

Kanpur Oil Mills Harriesganj vs Judge (Appeals) Sales Tax, Kanpur ... on 26 August, 1954

Equivalent citations: AIR1955ALL99, AIR 1955 ALLAHABAD 99

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Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. The petitioner, Messrs. Kanpur Oil Mills, Harrisganj, Kanpur, is a firm carrying on the business of manufacturing oils and dealing in them. During the assessment year 1949-50, the firm filed returns for assessment of sales tax under the U. P. Sales Tax Act and an order of assessment was passed by the Sales Tax Officer, Kanpur, on 28th February, 1951. Amongst sales effected by the petitioner were certain transactions in which the purchasers belong to places outside the State of Uttar Pradesh and delivery of goods was also effected to them outside the State of Uttar Pradesh. In a number of cases, the goods, which were sent by rail, were booked by the petitioner, showing itself as the consignee of the goods. Thereafter, in some cases, the railway receipts were sent to the purchasers through the banks and, in some cases, direct to the purchasers. The Sales Tax Officer, when making the assessment, exempted from tax the turn-over in respect of all sales in which the railway receipts were sent to the purchasers through the banks, holding that, in those cases, delivery had taken place outside the State of Uttar Pradesh and the amount of turnover was not liable to sales tax. He, however, held that in respect of sales amounting to Rs. 1,55,073/-, in which the railway receipts were sent direct to the purchasers, the property in the goods passed to the purchasers within U. P. even though actual delivery took place outside Uttar Pradesh. He was of the view that these sales must be held to have taken place inside U. P. and, consequently, were subject to the U. P. Sales Tax. The petitioner filed an appeal before the Judge (Appeals), Sales Tax, Kanpur Range. The learned Judge (Appeals) upheld the decision of the Sales Tax Officer and dismissed the appeal. In deciding the appeal, the learned Judge Meld:

"The admitted facts are that goods worth Rs. 1,55,073/- were actually delivered outside the Province but the transaction of sale was complete within U. P. The contract was entered into in U. P. The goods were delivered in U. P. on payment of the price. The question of actual delivery, as contemplated by Article 286 of the Indian Constitution, shall only arise in the case of sales outside the State. The place of sale has got to be determined in accordance with the Sale of Goods Act. In this case, the contract was entered into within this Province. The price was paid within this Province. The delivery of goods was made within this Province and as such, under the

provisions of the Sale of Goods Act, the sale shall be deemed to have taken place within this Province. The sales within this Province are outside the scope of Article 286(1) of the Indian Constitution. Such sales, as were dismissed (?) in this case, shall be considered to be in the nature of inter-State trade and commerce and they shall continue to be taxed upto 31-3-51 in accordance with G. O. No. 7 (Continuance Order)."

This petition has been filed under Article 226 of the Constitution by the petitioner, challenging this order of the Judge (Appeals), Sales Tax, on the ground that the sales under Article 286(1) of the Constitution must be deemed to have taken place outside the State of Uttar Pradesh in respect of this amount of Rs. 1,55,073/- and the learned Judge's judgment is based on an error apparent on the face of the record and is liable to be quashed in this respect by issue of a writ of certiorari.

2. It does appear that the learned Judge, in applying Article 286 of the Constitution, did not fully comprehend the scope of its various clauses. Clause (1) of Article 286 of the Constitution lays down:

"286(1): No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place--

(a) Outside the State; or

(b)"

Clause (2) of that section is as follows: "286(2): Except in so far as Parliament may by law otherwise provide no law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of any goods where such sale or purchase takes place in the course of inter-State trade or commerce."

3. Both these clauses, of Article 286 of the Constitution are prohibitory clauses, laying down restrictions on the power of a State Law to impose, or authorise the imposition of a tax on sale or purchases of goods. Clause (1) 'inter alia' restricts the power of a State law to impose a tax to such sales or purchases as do not take place outside the State. What are sales outside a State is laid down in the Explanation which forms part of Clause (1) of Article 286 of the Constitution. This Explanation introduces a fiction of law and lays down that, in cases where goods have actually been delivered in a particular State as a direct result of a sale or purchase for the purpose of consumption in that State, that sale shall be deemed to have taken place in that State, notwithstanding the fact that, under the general law relating to sale of goods, the property in the goods has, by reason of such sale or purchase, passed in another State. In cases, therefore, where delivery of goods in pursuance of a sale or purchase takes place in a particular State for consumption in that State, the sale, by this fiction of law, has to be deemed to take place in that State and, consequently, in no other State. The result is that such a sale or purchase cannot be taxed by another State except the State in which the sale is deemed to have taken place because of the actual delivery of goods for consumption in that State. Clause (2) of Article 286 deals with another aspect. Under that clause, all sales in the course of inter-State trade or commerce are exempt from sales tax except to the extent that Parliament may by

law otherwise provide. This limitation on the power of a State law to impose tax on sales or purchases taking place in the course of inter-State trade or commerce is a separate and distinct ban on imposition of tax apart from the ban imposed by Clause (1)(a) of that Article. This means that a particular sale or purchase may not be liable to tax because of Clause (1)(a) of Article 286 of the Constitution and this ban would operate even though there may be no such ban on taxing that sale or purchase under Clause (2) of that Article. Similarly, there may be no ban on taxing a sale or purchase under Clause (1)(a) of Article 286 but the ban may occur under Clause (2) of that Article. If either of the two limitations placed by Clause (1) or Clause (2) of Article 286 of the Constitution comes into play, the State law cannot tax such a sale or purchase. In the present case, the petitioner has relied on the ban placed by Clause (1) (a) of Article 286 and not on Clause (2) of that Article. The learned Judge (Appeals), Sales Tax, himself clearly found that all the goods in respect of the sales in dispute were actually delivered outside the State of Uttar Pradesh and the actual delivery was not made within the State of Uttar Pradesh. On behalf of the petitioner, it had been contended before the Sales Tax authorities that the goods were delivered to the purchasers in States other than the State of Uttar Pradesh for consumption in those very States in which they were actually delivered. There is no specific finding either by the Sales Tax Officer or by the Judge (Appeals), Sales Tax, whether this contention was correct but a reading of the two orders makes it clear that the contention of the petitioner was not repelled and the authorities proceeded to decide the case assuming that this contention was correct. Once the case of the petitioner was accepted that the delivery of the goods actually took place in a State other than the State of Uttar Pradesh for consumption in that very State, it is clear that Clause (1)(a) of Article 286 of the Constitution read with the explanation attached to that Clause would prevent the State of Uttar Pradesh from imposing sales tax on that transaction of sale. The learned Judge (Appeals), Sales Tax, when dealing with this question, held that "the question of actual delivery, as contemplated by Article 286 of the Indian Constitution, shall only arise in the case of sales outside the State. The place of sale has got to be determined in accordance with the Sale of Goods Act."

This view, expressed by the learned Judge, is obviously based on misinterpretation of Article 286 of the Constitution. Whenever any sale takes place in which the parties belong to two different States, it will have to be determined where the sale has taken place for purposes of imposing sales tax. The determination of the place of sale for purposes of the Indian Contract Act, or, for determining the rights inter partes to the sale may depend on the provisions of the Sale of Goods Act, but when the liability of the sale or purchase to sales tax has to be considered, the place, where the sale takes place, must be determined in accordance with Article 286 of the Constitution for purposes of complying with the provisions of Clause (1)(a) of Article 286 of the Constitution, and the place of sale must be determined after taking into account the Explanation appended to that clause. On applying the Explanation to the transaction now in question, it is perfectly clear that all the sales, which are sought to be taxed, took place outside the State of Uttar Pradesh because actual delivery of the goods took place in States other than the State of Uttar Pradesh for consumption in those States, The result is that such sales cannot be taxed under any State law and any such taxation under a State law would be void as contravening the ban imposed by Clause (1) (a), of Article 286 of the Constitution.

4. The learned Judge (Appeals), Sales Tax, may be right in his view that, for purposes of applying Clause (2) of Article 286 of the Constitution, the actual place of sale need not be determined in accordance with the Explanation which forms part of clause (1) of Article 286. For purposes of Clause (2) of Article 286, it may, therefore, be possible to hold that these sales, in accordance with the provisions of the Sale of Goods Act, must be deemed to have taken place within the State of Uttar Pradesh and, as a result of this view, the ban imposed by Clause (2) of Article 286 of the Constitution may not stand in the way of the State of Uttar Pradesh imposing a tax on the sale under its State law. However this would be quite immaterial because, as I have said earlier, if the imposition of tax is banned under Clause (1)(a), it is immaterial whether the imposition of that tax is or is not banned under Clause (2) of Article 286. The learned Judge seems to have been under the impression that, if a sale takes place in the course of inter-State trade and commerce, the only ban on the right of the State law to impose tax is under Clause (2) of that Article and that there is no ban at all under Clause (1)(a) of Article 286 of the Constitution. This impression is not correct. Even Clause (1)(a) of Article 286 deals with cases of inter-State trade and commerce and places a ban on taxation by State law of sales or purchases by all States other than the State in which, in such cases, the goods are actually delivered for consumption in that State. If this ban of Clause (1) comes into operation, the non-applicability of the ban under Clause (2) of Article 286 becomes immaterial and the taxation of the sale by the State law must be held to be void.

5. Reference may be made, in this connection, to a decision of their Lordships of the Supreme Court in -- 'State of Bombay v. United Motors (India) Ltd.', AIR 1953 SC 252 (A). Their Lordships, in that case, clearly expressed this proposition in the following words; "We are, therefore, of opinion that Article 286(1)(a) read with the Explanation prohibits taxation of sales or purchases involving inter-State elements by all States except the State in which the goods are delivered for the purpose of consumption therein in the wider sense explained above. The latter State is left free to tax such sales or purchases, which power it derives not by virtue of the Explanation but under Article 246(3) read with Entry 54 of List II." After having thus clearly interpreted the effect of Article 286(1)(a) of the Constitution, their Lordships then proceeded to examine the extent of the power of the State, in which the goods are actually delivered for consumption therein, to tax such sales and, for that purpose, they proceeded to consider whether that State was barred from taxing such sales under Clause (2) of Article 286. Learned counsel for the State relied on this later part of the judgment of their Lordships of the Supreme Court for his contention that a State, from which the goods are sent, can tax a sale though the goods may be delivered in another State for consumption therein in pursuance of that sale. Obviously, no such inference can follow from the decision of their Lordships. The judgment of the Supreme Court makes it plain that sales or purchases involving inter-State elements are of various types and ban on such sales or purchases is placed under Clause (1)(a) as well as Clause (2) of Article 286 of the Constitution. The ban under Clause (1) (a) operates" against taxation by the State selling the goods whereas the ban under Clause (2) has to be considered when dealing with the question of the power of the delivery State to tax that sale.

When considering the latter aspect, their Lordships held that, if the goods are actually delivered in a State for consumption therein, such a sale is not liable to be taxed even by that State on the ground that, 'qua' that State, the transaction loses its character of being a transaction in the course of inter-State trade and commerce. They then cited an example, saying that Clause (2) of Article 286

would be applicable to a case where the goods are delivered in a State other than the selling State but not for the purpose of consumption therein taut for the purpose of re-exporting to other States. They also mentioned that there may possibly be other categories of sales or purchases which may not satisfy all the requirements of the Explanation, and it was immaterial whether such transactions may or may not be sufficiently numerous for the Constitution to take notice of them. In such cases, according to their Lordships, the ban placed by Clause (2) of Article 286 would come into operation. It is, therefore, clear that the mere circumstance that the ban placed by Clause (2) of Article 286 of the Constitution does not operate against imposition of tax by the State of Uttar Pradesh on the sales in question does not lead to the inference that the ban placed by Clause (1)(a) of Article 286 can also not operate. That ban being clearly in the way of the State of Uttar Pradesh, prohibiting it from taxing the sales, the taxation of those sales would be against the provisions of Article 286(1) of the Constitution and the order imposing such a tax must, therefore, be quashed.

6. Learned counsel for the State raised another new point based on the language of the proviso to Clause (2) of Article 286 of the Constitution which is as follows:

"Provided that the President may by order direct that any tax on the sale or purchase of goods which was being lawfully levied by the Government of any State immediately before the commencement of this Constitution shall, notwithstanding that the imposition of such tax is contrary to the provisions of this clause, continue to be levied until the thirty-first day of March, 1951."

It was contended by learned counsel that an order was made by the President on 26th January, 1950, by which the President directed that the tax on sale or purchase of goods under the U. P. Sales Tax Act shall, notwithstanding that such imposition of tax was contrary to the provisions of Clause (2) of Article 286 of the Constitution, continue to be levied until 31-3-1951. Learned counsel's argument was that once the President had passed an order, continuing the levy of tax upto 31-3-1951, in exercise of the powers conferred on him under this proviso, the levy of the tax would be valid even though the tax may be banned by Clause (1)(a) of Article 286 of the Constitution. Obviously, this argument is based on an incomplete reading of the language of the proviso. The proviso includes in it the clause "notwithstanding that the imposition of such tax is contrary to the provisions of this clause" and this makes it perfectly clear that the only power, which the President has been granted under the proviso, is to pass an order, doing away with, for a temporary period ending on the 31-3-1951, the ban imposed by Clause (2) of Article 286 of the Constitution. No power has been granted to the President to dispense with the ban imposed by Clause (1)(a) of Article 286 of the Constitution. If the President had purported to pass an order, in exercise of his powers under this proviso, that the tax would continue to be levied until 31-3-1951, even though such tax might be contrary to the ban placed by Clause (1) (a) of that Article, such an order of the President could not be given effect to and would not validate that law as the order would be in excess of the powers granted to the President by the Constitution. The actual order passed by the President nowhere makes such a provision. The order really continues the levy of tax notwithstanding that the imposition of such tax was contrary to the provisions of Clause (2) of Article 286 of the Constitution. The result is that, if the petitioner had contended that those sales were exempt from tax by the State of Uttar Pradesh under Clause (2) of Article 286, that contention would have been repelled provided

the sales had taken place on or before 31-3-1951. The petitioner has sought protection not under Clause (2) but under Clause (1) (a) of Article 286 of the Constitution and the order of the President, therefore, in no way, authorises the imposition of this tax.

7. Learned counsel also contended that Article 286 of the Constitution can govern State laws made by the State Legislatures after the 26-1-1950, when the Constitution came into force and should not be applied to laws which were made prior to the 26-1-1950. This contention also has no force. The language of Article 286 makes it clear that the ban is imposed on every "law of a State" without making a distinction whether that law existed at the commencement of the Constitution or has been passed since the Constitution came into force. Wherever, in the Constitution, it was intended that the ban should be only on future laws, the language used has specifically dealt with the making of a law by a State and the use of the word "made" in that connection for one form or the other has been brought in to make it clear that such provisions of the Constitution would govern only future laws. Clause (2) of Article 13 thus places a ban on the State making any law which takes away or abridges the rights conferred by Part III of the Constitution. In cls. (1) and (2) of Article 31 of the Constitution, there is no mention of any law being 'made' and the language indicates that those provisions were meant to govern the existing laws as well as future laws. This is clarified by Clause (5) of Article 31 of the Constitution in which the laws mentioned in Clause (2) have been divided into two classes, viz., existing laws and any laws which the State may hereafter 'make'. These examples clearly show that where the words used are "law of a State", these words are comprehensive enough to cover existing laws as well as laws made after the commencement of the Constitution. Existing laws were continued in force by Article 372 of the Constitution but that Article, in continuing the existing laws, clearly provided that the existing laws were to continue in force 'subject to the other provision in the Constitution'. The effect of this provision in Article 372 is that, if any law happens to be contrary to any provision of the Constitution, to that extent that law would cease to continue in force. What this really means is that, if any existing law contains any provision which is in conflict with any provision in the Constitution, that provision of the existing law would be void. Of course, it does not mean that a law, which was made by a competent legislature before the Constitution and which the legislature may not be competent to make after the Constitution, will also be void. All that is required is that the law should have been made by a competent legislature at the time when it was made and, after the passing of the Constitution, it should not be contrary to any provision of the Constitution, and should not violate any fundamental right or other ban imposed by the Constitution against such a law. The U. P. Sales Tax Act could, therefore, continue in force in the State of Uttar Pradesh after the commencement of the Constitution only to the extent to which it did not contravene any of the provisions of the Constitution and, as I have said above, the provision, which permits the State of Uttar Pradesh to tax sales which, under Clause (1) (a) of Article 286 of the Constitution, must be deemed to take place outside the State of Uttar Pradesh, has become void as a consequence. This petition must, therefore, be allowed and the orders of the Sales Tax Officer and the Judge (Appeals), Sales Tax, must be quashed in so far as they levy tax on sales in contravention of Clause (1) (a) of Article 286 of the Constitution, viz., in respect of sales to the extent of Rs. 1,55,073/-.

8. The petition is accordingly allowed and the orders of the Sales Tax Officer and the Judge (Appeals) Sales Tax, imposing sales tax on those sales amounting to Rs. 1,55,073/- are quashed. The

petitioner shall be entitled to its costs from the opposite parties which I assess at Rs. 400/-.

9. It does not appear to be necessary to make any further direction to the opposite parties to refund the amount of tax which has been realised from the petitioner by virtue of orders of assessment which have been quashed today as the petitioner would, no doubt, be entitled to a refund by applying to the appropriate authorities.