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March 28.

MESSRS ASHOK LEYLAND LTD.

v.

THE STATE OF MADRAS

(S. K. DAS, J. L. KAPUR, M. HIDAYATULLAH, J. C. SHAH and T. L. VENKATARAMA AIYAR, JJ.)

Sales Tax—Inter-State sales before the enactment of the Sales Tax Laws Validation Act—Such sales taxed on the footing of sales inside the State—Sales found to be inter-State sales—Validity of assessment after the passing of that Act—Madras General Sales Tax Act, 1939 (Mad. 9 of 1939), ss. 2 (h), 22—Sales Tax Laws Validation Act, 1956 (7 of 1956), s. 2—Constitution of India, Art. 286.

The appellant firm had its factory in the State of Madras, where it manufactured, assembled and sold motor vehicles, spare parts and accessories. For the assessment year 1952-53, the sales tax authority computed the appellant's taxable turnover of sales for that year excluding a sum which represented the value of vehicles etc., sold outside the State of Madras, but on revision, the taxable turnover was increased by including a sum which related to certain transactions with dealers outside the State of Madras on the ground that the sales covered thereby were made within the State of Madras and were therefore liable to tax under the Madras General Sales Tax Act, 1939. The appellant claimed that these sales were in the course of inter-State trade and commerce and not liable to sales tax by reason of the provisions of Art. 286(2) of the Constitution of India. The matter was taken up to the Supreme Court and in the meantime, the Sales Tax Laws Validation Act, 1956, had been passed by Parliament. The question was whether the transactions in question, even if they were considered as having taken place in the course of inter-State trade, came within the protection of the Validation Act of 1956 and, therefore, the assessment in the present case was valid. The appellant contended (1) that the Validation Act was applicable only when the law of the State imposed, in express terms, a tax on the sale or purchase of any goods in the course of inter-State trade or commerce, and (2) that the new s. 22 inserted in the Madras General Sales Tax Act, 1939, by Madras Act 1 of 1957, which operated retrospectively from January 26, 1950, talked of sales in which the goods were delivered for consumption in the State of Madras, and, therefore, the Validation Act did not operate on sales of an inter-State character other than such sales.

Held: (1) that the effect of the Sales Tax Laws Validation Act, 1956, was to liberate the State laws from the fetter placed on them by Art. 286(2) of the Constitution of India and enable such laws to operate on their own terms. Consequently, the transactions in question were liable to tax under the provisions

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of the Madras General Sales Tax Act, 1939, and it was not necessary to provide in that Act in express terms that it was taxing sales in the course of the inter-State trade.

M. P. V. Sundararamier & Co. v. *The State of Andhra Pradesh and Another*, [1958] S.C.R. 1422, relied on.

(2) that the transactions in question came within the definition of sale in s. 2(h) of the Madras General Sales Tax Act, 1939, and the power to tax conferred on the State by the charging section, s. 3, was not affected by s. 22 in view of sub-s. (2) therein.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 446 of 1958.

Appeal from the judgment and order dated April 18, 1956, of the High Court of Judicature at Madras in Tax Revision Case No. 93 of 1955.

M. C. Setalvad, Attorney-General of India, S. Swaminathan and *K. L. Mehta*, for the appellants.

V. K. T. Chari, Advocate-General of Madras, M. M. Ismail and *T. M. Sen*, for the respondent.

N. A. Palkhivala, J. B. Dadachanji, S. N. Andley, Rameshwar Nath and *P. L. Vohra*, for the Intervener (Tata Loco & Engineering Co. Ltd., Bombay).

1961. March 28. The Judgment of the Court was delivered by

S. K. Das J.

S. K. DAS, J.—This is an appeal on a certificate granted by the High Court of Madras. The firm of Messrs. Ashok Leyland Ltd., Ennore, is the appellant before us. For brevity and convenience, we shall hereinafter refer to the firm as the assessee. The State of Madras through the Commercial Tax Officer, Saidapet, is the respondent before us.

The assessee is a firm with its factory at Ennore in the State of Madras, where it manufactures, assembles and sells motor vehicles and spare parts and accessories thereof, through an elaborate organisation spread over several States. It is, perhaps, necessary to indicate briefly the organisational set up in order to appreciate the point on which the case was heard in the High Court and argued before us. The system of distribution of its motor vehicles, spare parts and

accessories at one uniform price to consumers in the various States which the assessee adopted, consisted of the appointment of a distributor (called a dealer) with a definite territorial jurisdiction, both inside and outside the State of Madras. To every such dealer it granted the sole right of selling the products of the firm within the territory allotted to him. If the territory of the dealer was outside the State of Madras, the agreement entered into by the dealer provided for the delivery of the products of the firm by consignment, by rail or steamer or road transport. The agreement specifically stipulated that the dealer must not canvass or sell the products outside the territory allotted to him, and in the event of infringement or breach of the undertaking by the dealer, the assessee was entitled to terminate the agreement forthwith. On such termination, the assessee reserved the right to call upon the dealer to return all or any of the products remaining unsold at the date of such termination. The case set up by the assessee was that a substantial number of motor vehicles and accessories thereof were consigned to the dealers in other States either by rail or steamer; but due to want of such transport facilities, a number of vehicles were also transported by road.

In the year relevant to the assessment year 1952-53, the total turnover of the assessee in respect of all its sales came to Rs. 1,43,67,007 odd. The Deputy Commercial Tax Officer, Madras, computed the taxable turnover of the assessee for that year by excluding the sum of Rs. 1,12,21,707 odd which represented the value of vehicles, spare parts, etc., sold outside the State of Madras and consigned by rail or steamer or transported by road. The balance of Rs. 31,45,299 odd was determined to be the net assessable turnover of the company. The tax levied thereon was a sum of Rs. 1,45,655-13-3 and this sum was duly paid by the assessee.

Sometime thereafter, the Commercial Tax Officer, Madras, purporting to act under the powers of revision given to him by s. 12 of the Madras General Sales

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Tax Act, 1939 (Madras Act IX of 1939), hereinafter called the Act, called upon the assessee to produce its books of account for the purpose of satisfying himself as to the legality or propriety of the assessment made. After scrutinising the accounts and other records produced by the assessee, the Commercial Tax Officer issued a notice proposing to revise the assessment by including a sum of Rs. 42,98,068 odd on the ground that the delivery of motor vehicles, etc., in respect of sales covered by the aforesaid sum was made within the State of Madras and was therefore liable to tax under the Act. The assessee submitted its objection to the revision of the assessment and contended that on the sum of Rs. 42 lacs odd the assessee was not liable to pay sales tax as the transactions were in the course of inter-State trade and commerce. This objection was, however, overruled by the Commercial Tax Officer except to a very small extent.

From that decision of the Commercial Tax Officer, an appeal was taken to the Sales Tax Appellate Tribunal, Madras, and the assessee contended in that appeal that the revision of the assessment by the Commercial Tax Officer was without jurisdiction and that the inclusion of Rs. 42 lacs odd in the taxable turnover was contrary to the provisions of Art. 286 of the Constitution. The Tribunal rejected the plea of absence of jurisdiction, but held on merits that the sum of Rs. 12,48,403 odd representing the value of vehicles driven away on their own motive power through the assessee's own drivers to the places of business of the non-resident dealers was not liable to sales tax.

The assessee then preferred a revision to the High Court of Madras under s. 12B(1) of the Act and repeated the contention that the sales in question were in the course of inter-State trade and commerce and not liable to sales tax by reason of the provisions of Art. 286(2) of the Constitution. In the High Court the liability to tax was challenged by the assessee in respect of the following four items only:

(1) A sum of Rs. 1,43,072 odd which represented the value of vehicles delivered ex-factory to the

dealer's drivers. The vehicles were driven away by those drivers after temporary registration of the vehicles in the name of the dealer, outside the State of Madras.

(2) A sum of Rs. 28,01,357 odd which represented the value of vehicles delivered to the drivers of the dealers, which were driven away under the trade number of the dealers, outside the State of Madras.

(3) A sum of Rs. 7,866 odd which represented the value of spare parts or other accessories delivered along with the cars.

(4) A sum of Rs. 15,000 which represented the value of spare parts consigned to the dealers. These were delivered to the dealers outside the State of Madras and the consignments were sent by rail or steamer.

The High Court repelled the contention of the assessee in respect of the first three items aforesaid, holding that they fell outside the purview of the ban imposed by Art. 286(2) of the Constitution. It modified the order of the Tribunal with respect to the fourth item, as in its view that item came within the scope of Art. 286(2). The assessee then moved the High Court and obtained the necessary certificate under Art. 133 of the Constitution.

When the learned Attorney-General appearing for the assessee opened the appeal, he submitted in the forefront of his argument that the High Court was in error in holding that the transactions coming under the three items (1), (2) and (3) above were outside the ban imposed by Art. 286(2) of the Constitution, and contended that the transactions were within the purview of the ban. We then drew his attention to the Sales Tax Laws Validation Act, 1956 (hereinafter called the Validation Act), and asked him to consider the question whether the transactions in question came within the protection of the Validation Act, an aspect of the case which does not appear to have been considered in the High Court. The argument before us then centered round the question whether the assessment in respect of the three items came within the protection of the Validation Act, and it was conceded by the

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learned Attorney-General that if it did, no other question would survive and it would be unnecessary to determine in this appeal the true scope and effect of Art. 286(2) of the Constitution and whether the transactions in question came within the ban imposed thereby. On behalf of an intervener (Tata Locomotive & Engineering Co. Ltd., Bombay) we have been pressed to decide, on merits, whether the transactions under consideration here come within the ban of Art. 286(2) of the Constitution, on the ground that such decision will be of assistance in a pending case to which the intervener is party. We do not think that we can do so for the benefit of the intervener. The intervener has no right to ask us to decide a question which does not fall for decision if the Validation Act applies; for it is conceded that if the Validation Act applies, that will be decisive of the whole appeal. We must, therefore, reject the plea of the intervener.

We proceed now to consider the main point argued in this appeal, namely, whether the Validation Act applies to the transactions in question. It is convenient to read here s. 2, which is the relevant section, of the Validation Act:

> "Section 2. Notwithstanding any judgment, decree or order of any court, no law of a State imposing or authorising the imposition of, a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955, shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce; and all such taxes levied or collected or purporting to have been levied or collected during the aforesaid period, shall be deemed always to have been validly levied or collected in accordance with law".

It will be noticed at once that the transactions under consideration in the present appeal came within the period mentioned in the Validation Act, being transactions of a period between April 1, 1951, and

March 31, 1952. Indeed, this is not disputed before us. It is also clear that the wording of s. 2 is general and wide enough to take in "the sale or purchase of any goods where such sale or purchase took place in the course of inter-State trade or commerce during the period between the 1st day of April, 1951, and the 6th day of September, 1955." The section states in effect that notwithstanding any judgment, decree or order of any court, no law of a State imposing a tax on the sale or purchase of goods referred to therein shall be deemed to be invalid or ever to have been invalid merely by reason of the fact that such sale or purchase took place in the course of inter-State trade or commerce. The learned Attorney-General has advanced two arguments in support of his contention that the Validation Act does not apply to the transactions under consideration here. His first argument is that the Validation Act applies only when the law of the State imposes, in express terms, a tax on the sale or purchase of any goods in the course of inter-State trade or commerce. He emphasises the expression "where such sale or purchase took place in the course of inter-State trade or commerce" occurring in the section and from that expression he has drawn the inference that the law must in express terms say that it is taxing transactions in the course of inter-State trade and commerce. His second argument is that by reason of s. 22 of the Act inserted by the amending Act of 1957, being Madras Act I of 1957, the Act imposes no tax on transactions under consideration in this appeal; it merely imposes a tax on transactions which are generally known as Explanation sales referable to the Explanation to Art. 286(1)(a), such as were considered in the decision of this Court in *M. P. V. Sundararamier & Co.* v. *The State of Andhra Pradesh & Another* (1). We shall consider these two arguments one after the other.

It appears to us that the first argument does not correctly reflect the true scope and effect of s. 2 of the Validation Act. It is necessary, perhaps, to advert to the circumstances which led to the enactment of

(1) [1958] S.C.R. 1422.

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the Validation Act. The true meaning and scope of the Explanation to Art. 286(1) of the Constitution came up for consideration before this Court in *The State of Bombay and Another* v. *The United Motors (India) Ltd. and Others* (1). It was therein held by the majority that though the sales falling within the Explanation would, in fact, be in the course of inter-State trade, they became intra-State sales by the fiction introduced by the Explanation and were liable to be taxed by the State within which the goods were delivered for consumption. Then, came the decision in *The Bengal Immunity Company Limited* v. *The State of Bihar and Others* (2) where this Court held, again by a majority, that the sales falling within the Explanation being inter-State in character, could not be taxed by reason of Art. 286(2) unless Parliament lifted the ban, that the Explanation to Art. 286(1)(a) controlled only that clause and did not limit the operation of Art. 286(2), and that the law in this respect had not been correctly laid down in the *United Motors'* case (2). The decision in *The Bengal Immunity's* case (2) was rendered on September 6, 1955. The Sales Tax Validation Ordinance No. III of 1956 was promulgated on January 30, 1956, and that was later replaced by the Validation Act. The constitutionality of the Validation Act was challenged before this Court and in *M. P. V. Sundararamier's* case (3) this Court upheld its validity, though the sales referred to in the arguments in that case were Explanation sales.

The Validation Act is legislation by Parliament, and it lifts the ban imposed by Art. 286(2). Clause (2) of Art. 286 as it stood before the Constitution (Sixth Amendment) Act, 1956, was in these terms:

> "(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."

In *M. P. V. Sundararamier's* case (3) this Court observed:

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.
(3) [1958] S.C. 1422.

"Section 2 of the impugned Act which is the only substantive enactment therein makes no mention of any validation. It only provides that no law of a State imposing tax on sales shall be deemed to be invalid merely because such sales are in the course of inter-State trade or commerce. The effect of this provision is merely to liberate the State laws from the fetter placed on them by Art. 286(2) and to enable such laws to operate on their own terms. The true scope of the impugned Act is, to adopt the language of this Court in the decisions in the *United Motors* case (1) and *The Bengal Immunity Company's* case (2), that it lifts the ban imposed on the States against taxing inter-State sales and not that it validates or ratifies any such law."

It should be obvious that in 1939, long before the coming into force of the Constitution, the Act could not have said in express terms that it was taxing sales in the course of inter-State trade. What we have to see is that the fetter under Art. 286(2) having been removed, does the Act operating on its own terms affect the transactions in question even though they be in the course of inter-State trade? If it does, the assessment is no longer liable to challenge on the ground of the ban imposed by Art. 286(2).

This brings us to the second argument of the learned Attorney-General. One has merely to see the definitions of 'sale' and 'turnover' and s. 3, the charging section, to come to the conclusion that the Act operating on its own terms makes the transactions under consideration in this appeal liable to sales tax. Explanation (2) to the definition of 'sale' says:

"The sale or purchase of any goods shall be deemed, for the purposes of this Act, to have taken place in this State, wherever the contract of sale or purchase might have been made—

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

(b) in the case the contract was for the sale or purchase of future goods by description, then, if the

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.

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goods are actually produced in this State at any time after the contract of sale or purchase in respect thereof was made."

There can be no doubt that the Explanation brings the transactions in question within the definition of 'sale' under the Act. The point now is—does s. 22 of the Act make any difference? We are clearly of the opinion that it does not. A little history of that section is necessary here. Section 22 of the Act, as it stood before the amending Act of 1957, was inserted by the Adaptation of Laws (Fourth Amendment) Order, 1952, made by the President in exercise of the powers conferred on him by Art. 372(2) of the Constitution. The section was then almost a verbatim reproduction of Art. 286(1) and (2) of the Constitution. The effect of the section as it stood then, was considered in *M. P. V. Sundararamier's case* (1) and it was held that it had a positive content and the Explanation in the context of s. 22 (as it then stood) authorised the State of Madras to impose a tax on sales falling within its purview. Then came the Validation Act in 1956, which lifted the ban imposed by Art. 286(2). In 1957 new s. 22 was inserted in the Act with restrospective effect from January 26, 1950, and old section 22 was repealed. The new section reads:

"Section 22. *Sale or purchase deemed to have taken place inside the State in certain cases*—

(1) Any sale or purchase which took place on or before the 6th day of September, 1955, shall be deemed to have taken place inside the State if the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in the 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, and be subject to tax under this Act accordingly..

(2) The provisions of this section shall not affect the liability to tax of any sale or purchase under any other provision of this Act."

The argument of the learned Attorney-General is that

(1) [1958] S.C.R. 1422.

the new section which operates retrospectively from January 26, 1950, talks of sales in which the goods are delivered for consumption in the State of Madras; in other words, of Explanation sales only; therefore, the Act does not operate on sales of an inter-State character other than Explanation sales. We are unable to agree. First of all, sub-s. (2) of new s. 22 makes it quite clear that the section does not affect the liability to tax of any sale or purchase under any other provision of the Act. Secondly, after Parliament had lifted the ban imposed by Art. 286(2), it was unnecessary to repeat the provisions of that Article in the Act and old s. 22 in so far as it repeated Art. 286(2) became otiose. Therefore, new s. 22 has not the effect of subtracting something from the power to tax conferred on the State by the charging section, s. 3, read with the definition of 'sale' in s. 2(h). To repeat what we have said earlier: after the removal of the fetter of Art. 286 (2), the Act operating on its own terms makes the transactions in question liable to tax, and new s. 22 makes no difference to that position.

For these reasons, we are unable to accept as correct the arguments advanced on behalf of the assessee. In our view, the Validation Act applies and the assessment on the transactions in question cannot now be challenged on the ground alleged by the assessee. The appeal fails and is dismissed with costs.

Appeal dismissed.