PETITIONER:
KURAPATI VENKATASATYANARAYANA & OTHERS

Vs.

RESPONDENT:
THE STATE OF ANDHRA PRADESH

DATE OF JUDGMENT:
01/08/1969

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C. (CJ)
GROVER, A.N.

CITATION:
1970 AIR 306 1970 SCR (1) 743
1969 SCC (2) 439

ACT:
Constitution of India, Art. 285 (1) (a) --Sales outside the State--Whether burden of proof on dealer to show consumption in delivery State--Assessment Order--Comprehensive order covering sales taxable and those not taxable--lf severable.

HEADNOTE:
The appellant, a dealer in pulses in Vijayawada in Madras State made certain sales outside the State during the assessment year 1949-50. The appellant claimed exemption from sales tax of sales effected outside the State during the year but the Deputy Commercial Tax Officer disallowed the claim. A first appeal and a revision petition to the Board of Revenue were unsuccessful. The appellant thereafter brought a suit for the recovery of tax collected from him with interest contending that part of sales effected outside the State could not be taxed under Art. 285(1)(a) of the Constitution. The Trial Court held that the assessment to tax of the sales during the period from April 1, 1949 to January 25, 1950' could not be impeached but the sales from January 26 to March 31 outside the State were not liable to sales-tax; as there was a single order of assessment 'for the whole year, the entire assessment was illegal.
In appeal to the High Court, and upon a direction from that Court, the Trial Court gave a finding that deliveries of the goods were not made for purposes of consumption within the delivery State only. The High Court. therefore. allowed the appeal holding that the appellant could not claim the benefit under Article 286(1)(a) in the absence of evidence as to how the whole-sales disposed of the goods after obtaining delivery and therefore the entire turn-over for the year 1949-50 would be assessable to tax.
In the appeal to this Court, it was contended inter-alia (i) that the High Court was in error in holding that the burden of proof was on the appellant to show that there was not only delivery of goods for consumption within the delivery States but there was actual consumption of goods in those States: (ii) the assessment must be treated as an

indivisible one and if a part of the assessment was illegal, the entire assessment must be deemed to be infected and treated as invalid.

HELD: Allowing the appeal,

(i) The part of the turnover which related to sales from January 26, 1960 to March 31. 1960 was not liable to sales-tax and the levy of sales-tax from the appellant to this extent was illegal.

It was rightly contended that the appellant did not carry the burden of showing that there was not only delivery of goods for consumption within the States but that the goods were actually consumed in those States. [749 C]

India Copper Corporation Ltd. v. The State of Bihar, 12 S.T.C. 56 relied upon.

744

(ii) In the present case though there was a single order of assessment for the period from April 1, 1949 to March 31, 1950, the assessment could be split up and dissected and the items of sales separated and taxed for different periods. It was possible to ascertain the turnover of the appellant for the pre-Constitution and post-Constitution periods from the figures furnished in the plaint by the appellant himself. It was, therefore. open to the Court in these circumstances to sever the illegal part of the assessment and give a declaration with regard to the illegal part alone instead of1 declaring the entire assessment void. [752 B]

Case law referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1451 of 1968.

Appeal from the judgment and decree dated March 11, 1965 of the Andhra Pradesh High Court in A.S. Nos. 93 and 169 of 1957.

Rajeshwara Rao and B. Parthasarathi, for the appellant.

D. Munikanniah and A.V.V. Nair, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought by certificate from the judgment of the High Court of Andhra Pradesh dated March 11, 1965 in A.S. Nos. 93 and 169 of 1957.

The appellant was a firm of dealers in pulses at Vijayawada.It was sending pulses like green gram and black gram to other States viz.: Bombay, Bengal, Madras and Kerala by rail in the course of their business. The consignments were addressed to 'self' and the railway receipts were endorsed in favour of Banks for delivery against payments. The purchasers obtained the railway receipts after payments and took delivery of the goods. The total turnover of the business of the appellant for the year 1949-50 was Rs. 17,05,144-2-2. Of the said turnover a sum of Rs. 3,61,442-7-3 represented the turnover of sales effected outside the then Madras State. For the assessment year 1949-50 the Deputy Commercial Tax Officer collected sales tax on the total turnover without exempting the value of the sales effected outside the State. The appellant was permitted to pay sales tax under(r. 12 of the Madras General Sales Tax (Turnover and Assessment) Rules. The appellant submitted monthly returns and paid sales tax without claiming any such exemption till the end of January, 1950. But in, the returns for the months of February and March, 1950 the appellant claimed exemption on sales effected outside the State. The appellant submitted a consolidated return Ex. A-18 to the Deputy Commercial Tax Officer on

March 30, 1950 claiming exemption in respect of a sum of Rs. 10,37,334-7-9 being the value of the sales effected outside the
745
State or the period commencing from April 1, 1949 and ending January 31, 1950. The Deputy Commercial Tax Officer fixed the taxable turnover of the appellant at Rs. 17,05,14-4-2-2 and issued a notice Ex. A-23 dated October 24, 1950 to show cause why the appellant should not be assessed accordingly. The appellant was thereafter held liable to pay tax amounting to Rs. 26,642-14-0 on a net turnover of Rs. 17,05,144-2-2. The appellant preferred an appeal to the Commercial Tax Officer and a revision petition to the Board of Revenue, Madras but was unsuccessful. The appellant, therefore brought a suit for the recovery of Rs. 21,270-13-0 being the amount of tax illegally collected from him together with interest, contending that the sales effected outside the State could not be taxed under Art. 285 (1)(a) of the Constitution of India. The State of Madras contested the suit on the ground that the sales were taxable as they fell within the purview of explanation 2 to s. 2(h) of the Madras General Sales Tax Act, 1939 hereinafter referred to. as the Act). The Subordinate Judge held that for the period from April 1, 1949 to January 25, 1950 the appellant was not entitled to impeach the assessment on the turnover relating to sales outside the State. As regards the period from March 26, 1950 to March 31, 1950 the Subordinate Judge took the view that the past of the turnover relating to, outside sales was not liable to salestax but as there was a single order of assessment for the entire period the entire assessment was illegal. Again the judgment of the Subordinate Judge both the appellant and the respondent filed appeals A.S. No. 93 of 1957 and A.S. No. 169 of 1957 to the High Court of Andhra Pradesh. But its order dated April 18, 1960 in Appeal No. 169 of 1957 the High Court called for a finding from the trial court as to whether the appellant was able to prove the facts entitling him to invoke the explanation to Art. 286(1)(a). By its order dated July 21, 1962 the trial court submitted a finding to the effect that in view of the decision of the Supreme Court in India Copper Corporation Ltd. v. The State of Bihar(1) the burden of proof was not on the appellant and that the finding will have to be given in its favour. But by its order dated March 5, 1963 the High Court directed the Subordinate Judge to record a finding after considering the evidence adduced by the appellant as to whether the goods in question were delivered for consumption within the delivery States. In its order dated March 22, 1963 the trial court, after considering the evidence given by the appellant's witnesses came to the conclusion that the deliveries were not made for purposes of consumption within the delivery States only. The High Court by a common judgment dated March 11, 1965 in
A.S. No. 93 and 169 of 1957 held that the appellant could not claim the benefit under Art. 286(1)(a) of the Constitution in the
(1) 12S.T.C. 56.
746
absence of evidence as to how the wholesalers disposed of the goods after obtaining delivery and therefore the entire turnover for the year 1949-50 would be assessable to tax. In the result A.S. No. 169 of 1957 flied by the respondent was allowed and A.S. No. 93 of 1957 filed by the appellant was dismissed.

The Madras General Sales Tax Act, 1939 was enacted in

exercise of the legislative authority conferred upon the Provincial Legislatures by Entry 48 of List II read with s. 100(3) of the Government of India Act, 1935. The explanation to s. 2(h) of this Act is as follows:

"Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930 the sale or purchase of any goods shall be deemed, for the purpose of this Act, to have taken place in this Province, wherever the contract of sale or purchase might have been made.

(a) If the goods. were actually in this Province at the time when the contract of sale or purchase in respect thereof was made or,

(b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in this Province at any time after the contract of sale or purchase in respect thereof was made."

Under Entry 48 of List II of the Government of India Act, 1935the Provincial Legislatures could tax sales by selecting some fact or circumstances which provided a territorial nexus with the taxing power of the State even if the property in the goods sold passed outside the Province or the delivery under the contract of sale took place outside the Province. Legislation taxing sales depending solely upon the existence of a nexus, such as production or manufacture of the goods, or presence of the goods in the Province at the date of the contract of sale, between the sale and the legislating Province could competently be enacted under the Government of India Act, 1935. [see Tata Iron & Steel Ca. Ltd. v. The State of Bihar(1) and Poppatlal Shah v. The State of Madras (2)].

By Art. 286 of the Constitution certain fetters were placed upon the legislative powers of the States as follows:

"(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--

(1) [1958] S.C.R. 1355. (2) [19531 S.C.R. 677.

747

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

Explanation.--For the purposes of sub-clause (a), a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption 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.

(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;

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.

(3) No law made by the Legislature of a State

imposing, or authorising the imposition of, a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

Therefore, by incorporating s. 22 of the Madras Act read with Art. 286, notwithstanding the amplitude of the power otherwise granted by the charging section read with the. definition of 'sale', a cumulative fetter of triple dimension was imposed upon the taxing power of the State. The Legislature of the Madras State could not since January 26, 1950, levy a tax on sale of goods taking place outside the State or in the course of import of the goods into, or export of the goods out of, the territory of India, or on sale of any goods where such sale took place in the course of inter-State trade or commerce. By the Explanation to Art. 286(1)(a) which is incorporated by s. 22 of the Madras Act a sate is deemed to take place in the State in which the goods are actually delivered as a. direct result of such sale for the purpose

748

of consumption in that State even though under the law relating to sale of goods the property in the goods has by reason of such sale passed in another State. In the State of Bombay and Anr. v. The United Motors (India) Ltd.(1) it was held that since the enactment of Art. 286(1)(a) a sale described in the Explanation which may for convenience be called an "Explanation sale" is taxable by that State alone in which the goods sold are actually delivered as a direct result of sale for the purpose of consumption in that State.

With a view to impose restrictions on the taxing power of the States under the pre-Constitution statutes, amendments were made in those statutes by the Adaptation of Laws Order. As regards the Madras Act the President issued on July 8, 1952 the Fourth Amendment inserting a new section, s. 22 in that Act. It runs as follows:

> "Nothing contained in this Act shall be deemed to impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase takes place--
>
> (a) (i) outside the State of Madras, or
>
> (ii) in the course of import of the goods into the territory of India or of the export of the goods out of such territory, or
>
> (b) except in so far as Parliament may by law otherwise provide, after the 31st March., 1951, in the course of inter-State trade or commerce, and the provisions of this Act shall be read and construed accordingly.
>
> Explanation :--For the purposes of cl. (a)(i) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption 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."

By this amendment the same restrictions were engrafted on the pre-Constitution statute as were imposed by Art. 286 of the Constitution upon post-Constitution statutes.

As regards the sales for the period from April, 1949

to January 25, 1950 it was admitted before the Deputy Commercial
(1) [1953] S.C.R. 1069.
749
Tax Officer that the goods were actually in the Madras State at the time the contract of sale was concluded. It was for this reason that the Deputy Commercial Tax Officer negatived the claim which the appellant made in respect of those sales. It appears that in the trial court the appellant challenged the constitutional validity of explanation to s.. 2(h) of the Act. But in view of the decision of this Court in the Tata Iron & Steel Co's case(1) and Poppatlal Shah's case(2) counsel on behalf of the appellant did not seriously dispute the validity of the assessment in regard to sales from April 1, 1949 to January 25, 1950.

With regard to the period from January 26, 1950 to March 31, 1950 the contention of the appellant' is that the High Court was in error in holding that the burden of proof was on the appellant to show that there was not only delivery of goods for consumption within the delivery States but there was actual consumption of the goods in those States. In our opinion the argument is well-founded and must be accepted as correct. In India Copper Corporation's case(3) it was pointed out by this Court that if the goods were as a direct result Of a sale delivered outside the State of Bihar for the purpose of consumption in the State of first delivery, the assessee would be entitled to the exemption from sales tax by virtue of the Explanation to Art 286(1)(a) of the Constitution and it would not be necessary for the assessee to prove further that the goods so delivered were actually consumed in the State of first destination.

In the present case the Subordinate Judge has, upon a consideration of the evidence adduced by the parties stated in his report dated June 27, 1962 that the intention of the appellant was that the sale and delivery should be for the purpose of consumption in the delivery States. It is true that in his subsequent report dated March 22, 1963 the Subordinate Judge gave a different finding. But it is obvious that the subsequent report of the Subordinate Judge is vitiated because the principle laid down by this Court in India Copper Corporation's case(3) has not been taken into account. Having regard to the evidence adduced by the appellant in this case we are satisfied that the part of the turnover which related to sale from 2, January 26, 1950 to March 31, 1950 was not liable to sales tax and the levy of sales tax from the appellant to this extent is illegal.

The next question arising in this appeal is whether the assessment order of the Deputy Commercial Tax Officer for the year 1949-50 is illegal in its entirety notwithstanding the fact that the State Government had a right to levy sales tax on outside sales
(1) [1958] S.C.R. 1355. (2) [1953] S.C.R. 677.
(3) 12 S.T.C. 56.
750
which were effected prior to January 26, 1950. It was argued for the appellant that the assessment must be treated as one and indivisible and if a part of the assessment is illegal the entire assessment must be deemed to be infected and treated as invalid. In support of this argument reference was made to the decision of this Court in Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax(1) in which this Court observed as follows:

> "The necessity for doing so; is, however, obviated by reason of the fact that the

assessment is one composite whole relating to. the pre-Constitution as well as the post-Constitution periods and is invalid in toto. There is authority for the proposition that when an assessment consists of a single undivided sum in respect of the totality of the property treated as assessable, the wrongful inclusion in it of certain items of property which by virtue of a provision of law were expressly exempted from taxation renders the assessment invalid in toto."

The Court cited with approval a passage from the judgment of the Judicial Committee in Bennett & White (Calgary) Ltd.and Municipal District of Sugar City No. 5(2).

"When an assessment is not for an entire sum, but for separate sums, dissected and earmarked each of them to a separate assessable item, a Court can sever the items and cut out one or more along with the sum attributed to it, while affirming the residue. But where the assessment consists of a single undivided sum in respect of the totality of property treated as assessable, and when one component (not dismissible as 'de minimis') as on any view not assessable and wrongly included, it would seem clear that such a procedure is barred, and the assessment is bad wholly. That matter is covered by authority. In Montreal Light, Heat & Power Consolidated v. City of Westmount(3) the Court (see especially per Anglin, C.J) in these conditions held that an assessment which was bad in part was infected throughout, and treated it as invalid. Here their Lordshis are of opinion, by parity of reasoning, that the assessment
was invalid in toto."

Applaying the principle to the special facts are circumstances of the case the Court set aside the orders of assessment and directed that the case should be remanded to the Assessment Officer for reassessment of the appellants in accordance with law. The same principle was applied but with a different result in the later case

(1) 6 S.T.C. 627 at 637. (2) [1951] A.C. 786 at p. 816.
(3) [1926] S.C.R. (Can) 515.

751

the State of Jammu & Kashmir v. Caltex (India) Ltd. (1) in which the question arose as regards the validity of an assessment of sales tax of all retails sales of motor spirit. The Petrol Taxation Officer assessed the respondent to pay sales tax for the period January 1955 to May, 1959 under s. 3 of the Jammu & Kashmir Motor Spirit (Taxation of Sales) Act, 2005. The respondent applied under s. 103 of the Constitution of Jammu & Kashmir and a single Judge of the High Court held that the respondent was liable to pay sales tax only in respect of the sales which took place during the period January to September, 1955 and issued a writ restrainig the appellants from levying tax for the period October, 1955 to May, 1959. On appeal a Division Bench of the High Court quashed the assessment for the entire period. On appeal to this Court it was held that though there was one order of assessment for the period January 1, 1955 to May 1959 the assessment could be split up and dissected and the items of sale could be separated and taxed for different periods. It was pointed

out that the sales tax was imposed in the ultimate analysis on receipts from individual sales or purchases of goods effected during the entire period, and, therefore, a writ of mandamus could. be issued directing the appellant not to realise sales tax with regard to transactions of sale during the period from September 7, 1955 to May, 1959.

A similar question arose for determination in an American case [Frank Rattarman v. Western Union Telegraph Co.(2)]. The question in that case was "whether a single tax, assessed under the Revised Statutes of Ohio, section 2778, upon the receipts of a telegraph company which receipts were derived partly from inter-state commerce and partly from commerce' within the State but which were returned and assessed in gross and without separation or apportionment, is wholly invalid, or invalid only in the proportion and to the extent that the said receipts were derived ,from interstate commerce". It was held unanimously by the Supreme Court of the United States that the assessment was not wholly invalid but it was invalid only in proportion to the extent that such receipts were derived from interstate commerce. It was observed that where the subjects of taxation can be separated so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the State, the Court will act upon this distinction, and will restrain the tax on interstate commerce. while permitting the State to collect that upon commerce wholly within its own territory. The principle of this case has been consistetly followed in American cases: [see Bowman v. Continental Company(3)]. This case has been cited with approval by this Court in The State of Bombay

(1) 17 S.T,C. 612. (2) 127 U.S. 411.

(3) 250 U.S. 642.

C.I./69---4

752

v. The United Motors (India) Ltd.(1) wherein it was observed that the same principle should be applied in dealing with taxing statutes in this country also.

In the present case we are of opinion that though there is a single order of assessment for the period from April 1, 1949 to March 31, 1950 the assessment could be split up and dissected and the items of sale separated and taxed for different periods. It is quite easy in this case to ascertain the turnover of the appellant for the pre-Constitution and post-Constitution periods for these figures are furnished in the plaint by the appellant himself. It is open to the Court in these circumstances to sever the illegal part of the assessment and give a declaration with regard to that part alone instead of declaring the entire assessment void. For these reasons we hold that the appellant should be granted a declaration that the order of assessment made by the Deputy Commercial Tax Officer for the year 1949-50 is invalid to the extent that the levy of sales tax is made on sales relating to. goods which were delivered for the purpose of consumption outside the State for the period from January 26, 1950 to March 31, 1950. The result is that the appellant is entitled to a refund of the amount illegally collected from him for the period from January 26, 1950 to March 31, 1950. The trial court has already found that the appellant is entitled to claim exemption with regard to. turnover for this period to the extent of Rs. 3,34,107-15-6 and the tax payable on this sum is Rs. 5,220-7-0. The appellant is. therefore, entitled to a decree for the refund of Rs. 5,220-7-0. The appellant is also entitled to interest at 6%

per annum from the date of suit till realisation of this amount.

For these reasons we allow this appeal and set aside the judgment of the Andhra Pradesh High Court dated March 11, 1965 in A.S. Nos. 93 and 169 of 1957 and allow this appeal to the extent indicated above.

There will be no order with regard to costs.

R.K.P.S. Appeal allowed.

(1) [1953] S.C.R. 1069 at 1097.

753