to the respondents to question the validity of the assessment. Relying on two decisions of the Madras High Court, the learned Magistrate upheld the contention of the prosecution on the second point.

The fact of assessment and non-payment of the assessed tax having been proved, the learned Magistrate convicted the respondents under Section 15(b) of the Madras General Sales Tax Act and sentenced them to varying fines with provision for simple imprisonment for 15 days in default of payment and also directed that the amount of sales tax remaining due from the respective respondents should be recovered as if the same were a fine.

6. Against their convictions, the respondents separately went up before the High Court in revision. The main controversy in the High Court centered round the validity or otherwise of Section 16A of the Madras General Sales Tax. After dealing at considerable length and in great detail with the respective contentions urged from different aspects, the High Court came to the conclusion that Section 16A of the Madras General Sales Tax Act was 'ultra vires' the Constitution and the provisions of the Criminal Procedure Code and the fundamental principles of criminal justice.

The High Court did not go into the question of the validity or otherwise of the assessments in the light of Article 286(1)(b) of the Constitution. The learned Judges pointed out that the Magistrate, who had heard the evidence, had not recorded any finding as to whether the transactions in respect of which the sales tax was assessed and demanded by the taxing authorities came within the scope of that article. The High Court did not consider the respective contentions of the parties regarding the effect of Article 286(1)(b) on the assessments but stated that in the absence of any proper enquiry into the question in the absence of any discussion of the evidence on this point and of a finding by the trial Court, it was difficult for the High Court to come to any definite conclusion.

The High Court seems to have thought that the respondents had not been permitted to raise the question of the validity of assessment in the light of the relevant article and plead the same in defence. In the result, the High Court reversed the decision of the Magistrate but without remanding the case for retrial on the first point based on Article 286(1)(b) set aside the conviction and sentences passed by him. Being aggrieved by this order of acquittal the State of Madras has preferred these appeals with a certificate granted by the High Court under Article 134(1)(c) of the Constitution.

7. In the view we have taken about the validity of the assessments on which the prosecutions were founded, we do not considered it necessary on this occasion to expect any opinion on any of the question raised about the validity or otherwise of Section 16A of the Madras General Sales Tax Act. We have gone through the record carefully and we have come to the conclusion, for reason to be presently stated, that the grievance made by the respondents before the High Court was not well founded.

8. The prosecution was for non-payment of the assessed tax. The prosecution examined K. M. Narayan (P.W. 1), the Deputy Commercial Tax Officer, Salem town, in each of these cases. In his

examination-in-chief he deposed to the fact of the respective assessment and to the fact of the non-payment of the assessed tax by the respondents. In cross-examination it was quite clearly put to this witness that the respondents purchased the skins for exporting them to London. This was put to the witness once by the opening question in cross examination and twice again about the middle of it. The service of notice was proved by the prosecution by examining Kandaswami (P.W. 2), who was a peon in the office in the Assistant Commercial Tax Officer. The trend of the cross-examination quite clearly suggests that the defence was that the skins were purchased for the purpose of export and obviously the purpose of the cross-examination was to make out a case on Article 286(1)(b) for exemption from sales tax. The matter did not rest there. The respondents adduced substantive evidence in their defence. In each of the cases the respondents examined their respective shipping agent and also a clerk in their respective business.

The evidence of the shipping agent shows that he acted as an intermediary between the respondents and the London buyers as also as the shipping and forwarding agent to the respondents, that whenever he got orders from the London buyers for skins, of any of the respondents he used to contact the particular respondent, that after the price was settled and the order was accepted the respondent concerned used to send the skins to the intermediary who was also the shipping agent at Madras, that the latter, after assorting them according to the size and range and rejecting those which were unfit for export, used to send them to the London buyers.

The evidence of the respective clerks quite clearly indicates that upon the shipping agent and the intermediary intimating that skins of certain types were required by the London buyers and after the price was settled with the intermediaries, the respondents would purchase the goods and forward the same to the intermediary and shipping agent for the purpose of exporting them to the London buyers.

9. There can be no doubt, on the evidence on record, that the object of the respondents was to avail themselves of the exemption from sales tax provided for in Article 286(1)(b) and to question the legality of the assessments on which the prosecutions were based. It is, therefore, not correct to say that the respondents were in any way prevented from adducing evidence or that there was no sufficient enquiry into this aspect of the matter. The evidence adduced by the respondents will, therefore, have to be read and considered and it will have to be decided whether the defence is made out on that evidence. Unfortunately for the respondents, the evidence on record amounts only to this, namely, that after securing orders for supply of skins to the London buyers the respondents used to go about purchasing the requisite kind and quantity of skins to implement such orders.

Such purchases were, it is true, for the purpose of export, but such purchases did not themselves occasion the export and consequently did not fall within the exemption of Article 286(1)(b) of the Constitution as held by this Court in the *State of Travancore-Cochin v. Bombay Co. Ltd., Allepy*

- 1952 AIR(SC) 366. Nor did such purchases in the State by the exporter for the purpose of export come within the ambit of Article 286(1)(b) as held by the decision of the majority of a Constitution Bench of this Court in the *State of Travancore-Cochin v. Shanmugha Vilas Cashew Nut Factory* - 1953 AIR(SC) 333.

In this view of the matter, there can be no question that these purchases were liable to be included in the turnover and assessed to sale tax. Even if, therefore, we concede, without deciding it, that Section 16A did not prevent the respondents from questioning the validity of the assessment, it was quite impossible for the respondents, on the evidence adduced by them, to contend, in view of the majority decision referred to above, that the purchases were exempt from sales tax by virtue of Article 286(1)(b), that the assessments were illegal and that consequently the non-payment thereof was not an offence.

In our view, the High Court erred in holding that the prosecution had failed to establish their case and in acquitting the accused.

10. Our attention was drawn by the learned Advocate for the respondents to the decision of this Court in *State Govt. Madhya Pradesh v. Ramkrishna Ganpatrao Limsey* - 1954 AIR(SC) 20 and it was contended that these appeals are not maintainable as the High Court had no jurisdiction to grant certificates of fitness for appeal against acquittal under Article 134 of the Constitution, for there was no provision in the Constitution corresponding to Section 417 of the Criminal Procedure Code which gave a right of appeal to the State against an order of acquittal passed by the High Court.

That was a decision of a Bench of three Judges and not that of a Constitution Bench. There, the appeal was by special leave granted by this Court. The observation that there was no provision in the Constitution corresponding to Section 417 of the Criminal Procedure Code was obviously made to emphasise that this Court should not, in an appeal by special leave, interfere with an order of acquittal passed by the High Court merely for correcting errors of facts or law.

Without hearing further arguments on the scope of Article 134(1)(c), we would prefer not to express any opinion as a Constitution Bench as to the validity of the certificates given by the High Court in this case, for assuming, without deciding, that the certificate were wrongly given, we would, in view of the clear majority decision of this Court on Article 286(1)(b) which is not questioned before us and the equally clear and convincing evidence on record in these cases, be willing, if it were necessary, to regularise these appeals by giving special leave to appeal here and now.

11. For reasons stated above, we accept these appeals, reverse the order of acquittal passed by the High Court and restore and confirm the order of conviction, sentences and directions made and passed by the trial Court, although on different grounds.