1955

September 20.

MESSRS MOHANLAL HARGOVIND DAS, BIDI MERCHANTS, JABALPUR (M.P.)

v.

THE STATE OF MADHYA PRADESH & ANOTHER.

[S. R. DAS, ACTING C. J., BHAGWATI, JAGANNADHADAS, JAFER IMAM and CHANDRASEKHARA AIYAR JJ.]

Constitution of India—Art. 286(2)—Central Provinces and Berar Sales Tax Act, 1947 (XXI of 1947), s.4(6)—Petitioners—Bidi merchants of Madhya Pradesh—Importing tobacco from the State of Bombay—Whether such transactions of sales of goods—Affected by the ban under Art. 286(2) of the Constitution—Petitioners registered as "dealers" under Central Provinces and Berar Sales Tax Act, 1947 and dealers in Bombay selling or supplying tobacco to the petitioners also registered as "dealers" under Central Provinces and Berar Sales Tax Act, 1947—Whether makes the transactions as intra-State transactions between two registered dealers in the State of Madhya Pradesh.

The petitioners are carrying on business on a very large scale of making and selling bidis having their head office in Jabalpur in the State of Madhya Pradesh and are registered as "dealer" for the purposes of the Central Provinces and Berar Sales Tax Act, 1947. In the course of their said business, the petitioners import tobacco from the State of Bombay in very large quantities after it is blended in that State by the vendors with various other types of indigenous tobacco by an elaborate process.

This finished tobacco, after its import within the State of Madhya Pradesh is rolled into bidis which are exported to various other States, largely to the State of Uttar Pradesh. The dealers in the State of Uttar Pradesh and such other States who buy bidis from the petitioners sell the same to various other dealers and consumers in those States.

The Sales Tax authorities in the State of Madhya Pradesh required the petitioners under threat of criminal prosecution to file a statement of return of the total purchases of tobacco made by them out of Madhya Pradesh and delivered to them in Madhya Pradesh with a view to assess and levy purchase tax on the transactions of purchases made by the petitioners as stated above. *Held,* that the State of Madhya Pradesh had no authority to impose or to authorise the imposition of such a tax and that the action of the State authorities contravened the provisions of Art. 286(2) of the Constitution inasmuch as the transactions in question were in the course of inter-State trade or commerce as the finished tobacco which was supplied to the petitioners moved from the State of Bombay to the State of Madhya Pradesh.

1955

Messrs Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M.P.)
v.
The State of Madhya Pradesh and another.

The contention that not only the petitioners were the registered dealers under Rule 8 of the Central Provinces and Berar Sales Tax Rules, 1947 but the dealers in Bombay who sell or supply tobacco to them were registered as "dealers" for the purpose of the Central Provinces and Berar Sales Tax Act, 1947 and therefore the transactions were between two registered dealers in the State of Madhya Pradesh and thus constituted purely internal sales of the goods was without force because what one has to look at is the real nature of the transactions and not the outside form and as the transactions in dispute involved movement of the goods across the border they were clearly transactions of sales of goods in the course of inter-State trade or commerce and were hit by the ban under Art. 286(2) of the Constitution.

ORIGINAL JURISDICTION: Petition No. 67 of 1955.

Under Article 32 of the Constitution of India for the enforcement of Fundamental Rights.

M. C. Setalvad, Attorney-General of India, C. K. Daphtary, Solicitor-General of India, G. S. Pathak, (J. B. Dadachanji, A. P. Sen, Rameshwar Nath and *Rajinder Narain,* with them), for the petitioners.

T. L. Shevde, Advocate-General of Madhya Pradesh (*M. Adhikari* and *I. N. Shroff,* with him), for the State of Madhya Pradesh.

1955. September, 20. The Judgment of the Court was delivered by

BHAGWATI J.—The petitioners are a firm carrying on business on a very large scale of making and selling bidis having their head office in Jabalpur in the State of Madhya Pradesh. They are registered as "dealer" for the purpose of the Central Provinces and Berar Sales Tax Act, 1947.

In the course of their said busines, the petitioners import tobacco from the State of Bombay in very large quantities after it is blended in that State by the vendors with various other types of indigenous tobacco by an elaborate process. This finished tobacco, after its import within the State of Madhya Pradesh is rolled into bidis which are exported to various other States, largely to the State of Uttar Pradesh. The dealers in the State of Uttar Pradesh

and such other States who buy bidis from the petitioners sell the same to various other dealers and consumers in those States.

The Sales Tax authorities in the State of Madhya Pradesh required the petitioners under threat of criminal prosecution to file a statement of return of the total purchases of tobacco made by them out of Madhya Pradesh and delivered to them in Madhya Pradesh with a view to assess and levy purchase tax on the transactions of purchases made by the petitioners as above. The petitioners filed under protest two returns dated the 11th September 1954 and 3rd December 1954 for the periods 3rd May 1954 to 29th July 1954 and 30th July 1954 to 26th October 1954 respectively but without prejudice to their right to challenge the validity of the assessment and levy of the said tax on the aforesaid transactions. The Sales Tax authorities further called upon the petitioners to deposit the alleged purchase tax which amounts to thousands of rupees in every quarter of the year.

The petitioners thereupon filed this petition under article 32 of the Constitution for a writ of *mandamus* or any appropriate direction or order seeking to restrain the State of Madhya Pradesh and the Commissioner of Sales Tax, Madhya Pradesh, from enforcing the said Act and its provisions against the petitioners and for consequential reliefs.

The petitioners averred that the imposition of tax on sale or purchase of tobacco rolled into bidis exported out of Madhya Pradesh in the manner described was in contravention of article 286(1) (a) of the Constitution, that the tobacco purchased by them for the purpose of making bidis exported outside Madhya Pradesh was never intended for use as raw material for the making of bidis for the purpose of consumption in Madhya Pradesh and section 4, sub-section (6) of the Act had no application to the tobacco so used and there was no liability to pay the alleged tax and that to the best of the petitioners' information tobacco had not been notified by the State Government in the Gazette for the purpose of section 12(A) of the Act

1955

Messrs Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M.P.)
v.
The State of Madhya Pradesh and another

Bhagwati J.

and that the Sales Tax authorities, under the Act, were, therefore, not entitled to levy any tax on the petitioners. The petitioners also submitted that the transactions in question had taken place in the course of inter-State commerce, that the State of Madhya Pradesh had no authority to impose or to authorise the imposition of such a tax and that the action of the State authorities contravened the provisions of article 286(2) of the Constitution.

The Respondents filed a return denying the contentions of the petitioners and submitted that the petitioners by purchasing tobacco which was entered in their registration certificate as raw material for the manufacture of bidis for sale by actual delivery in Madhya Pradesh for consumption in that State made themselves liable to pay the tax by exporting bidis to other States and thus utilising it for a different purpose under section 4(6) of the Act. They admitted that the petitioners imported tobacco from the State of Bombay in large quantities but stated that the tobacco, after its arrival in the petitioners' bidi factories, was cleaned, sieved and blended.

A few more facts relevant for the decision of this petition may be stated in this context. Not only the petitioners but also the dealers in Bombay who sell or supply tobacco to the petitioners are registered as "dealers" for the purpose of the Central Provinces and Berar Sales Tax Act, 1947. The petitioners are the holders of a certificate of registration, No. LDG 53 obtained by them under Rule 8 of the Central Provinces and Berar Sales Tax Rules, 1947. When making purchases of the tobacco in question they also made declarations in the form required by Rule 26(II) declaring that they had purchased the said goods from Shri Shah Chhaganlal Ugarchand Nipani, a dealer holding registration certificate No. BMY/93-MP and from Shri Maniklal Chunanlal Baroda, a dealer holding registration certificate No. BMY/341-MP on different dates therein mentioned for use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State. In the return which

was filed by the petitioners for the quarter beginning from 3rd May 1954 and ending with 29th July 1954, the petitioners mentioned Rs. 16,47,567-3-3 as the purchase price of goods purchased on declaration as being goods specified in the registration certificate as intended for use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State but utilised for any other purpose. In the return which was filed by them for the quarter beginning from 27th July 1954 and ending with 26th October 1954, they did not fill in any figure but showed the above item as blank contending that the Sales Tax authorities were not entitled to levy any purchase tax against them in respect of the same.

The learned Attorney-General appearing for the petitioners before us contended (1) that the transactions in question were in the course of inter-State commerce and were, therefore, within the ban of article 286(2) and the State of Madhya Pradesh had no authority to impose or to authorise imposition of tax on these transactions, (2) that in any event the goods were delivered for consumption in the State of Uttar Pradesh and were not liable to a levy of tax at the instance of the State of Madhya Pradesh, (3) that, section 4(6) of the Act was invalid inasmuch as it offended against the provisions of article 286(1) (a), and lastly (4) that even if the above contentions were negatived, section 4(6) of the Act had, on its true construction, no application to the facts of the present case. He, however, urged that if the Court was with him on his first contention, *viz.*, that the transactions in question took place in the course of inter-State commerce it was not necessary to go into the other contentions.

We are of the opinion that this contention of the learned Attorney-General is sound. It was in fact admitted by the Respondents in their return that the petitioners imported tobacco from the State of Bombay in large quantities. The Bombay suppliers processed tobacco in their godowns situated within the State of Bombay and supplied the finished tobacco

1955

Messrs Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M.P.)
v.
The State of Madhya Pradesh and another.

Bhagwati J.

to the petitioners in Madhya Pradesh. The petitioners imported this finished tobacco into Madhya Pradesh from these suppliers who were carrying on business in the State of Bombay and there was of necessity, as a result of these transactions, the movement of the goods across the border. As a result of the transactions entered into by the petitioners with these suppliers the finished tobacco which was supplied to the petitioners moved from the State of Bombay to the State of Madhya Pradesh and these transactions were, therefore, in the course of inter-State trade or commerce.

The only answer which was made by the learned Advocate-General of Madhya Pradesh was that Shri Shah Chhaganlal Ugarchand Nipani and Shri Maniklal Chunanlal Baroda were themselves dealers holding registration certificates Nos. BMY/93/MP and BMY/341-MP being registered as such under the provisions of the Central Provinces and Berar Sales Tax Act, 1947, and that, therefore, the transactions were between two registered dealers in the State of Madhya Pradesh and therefore constituted purely internal sales of the goods. If they were thus internal sales there was no question of their being transactions in the course of inter-State trade or commerce and therefore they were not subject to the ban imposed under article 286(2).

This answer suffers from over-simplification. No doubt, the dealers who supplied the finished tobacco to the petitioners were registered dealers under the Central Provinces and Berar Sales Tax Act, 1947, but that fact by itself would not be sufficient to invest the transactions which otherwise were in the course of inter-State trade or commerce with the character of intra-State transactions or internal sales or purchases. What one has got to look at is the real nature of the transactions and not the outside form. A person who carries on business of selling or supplying goods in Madhya Pradesh and who comes within the definition of "dealers" given in section 2(c) of the Act has, under pain of penalty visited upon him under section 24 of the Act, to register himself as a dealer

and possess a registration certificate under section 8(1) of the Act. Merely because he got himself registered as such to avoid the penalty which would otherwise be visited upon him by the State it cannot be stated that whatever transactions he entered into with other dealers in the State of Madhya Pradesh were all intra-State transactions or internal sales or purchases irrespective of the fact that the transactions involved movement of the goods across the border and were clearly transactions of sale of goods in the course of inter-State trade or commerce. We were taken by the learned Attorney-General through the several provisions of the Act and we are confirmed in our opinion that these transactions sought to be taxed by the Sales Tax authorities of the State of Madhya Pradesh were transactions in the course of inter-State trade or commerce. The activities of selling or supplying goods in Madhya Pradesh if carried on habitually would amount to a carrying on of the business of selling or supplying goods in the State of Madhya Pradesh and even an outside merchant who indulged in such activities may in such event be said to be carrying on business in Madhya Pradesh and would come within the definition of "dealer" given in section 2(c) of the Act. When we come, however, to section 8 which deals with the registration of dealers, that section requires that a dealer while being liable to pay tax under the Act shall not carry on business as a dealer unless he has been registered as such and possesses a registration certificate. The liability to pay tax under the Act is thus postulated and unless and until a person is liable to pay such tax he need not get himself registered as a dealer. All the transactions entered into by a registered dealer, however, do not necessarily import a liability to pay tax under the Act because, whenever the question arises in regard to his liabilty to pay any tax under the Act, such liability would have to be determined in spite of his being a registered dealer with reference, *inter alia,* to the provisions of section 27-A of the Act which incorporates within its terms the bans which have been imposed on the powers of the State Legislatures to

1955

Messrs Mohanlal Hargovind Das, Bidi Merchants, Jabalpur (M. P.)
v.
The State of Madhya Pradesh and another

Bhagawati J.

tax under article 286 (1) (a) and (2) of the Constitution. If, therefore, a dealer who has got himself registered as dealer under the provisions of section 8(1) of the Act is sought to be made liable in respect of transactions of sale effected by him he could claim exemption from such liability if the transactions of sale or purchase took place in the course of inter-State trade or commerce after the 31st March, 1951, except in so far as Parliament may by law otherwise provide. In the case before us there was no such provision made by Parliament and the transactions in question were all after the 31st March, 1951, with the result that the ban imposed by article 286(2) was in operation and if the transactions took place in the course of inter-State trade or commerce not only were Shri Chhaganlal Ugarchand Nipani and Shri Maniklal Chunanlal Baroda exempt from the liability to pay the tax on these transactions but the petitioners also were similarly exempt. No liability, therefore, could be imposed either for Sales Tax or for Purchase Tax within the terms of the Act on these transactions which as above stated took place in the course of inter-State trade or commerce.

It was, however, urged that the petitioners had made declarations at the time of making the purchases of this finished tobacco that they had purchased the said goods for use as raw materials in the manufacture of goods for sale for actual delivery in Madhya Pradesh for the purpose of consumption in that State and that by virtue of the provisions of section 4(6) of the Act they were liable to pay the purchase tax on the purchase price of goods which had been utilised for any other purpose. Whatever steps the State of Madhya Pradesh may be able to take in regard to non-compliance with the terms of the declarations by the petitioners we are clearly of opinion that the State of Madhya Pradesh is restrained from imposing any tax on the transactions of purchase or sale which take place in the course of inter-State trade or commerce and no question of liability of the petitioners by virtue of such declarations survives because even initially Shri Shah Chhaganlal Ugar-

chand Nipani and Shri Maniklal Chunanlal Baroda were not liable to pay any tax on these transactions nor could any such liability for tax be transferred to the petitioners by virtue of such declarations. If, therefore, there was no basis for any such liability, the declarations by themselves cannot create any new liability and the petitioners cannot be held liable to tax even by the operation of section 4(6) of the Act, the very basis of the liability sought to be imposed therein having disappeared.

The result, therefore, is that the Respondents will be restrained from enforcing the Central Provinces and Berar Sales Tax Act, 1947, and its provisions against the petitioners and from imposing a tax in respect of the transactions in question and in particular from imposing a tax on the purchase price of goods purchased on the declarations under Rule 26 being goods specified in the registration certificate as intended for use as raw material in the manufacture of goods for sale by actual delivery in Madhya Pradesh for the purpose of consumption in that State but utilised for any other purpose under the provisions of section 4(6) of the Act. The Respondents will pay the petitioners' costs of this petition.