PETITIONER:
COMMISSIONER OF SALES TAX

Vs.

RESPONDENT:
LEATHER FACTS CO.

DATE OF JUDGMENT24/03/1987

BENCH:
THAKKAR, M.P. (J)
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THAKKAR, M.P. (J)
RAY, B.C. (J)

CITATION:
1987 AIR 1343 1987 SCR (2) 630
1987 SCC (2) 380 JT 1987 (1) 807
1987 SCALE (1)659

ACT:

Central Sales Tax Act, 1956--Section 5(3)--Transaction of sale/ purchase 'in course of export'--Not exigible to tax--Use of Form IlIA under Rule 12--A of U.P. Sales Tax Act, 1948 by trader--Whether State empowered to levy tax.

U.P. Sales Tax Act, 1948--Rule 12-A Form III--A--Trader using such Form--Whether liable to tax on transactions 'in course of export.'

HEADNOTE:

The respondent, a dealer in hides and skins and exporting the same out of the territory of India, entered into transactions failing within the purview of sub-section (3) of Section 5 of the Central Sales Tax Act, 1956 and which could not be taxed because of constitutional bar under Article 286(1)(a) of the Constitution of India, furnished Form III-A under Rule 12-A of the U.P. Sales Tax Act, as an appropriate form to meet the situation was not devised under the U.P. Sales Tax Act, and sought a clarification from the Commissioner, Sales Tax, as to whether the firm was liable to tax under Section 3-AAAA of the U.P. Sales Tax Act on the purchases made against Form III-A or H under the Central Sales Tax Act, when such dressed hides and skins were exported beyond the territory of India. The Commissioner, Sales Tax clarified and held that the purchases of dressed hides and skins made against Form H were not liable to purchase tax under Section 3-AAAA of the U.P. Sales Tax Act provided the same were exported outside the territory of India and the conditions laid down in Section 5(3) of the Central Sales Tax Act were satisfied, but if the purchases were made against Form III-A and exported outside the territory of India, they shall be liable to purchase tax under Section 3-AAAA.

On appeal, the Sales Tax Tribunal held that the respondent was not liable to any purchase tax under Section 3-AAAA of the U.P. Sales Tax Act whether they were purchased against or without Form III-A or H, as the same were exported outside the territory of India in compliance with the order received from the foreign buyers and those transactions were exempted under Section 6 of the Central Sales Tax Act.

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A Revision Petition filed before the High Court by the appellant Revenue, contending that the decision of the Tribunal was bad in law was dismissed.

Disposing of the appeal by the U.P. Sales Tax authorities, this Court,

HELD: 1.1 The mere fact that Form III-A has been given will not empower the State to collect or levy the sales tax/purchase tax in respect of a transaction in the course of export which satisfies the tests prescribed by Section 5(3) of the Central Sales Tax Act. It would be unconstitutional in view of the constitutional bar to levy tax on sales in the course of export regardless of the fact whether an appropriate form is used or not. [633E-F]

1.2 The transactions entered into by the respondent which are such on which sales tax/purchase tax cannot be levied on account of the constitutional bar read with sub-section (3) of Section 5 of the Central Sales Tax Act, cannot become exigible to tax merely because a wrong form is used (particularly when the appropriate form has not been devised by the rule making authority). [633F-G]

1.3 Liability for tax in respect of such transactions cannot be fastened on the respondent for the very good reason that the State has no power to collect or levy sales tax/purchase tax on such transactions. The U.P. Sales Tax authorities should have devised an appropriate form in this behalf. They can do so even now (as has been done under the Delhi Sales Tax Act, by prescribing Form 49 to meet such a situation). [633G-H; 634A]

1.4 For the future purposes instead of furnishing Form III-A under rule 12-A of the U.P. Sales Tax Act, the respondent will furnish a photostat copy of Form H under the Central Sales Tax Act. [634B]

So fas as the past transactions are concerned, the respondent will not be liable provided the tests prescribed under Section 5(3) of the Central Sales Tax Act, are satisfied. [634D]

Consolidated Coffee Ltd. v. Coffee Board, Bangalore, A.I.R. (Vol. 46) p. 164 refferred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 350 (NT) of 1987.

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From the Judgment and Order dated 19.11. 1985 of the Allahabad in S.T.R. No. 401 of 1985.

S.C. Manchanda and Ashok K. Srivastava for the Appellant.

Raja Ram Agarwal, Ajay Kumar Jain, Pramod Dayal and A.D. Sanger for the Respondent.

The Order of the Court was delivered by

THAKKAR, J. A transaction of sale or purchase which takes place 'in the course of export' falling within the purview of sub-section (3) of Section 51 of the Central Sales-tax Act. 1956 (hereinafter called the 'Act') cannot be subjected to sales-tax by any State. The said provision inter alia provides that the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export.

(i) provided such last sale or purchase took place 'after' and

(ii) was for the purpose of complying with, the agreement or order for or in relation to such export

Such a transaction cannot be subjected to sales tax/purchase tax by any State in view of the embargo imposed by Art. 286(1) (a).1 The controversy centering around this question has been set at rest in Consolidated Coffee Ltd. v . Coffee Board, Bangalore, A.I.R. (Vol. 46) p. 164. Under the circumstances, if the last sale in favour of the respondent who is a dealer in hides and skins and exports the same out of the territory of India has taken place (1) after an agreement was entered

When a sale or purchase of goods said to take place in the course of import or export --(1) X X X X (2) X X X (3) Notwithstanding anything contained m' sub-section(1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after and was for the purpose of complying with, the agreement or order for or in relation to such export."

1. "286(1) (a) 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) in the course of the import of the goods, or export of the goods out, of the territory of India.

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into for such export or order for such export had been accepted by him. (2) last sale made in his favour was for the purpose of complying with the obligation undertaken under the said agreement or order, the transaction reflected in such last sale or purchase cannot be lawfully taxed under the Sales Tax Act. It cannot be taxed because of the constitutional bar embodied in Article 286 (1) (a) of the Constitution of India. The view taken by the High Court in the Judgment under appeal that such transactions are not exigible to sales tax/purchase tax under the U.P. Sales Tax Act, is unexceptionable in the light of the aforesaid provisions of the Constitution and sub-section (3) of Section 5 of the Act and the law declared by this Court in Consolidated Coffee Ltd. We, therefore, see no reason to interfere with the order of the High Court.

It is no doubt true that Form III-A under Rule 12-A of the U.P. Sales Tax Act is not an appropriate form to use in the context of such a transaction of last sale or purchase for the purpose of complying with an agreement or order for export which has already come into existence. However, it is equally true that an appropriate form to meet the situation in relation to such last sales which are not exigible to sales/ purchase tax under the U.P. Sales Tax Act having regard to the constitutional bar and having regard to the provision contained in sub-section (3) of Section 5 of the Act has not been devised under the afore-said Rules. It was under these circumstances that the respondent has furnished to his vendors form III-A which is not appropriate except in regard to purchases made for sales of undressed hides as such within the State or in the course of inter-State trade. But the mere fact that such a form has been given will not empower the State to collect or levy the sales tax/purchase tax in respect of a transaction in the course of export which satisfies the aforesaid tests prescribed by Section 5 (3) of the Central Sales Tax Act. It would be unconstitutional in view of the constitutional bar to levy tax on sales in the course of export regardless of the fact whether an appropriate form is used or not. The transactions entered into by him which are such on which sales tax/purchase tax cannot be levied on account of the constitutional bar read with sub-section (3) of Section 5 of the Central Sales Tax Act cannot become exigible to tax merely because a wrong form is used (particularly when the appropriate form has not been devised by the Rule making authority). Liability for tax in respect of such transactions cannot be fastened on the respondent for the very good reason that the State has no power to collect or levy sales tax/purchase tax on such transactions. The U.P. Sales Tax authorities should have devised an appropriate form in this behalf. They can do so even now (as has

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been done under the Delhi Sales Tax Act by prescribing Form 49 to meet such a situation). Learned counsel for the appellant submits that till such a form is prescribed the respondent who claims to have entered into these transactions in the course of export as defined by sub-section (3) of Section 5 of the Act may furnish to his vendor a copy of Form-H as provided by the Central Sales Tax Act, 1956. The respondent has no objection and is prepared to do so. Under the circumstances, for the future purposes instead of furnishing form III-A under Rule 12-A of the Sales Tax Act, .the respondent will furnish a photostat copy of form H under the Central Sales Tax Act. Learned counsel for the respondent states that if such a copy is furnished to the vendor it will be accepted by the competent authority and the vendor will not be held liable for payment of sales tax/purchase tax in respect of such transactions subject to the rider that respondent will be held liable in case the purchases made by him do not satisfy the conditions and tests prescribed by sub-section (3) of Section 5 of the Central Sales Tax Act and are not made in the course of export within the meaning of the said provision. So far as the past transactions are concerned the respondent will not be liable provided he satisfies the aforesaid tests and the transactions of last sales made to him are in the course of export within the deeming clause of sub-section (3) of Section 5 of the Act.

The appeal is disposed of accordingly. There will be no order as to costs.

N.P. V Appeal disposed of.

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