

PETITIONER:
THE STATE OF ASSAM

Vs.

RESPONDENT:
REMESH CHANDRA DEY AND OTHERS

DATE OF JUDGMENT:
14/04/1961

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
AIYYAR, T.L. VENKATARAMA
DAS, S.K.
KAPUR, J.L.
SHAH, J.C.

CITATION:
1962 AIR 107 1962 SCR (1) 986
CITATOR INFO :
RF 1979 SC1475 (30)

ACT:

Sales Tax-Law Providing for exclusion of sales of goods purchased for resale-Amendment confining such sales to those in the State-Whether amendment offends law prohibiting levy of tax on inter-State sales-Assam Sales Tax Act, 1947 (Assam 17 of 1947), as amended by Assam Act 4 of 1951, ss. 3(1)A(iii), 15-Assam Sales Tax Rules, r. 80-Constitution of India, Art. 286(2).

HEADNOTE:

Section 15 of the Assam Sales Tax Act, 1947, as originally enacted, provided that in calculating the net turnover of a registered dealer for tax purposes, all sales made to another registered dealer of goods specified in the latter's certificate of registration were to be excluded from the gross turnover, if the goods were brought for resale. In 1951, the section was amended by the addition of the words "in the State" after the word "resale", as a result of which the exclusion was confined only to sales of goods for resale in the State. Rule 80 was framed to give effect to the amendment. The petitioner, a registered dealer in Assam, and whose business consisted mainly of buying tea in Assam and selling it either in Assam or in Calcutta, challenged the legality of the amendment on the ground that the result of the amendment was that tax could be levied on interState sales and that, therefore, it contravened Art. 286(2) of the Constitution of India.

Held: (1) that a sale of goods to a dealer within the State who purchased them for the purpose of selling them to dealers outside the State, and who, in fact, so sold them, would not make it a sale in the course of inter-State trade as the two sales were distinct and separate. The first sale was an intra-State sale and a tax imposed thereon did not offend Art. 286(2) of the Constitution.

Endupuri Narasimham v. State of Orissa, [1962] 1 S.C.R. 314, followed.

(2) that s. 15 of the Assam Sales Tax Act, 1947, and Rule 80

framed under that Act were not ultra vires Art. 286(2) of the Constitution. The object of s. 15 of the Act was to avoid taxation at multiple points and the amendment to that section in 1951 or Rule 80 did not enable the levy of tax on sales in the course of inter-State trade twice. Such sales were expressly saved from tax by the operation of Art. 286(2) and S. 3(1)(A)(iii) of the Act. Once those sales were outside the charging section there was no need to re-enact that prohibition in s. 15 which was a machinery section and would stand cut down by the limitation placed by the charging section and the Constitution.

987

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 167 of 1960. Appeal from the judgment and order dated July 16, 1956 of the Assam High Court at Gauhati in Civil Rule No. 128 of 1954.

A. V. Viswanatha Sastri and Naunit Lal, for the appellant.

The Respondents did not appear.

1961. April 14. The Judgment of the Court was delivered by HIDAYATULLAH, J.-This appeal has been filed by the State of Assam against a judgment of the High Court of Assam dated July 16, 1956. By the judgment under appeal, the High Court held that s. 15 of the Assam Sales Tax Act, 1947, and Rule 80 framed under the Act were ultra vires, being a breach of Art. 286(2) of the Constitution. The High Court granted a certificate under Art. 132(1) of the Constitution.

R. C. Dey, the answering respondent, is a wholesale dealer in tea, and has been in business since 1949. He registered himself as a dealer under the Assam Sales Tax Act on January 14, 1950. His business consists mainly of buying tea in Assam and selling it either in Assam or in Calcutta. In respect of tea sold in Calcutta, R. C. Dey consigns the tea to himself after purchasing it in Assam. This tea is then approved by prospective purchasers, to whom the documents of title are endorsed on receipt of the price.

In 1951, the Assam Sales Tax Act was amended by the Assam Sales Tax (Amendment) Act, 1951 (4 of 1951). Section 15 of the Act before the amendment provided that in calculating the net turnover of a registered dealer for tax purposes all sales made to another registered dealer of goods specified in the latter's certificate of registration were to be excluded from the gross turnover, if the goods were bought for resale. By the amendment in 1951, the section was amended by the addition of the words "in the State" after the word "resale". Thus, in calculating the net turnover of a registered dealer, the goods intended

988

for resale in the State could alone be excluded from the gross turnover. This amendment was followed by amendment of the Rules. Rule 80 was enacted to provide as follows:

"80. (1) A dealer who wishes to deduct from his gross turnover the amount of sales on the ground that he is entitled to make such deductions under clause (b) of sub-section (1) of section 15 shall, on demand produce in respect of such sales the copy of the relevant cash memo or bill according as the sale is a cash sale or a sale on credit, and a true declaration in writing by the purchasing dealer or by such responsible person duly authorised by the purchasing dealer in this

behalf that the goods in question are specified in the certificate of registration of such dealer.

(2) For purposes of this rule, the declaration shall be in the following form:-

I/We hereby declare that I/We have purchased the goods herein mentioned for the purposes for use in the manufacture of goods for sale in the State, or for use in the execution of a contract in the State or for resale in the State, and further declare that these goods have been specified in/our certificate of registration bearing No in the District of

R. C. Dey filed a petition under Art. 226 of the Constitution, challenging the amendment and the Rule, and contended that they offended against Art. 286(2) and Part XIII of the Constitution, and were thus ultra vires. He also submitted that the amendment and the Rules were void as offending Art. 19 (1)(g). The last submission was given up in the High Court, and the objection about Part XIII of the Constitution, which was decided against him, must be taken to have been abandoned, because none appeared on his behalf to urge this point. We need not refer to Art. 19 or Part XIII of the Constitution. The High Court upheld his contention about Art. 286(2). In the High Court, separate judgments were delivered by the learned Chief Justice and Ram Labhaya, J. They both agreed that s. 15, as amended, and the Rule were ultra vires Art. 286(2). The reasons given 989

by the learned Judges were different. According to the Chief Justice, the amendment and the Rule had the effect of taxing sales in the course of inter-State trade or commerce and were, therefore, illegal. Ram Labhaya, J., held that the sale to R. C. Dey and the sale by him in Calcutta were separate sales, and that the first sale was not in the course of inter-State trade or commerce, and was taxable. He, however, held that though by s. 3, which is the charging section, sales in the course of inter-State trade or commerce were excluded from the ambit of the Act, this section remained only "a pious declaration", because its effect was not incorporated in the machinery section, namely, s. 15. According to the learned Judge, what was taxable under the Act was the net turnover of a registered dealer. The machinery section showed how the net turnover was to be ascertained, and it provided that to arrive at the net turnover, certain deductions could be made from the gross turnover. In the original section, anything which was sold for resale was so excluded; but by the amendment, the exclusion was only in respect of the sale of goods for resale in the State. According to the learned Judge, if sales which did not lead to resale in the State were not excluded from the gross turnover, then the net turnover would comprehend such sales and, therefore, there was a taxation of sale of goods in the course of inter-State trade or commerce. Putting it briefly, while the learned Chief Justice felt that the amendment and the Rule directly affected inter-State trade or commerce, Ram Labhaya, J., held that they affected inter-State trade or commerce indirectly, inasmuch as sales outside the State were not excluded from the gross turnover.

We shall take up these two points separately. III so far as the decision of the Chief Justice is concerned, the point has been before this Court in another case. In Endupuri Narasimham & Son v. State of Orissa and others (1), a similar question had arisen in connection with the Orissa

Sales Tax Act, 1947. In dealing with transactions such as these, this Court pointed out that only sales which affected inter-

(1) [1962] 1 S.C.R. 314.

990

State trade or commerce directly and were an integral part thereof, were saved under Art. 286(2). On that Occasion, reference was made to all the authorities of this Court which had discussed the question from the angle of Art. 286(1) of the Constitution, and it was pointed out that the same reasoning applied also to Art. 286(2). It was observed in the case as follows:

"The argument on behalf of the petitioner is that, as the goods were purchased for the purpose of being sold to dealers outside the State, and they were, in fact, so sold, the purchases were in the course of inter-State trade, and the levy of tax thereon was within the prohibition enacted by Art. 286(2). We do not agree with this contention. The transactions of sales which have been taxed were wholly inside the State of Orissa. They were sales by persons in the State of Orissa to persons within the State of Orissa of goods which were in Orissa. The fact that the purchaser sold those very goods to dealers outside the State is not relevant, as those sales are distinct and separate from the sales on which the taxes in question have been imposed. The present levy is not on the sales by the petitioner to persons outside the State, but on the purchases by him inside the State. The former sales are in the course of inter-State trade, and are not taxable under Art. 286(2), but the latter are purely intrastate sales, and tax imposed thereon does not offend Art. 286(2)."

These observations are entirely applicable in the context of the facts, as are to be found in this appeal. Indeed, all that is necessary to apply the above passage to the facts of this case is to substitute "Assam" in the place of "Orissa". In our opinion, this point must be held to be concluded against the respondent.

That leaves over for consideration the reasons given by Ram Labhaya, J., in his concurring judgment. Section 3 of the Act which created a liability to tax, was amended by Act 4 of 1951 by the introduction of sub-

s. (1)A in that section. That sub-section reads as follows:

"(1)A. Nothing in sub-section (1) shall, except in cases covered by the first proviso to sub-section (12) of section 2 of this Act, be deemed to

991

render any dealer liable to tax on the sale of goods where such sale takes place:-

- (i) outside the State of Assam;
- (ii) in the course of the import of the goods into, or export of the goods out of, the territory of India;
- or
- (iii) in the course of inter-State trade or commerce except in so far as Parliament may by law otherwise provide."

The introduction of sub-s. (1)A did no more than repeat in the Act the prohibition contained in Art. 286. The first

two clauses of this sub-section reiterate the prohibition contained in Art. 286(1), and the third clause reiterates the prohibition contained in Art. 286(2) of the Constitution. The first proviso to s. 2(12), which is referred to in sub-s. (1)A, enacts the Explanation to cl. (1) of Art. 286.

Now, it is quite clear that from the operation of the charging section sales of a particular character are kept out. This provision saves from taxation all those transactions which, if they were taxed, would have fallen within the ban of Art. 286. The effect of this saving is to make such transactions immune from taxation, and no further amendment of the law in the machinery section was necessary. What s. 15 does, is to grant an additional exemption in respect of sales in which the goods, though sold to a registered dealer, are meant for resale in the State, itself. It is quite easy to see that unless this exemption was granted, it was possible that there would have been sales-tax at more than one point, namely, at the point at which the first registered dealer sold to the second registered dealer and again, when the second registered dealer sold in his turn. To avoid taxation at multiple points on transactions of sale of the same goods within the State, it was provided that the tax shall be paid only on the last sale and not on the previous sales, so long as the previous sales were from registered dealers to registered dealers in respect of goods mentioned in the registration certificate of the latter and provided the goods were for resale in the State. When the charging section itself excluded taxation of sales in the course of inter-State trade

992

or commerce, it was hardly necessary to look for a repetition of the same exemption in the machinery section. It is an error to think that because the machinery section, namely, s. 15, does not repeat the exemption given by the charging section, the turnover of a dealer would necessarily include the sales in the course of inter-State trade or commerce. Even if the net turnover did, so include such sales, the dealer would, under sub-s. (1)A of s. 3, be able to claim that those transactions were not taxable, because they fell within the ban of Art. 286(2) as well as s. 3(1)A (iii) of the Act. What has already been excluded by the operation of the Constitution and the Act cannot become taxable, because the net turnover has to be calculated in a particular manner. From that net turnover, such sales must be excluded by the operation of Art. 286(2) and s. 3(1)A of the Act. In our opinion, the ban of Art. 286(2), which is again reenacted by s. 3(1)A, makes it incumbent that the sales falling within those provisions should be excluded from the net turnover.

Reference was made to sub-s. (2) of s. 3, and it was said that sub-s. (2) stated that every dealer to whom sub-s. (1) did not apply, shall be liable to be taxed under this Act, and that there was no mention of subs. (1)A there. No doubt, sub-s. (2) does not mention sub-s. (1)A; but sub-s. (1)A is not rendered ineffective by the omission. Sub-section (1)A speaks of its own force, and has to be given effect to, along with the remaining sub-sections of s. 3. Sub-section (1)A has the added support of Art. 286, and the Constitution must prevail. Thus, both Art. 286 and sub-s. (1)A of s. 3 are there to save from taxation all sales in the course of inter-State trade or commerce, and there is no need to look further into the Act to see whether they are exempted once again or not.

In our opinion, the appeal must succeed. The decision of

the High Court under appeal is set aside, and the petition is ordered to be dismissed with costs here and in the High Court.

Appeal allowed.

1

JUDIS