A

STATE OF JAMMU & KASHMIR AND OTHERS

v.

CALTEX INDIA (LTD.)

B

December 17, 1965

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, M. HIDAYATULLAH, V. RAMASWAMI, AND P. SATYANARAYANA RAJU, JJ.]

C *Sales Tax—Petrol sent under contract from Punjab to Jammu & Kashmir—Sales whether inter-State in character—Chargeability under Jammu & Kashmir Motor Spirit (Taxation of Sales) Act* 2005, *s.* 3—*Sales Tax Laws Validation Act,* 1956, *effect of—Constitution of India Art.* 286(2).

Petrol and allied products were supplied by the respondent company from its depot in Punjab to the State Mechanized Farm at Nandpur in D Jammu & Kashmir State under a contract with the Director-General of Supplies, Delhi. The sales were taxed under the Jammu & Kashmir Motor Spirit (Taxation of Sales) Act, 2005 for the period January 1955 to May 1959 by a single assessment order. The assessment was challenged by the respondent by a writ petition filed in the High Court, as being beyond the taxing power of the State owing to the ban imposed by Art. 286(2) as interpreted by this Court in the *Bengal Immunity* case, as also the provisions of the Central Sales Tax Act, 1956 passed by Parliament E after the amendment of Art. 286 by the Constitution Sixth Amendment Act, 1956. The respondent's plea was accepted by a single judge of the High Court as regards the period after September 6, 1955; as regards the period before and upto that date the learned Judge held that the sales were taxable because the ban on taxation of inter-State sales in Art. 286(2) was lifted in respect of that period by the Sales Tax Laws Validation Act, 1956. In Letters Patent Appeal the Division Bench held F that the assessment order for the whole period from January 1955 to May 1959 was one composite whole and being bad in part was infected throughout and must be treated as wholly invalid. The State appealed to this Court by special leave.

HELD : (i) The sales in question were inter-State sales as both the conditions laid down in the *Bengal Immunity* case for a sale to be an inter-State sale that (1) there should be a sale of goods and (2) the G goods must be transported under the contract of sale from one State to another, were fully satisfied in the present case. The sales could not therefore be taxed for the period not covered by the Sales Tax Laws Validation Act, 1956. [156 C-D]

Bengal Immunity Co. Ltd. v. *State of Bihar,* [1955] 2 S.C.R. 603, referred to.

H (ii) The last mentioned Act however validated the State laws which levied tax on inter-State sales for the period before September 6, 1955. Hence the sales before that date could be validly taxed as held by the single Judge. [159 F]

(iii) The fact that the respondent had no place of business or storage in Jammu & Kashmir was not material because it was not a condition for taxation under the Jammu & Kashmir Motor Spirit (Taxation of Sales) Act that there should be such a place of business or storage. Section 3 of the Act purports to tax all "retail sales". Nor is the holding of a licence under s. 6 which is a machinery section only, a condition of liability to pay sales-tax under the Act. [158 C-D] A

(iv) The Division Bench was wrong when it held that because there was one assessment order for the whole period from January 1955 to May 1959, the whole of it was vitiated. Sales-tax is in ultimate analysis imposed on receipts from individual sales or purchases of goods and it was possible to separate the assessment of receipts derived from the sales for the period up to September 6, 1955 and to allow the taxing authorities to enforce the statute with respect to the sales taking place during this period and also prevent them by grant of a writ from imposing the tax with regard to sales for the exempted period. [159 G—160 E] B C

State of Bombay v. *United Motors India Ltd.* [1953] S.C.R. 1069, relied on.

Bennett & White (Calgary) Ltd. v. *Municipal District of Sugar City No. 5*, [1951] A.C. 786, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 864 of 1964. D

Appeal from the judgment and order, dated July 10, 1962 of the Jammu & Kashmir High Court in L. P. Appeal No. 4 of 1962.

S. V. Gupte, Solicitor-General, Raja Jaswant Singh, Advocate-General for the State of Jammu and Kashmir, *N. S. Bindra, R. H. Dhebar*, and *R. N. Sachthey*, for the appellants Nos. 1 and 2. E

M. C. Setalvad, and *D. N. Gupta*, for the respondent.

The Judgment of the Court was delivered by F

Ramaswami, J. This appeal is brought on a certificate against the judgment of the Division Bench of the High Court of Jammu & Kashmir at Srinagar, dated July 10, 1962 holding that the respondent is not liable to pay sales tax for the period from January, 1955 to May, 1959 under the Jammu & Kashmir Motor Spirit (Taxation of Sales) Act, 2005 (1948 A.D.). G

The Director-General of Supplies, Delhi entered into a contract with General Manager, Caltex India (Ltd.) at Bombay (hereinafter called the respondent) for the supply of petrol, HSD and Power Kero to the State Mechanized Farm at Nandpur located in the State of Jammu & Kashmir. In pursuance of this contract the respondent directed its depot at Pathankot situated in the Punjab State to supply petrol to the Nandpur Farm. H

A The procedure adopted was as follows. The Officer in charge of the Nandpur farm placed indents with the Pathankot depot for supply of specified quantities of petrol to the farm and on receipt of the indents, the Pathankot depot transported the petrol in its own tank-lorries to Nandpur and delivered the petrol to the farm. The petrol was measured by means of dipping rods and approved by the B indenting officer at Nandpur farm and thereafter the petrol was delivered to the Nandpur farm through pumps which belonged to the respondent. The price of petrol so supplied was paid to the respondent at Delhi by the Director-General of Supplies. The Petrol Taxation Officer at Srinagar considered that the sales of petrol to Nandpur farm were liable to be taxed under the Jammu C & Kashmir Motor Spirit (Taxation of Sales) Act, 2005 and called upon the respondent to furnish returns of sales between 1952 to 1959. The respondent, however, furnished returns only for the period January, 1955 to May, 1959. On the basis of the returns the Petrol Taxation Officer assessed the respondent to pay sales tax D to the extent of Rs. 39,619.75 in respect of sales of petrol from January, 1955 to May, 1959. The respondent thereafter moved the High Court under s. 103 of the Constitution of Jammu and Kashmir for grant of a writ to quash the assessment of sales tax and to restrain the State of Jammu and Kashmir and the Petrol Taxation authorities (hereinafter called the appellants) from E levying the tax. It was contended on behalf of the respondent that the sales tax could not be imposed as the sales took place in the course of inter-State trade and commerce. Syed Murtaza Fazl Ali, J. held that the respondent was liable to pay sales tax in respect of the sales which took place during the period January, 1955 to September, 1955. Regarding the rest of the period of F assessment, the learned Judge held that the appellants were not entitled to levy tax and accordingly issued a writ restraining the appellants from levying the tax for the period from October, 1955 to May, 1959. The appellants took the matter in Letters Patent appeal and the respondent also filed Cross-objection with regard to the liability to tax for the period from January, 1955 to G September, 1955. The Division Bench dismissed the appeal in Letters Patent and allowed the cross-objection of the respondent, holding that the appellants were not entitled to levy sales tax for the entire period from January, 1955 to May, 1959 and accordingly quashed the assessment of sales tax, dated October 3, 1960.

H It is necessary, at this stage, to indicate the legislative development in the State of Jammu and Kashmir which provides the setting for the questions to be investigated in this case.

Article 286 of the Constitution, as it was originally enacted, read 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—

(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 purpose 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 be 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."

Article 286 therefore imposes four bans upon the legislative power of the States. Clause (1) prohibited every State from imposing or authorising the imposition of, a tax on outside sales and on sales in the course of import into or export outside the territory

A of India. By cl. (2) the State was prohibited from imposing tax on the sale of goods where such sale took place in the course of inter-State trade or commerce. But the ban could be removed by legislation made by the Parliament. By cl. (3) the Legislature of a State was incompetent to impose or authorise imposition of a tax on the sale of any goods declared by the Parliament by B law to be essential for the life of the community, unless the legislation was reserved for the consideration of the President and had received his assent. But Art. 286 of the Constitution did not apply to the State of Jammu & Kashmir till May 14, 1954, because the Constitution (Application to Jammu & Kashmir) Order 1950 made by the President of India on January 26, 1950 C excepted Art. 286 from its applicability to the State of Jammu & Kashmir. Reference, in this connection, may be made to the Second Schedule to the Constitution (Application to Jammu & Kashmir) Order 1950, relevant excerpt from which is reproduced below :

D "THE SECOND SCHEDULE

(See paragraph 3)

Provisions of the constitution applicable.	Exceptions	Modifications
Part XII	Articles 264 and 265 Clause (2) of Art. 267, Articles 268 to 281 Clause (2) of Art. 283, Articles 286 to 291, 293, 295, 296 and 297.	1. Articles 266 shall apply only in so far as it relates to the Consolidated Fund of India and the public account of India.
		2. Articles 282 and 284 shall apply only in so far as they relate to the Union or the public account of India.
		3. Articles 298, 299 and 300 shall apply only in so far as they relate to the Union or the Govt. of India."

G But Art. 286 was applied to the State of Jammu & Kashmir by the Constitution (Application to Jammu & Kashmir) Order, 1954 which came into force on 14th day of May, 1954. In *The Bengal Immunity Company Ltd.* v. *State of Bihar*[1] this Court held that the operative provisions of the several parts of Art. 286, namely cl. (1)(a), cl. (1)(b), cl. (2) and cl. (3), were intended H to deal with different topics and one cannot be projected or read

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

into another, and therefore the Explanation in cl. (1)(a) cannot legitimately be extended to cl. (2) either as an exception or as a proviso thereto or read as curtailing or limiting the ambit of cl. (2). This Court further held that until the Parliament by law, made in exercise of the powers vested in it by cl. (2) of Art. 286, provides otherwise no State may impose or authorise the imposition of any tax on sales or purchases of goods when such sales or purchases take place in the course of inter-State trade or commerce, and therefore the State Legislature could not charge inter-State sales or purchases until the Parliament had otherwise provided. The judgment of the Court in the *Bengal Immunity Company's* case(1), was delivered on September 6, 1955. The President issued the Sales Tax Laws Validation Ordinance, 1956, on January 30, 1956, the provisions of which were later embodied in the Sales Tax Laws Validation Act, 1956. By this Act 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 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 purported 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. The Parliament thus removed the ban contained in Art. 286(2) of the Constitution retrospectively but limited only to the period between April 1, 1951 and September 6, 1955. All transactions of sale, even though they were inter-State could for that period be lawfully charged to tax. But Art. 286(2) remained operative after September 6, 1955 till the Constitution was amended by the Constitution (Sixth Amendment) Act, *i.e.*, September 11, 1956. By the amendment, the explanation to cl. (1) of Art. 286 was deleted and for cls. (2) and (3) the following clauses were substituted :

> "(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).
>
> (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods, declared by Parliament by law to be

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

A of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

By cl. (2) of Art. 286 as amended, Parliament was authorised to B formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in cl. (1), namely, outside the State or in the course of the import into, or export out of the territory of India. By the Constitution (Sixth Amendment) Act, Parliament was entrusted with power under Art. 269(3) to formulate principles for determining when a sale or C purchase of goods takes place in the course of inter-State trade or commerce; and to effectuate the conferment of that power, in the Seventh Schedule, Entry 92A was added in the First List and Entry 54 in the Second List was amended. The Parliament enacted, in exercise of that power, the Central Sales Tax Act 74 of 1956 to formulate principles for determining when a sale or D purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, and to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce etc. Article 286, E as amended by the Constitution Sixth Amendment Act, 1956, was applied to the State of Jammu & Kashmir on 16th January 1958 by the Constitution (Application to Jammu & Kashmir) Amendment Order 1958. The Central Sales Tax Act (Act 74 of 1956) was enacted by Parliament on December 21, 1956 but F it was applied to the State of Jammu & Kashmir on March 23, 1958 by Act 5 of 1958.

The questions presented for determination in this appeal are : (1) whether sales tax could be imposed on the respondent for the period from October, 1955 to May, 1959 in view of the G prohibition contained in Art. 286(2) of the Constitution as it stood before its amendment, (2) whether sales tax could be validly levied on sales taking place between January 1, 1955 to September 6, 1955 in view of the provisions of Sales Tax Validation Act, 1956 (Act 7 of 1956).

As regards the first question, it is admitted by the parties that H petrol was transported from Pathankot in the State of Punjab to Nandpur in the State of Jammu & Kashmir under the contract of sale. The petrol was kept in storage at a depot of the respondent

at Pathankot and it was carried in the trucks of the respondent from Pathankot and delivered to the Nandpur farm in the State of Jammu & Kashmir. The price of the petrol supplied was paid to the respondent at Delhi by the Director-General of Supplies. Upon these facts it is manifest that there was movement of goods from the State of Punjab to the State of Jammu & Kashmir under the contract of sale and there was completion of sale by the passing of property and the delivery of the goods to the purchaser. As pointed out by Venkatarama Ayyar, J. in the *Bengal Immunity Company* case(1) :

> "A sale could be said to begin the course of inter-State trade only if two conditions concur : (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade."

In the present case, both these conditions have been satisfied and the transactions of sale made between the parties were unquestionably in the course of inter-State trade. Indeed, the Solicitor-General on behalf of the appellants did not seriously challenge the finding of the High Court on his point.

We proceed to consider the next question, *viz.*, whether the respondent was liable to pay sales tax for the period from January 1, 1955 to September 6, 1955 in view of the lifting of the finding of the High Court on this point.

On behalf of the respondent Mr. Setalvad put forward the argument that the Sales Tax Validation Act by itself did not empower any State to levy any tax on sales or purchases in the course of inter-State trade but it merely liberated Sales Tax Acts of several States from the fetter imposed by cl. (2) of Art. 286 of the Constitution and left the State Act to operate in its own terms. It was submitted that if there was no law in a State empowering the levy of a tax on sales or purchases in the course of inter-State trade or commerce, the State could not derive any advantage from the Sales Tax Validation Act. It was contended that the Explanation to Art. 286(1)(a) of the Constitution did not confer any taxing power on any State Legislature. On the contrary, it was intended to place a limitation on the State taxing power and therefore the mere lifting of the ban under cl. (2) of Art. 286 did not enable the State to impose the tax on sales in the course of inter-State trade and such levy of tax could be made

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

A only when the taxing statute of the State expressly provides for it. In our opinion, the argument of Mr. Setalvad is well-founded. The question, therefore, arises whether the Jammu & Kashmir Motor Spirit (Taxation of Sales) Act, 2005 (hereinafter called the Act) applies to the sale of petrol made by the respondent between January 1, 1955 to September 6, 1955 and whether the B appellants can validly assess the respondent to sales tax with regard to these transactions.

The preamble of the Act states that it is expedient to provide for the levy of a tax on the retail sale of motor spirit. Section 2 (g) of the Act defines "retail sale" to mean a sale by a retail C dealer of any motor spirit to a consumer or to any other person for any purpose other than resale. Section 2(f) defines "retail dealer" to mean any person who, on commission or otherwise, sells any motor spirit to a consumer or to any other person for any purpose other than re-sale or keeps any motor spirit for sale to consumers or to any other persons for purposes other than D resale. Under s. 2(h) of the Act the words "sale" and "sell" include exchange barter and also the consumption of motor spirit by the retail dealer himself. Section 3 deals with the imposition of tax and reads as follows :

> "3. There shall be levied and paid to the Government on all retail sales of motor spirit a tax at the rate E of four annas for each imperial gallon of motor spirit or at such other rate as the Government may prescribe from time to time."

Section 6 of the Act deals with the licensing of the retail dealers and states that after the expiry of a period of two months from F the commencement of the Act no person shall carry on business as a retail dealer unless he is in possession of a valid license. Section 7 relates to the procedure for grant of licence. Section 7(4) states as follows :

> "No license under this Act shall be granted to any G person who does not hold a license for the storage of dangerous petroleum under the Petroleum Act, 1998, and if any such license granted under that Act is cancelled, suspended or is not renewed any license granted under this Act to the holder thereof shall be deemed to be cancelled, suspended or not renewed, as the case may H be."

It was contended on behalf of the respondent that no tax could be levied under the Act unless the assessee has his place of business

or storage of motor spirit within the State of Jammu & Kashmir. It was pointed out that no retail dealer was permitted to carry on business as a retail dealer of motor spirit unless he holds a license for storage of petroleum under the State Petroleum Act. It is admitted that the respondent had no storage depot or place of business within the State of Jammu & Kashmir at the material time. It is also conceded that the respondent did not hold any licence for storage of petrol within the State. Mr. Setalvad therefore contended that the appellants were not authorised to levy sales-tax under the provisions of the Act. We are unable to accept this contention as correct. The charging section—s. 3—authorises the Government to levy tax on "all retail sales of motor spirit" at the rate of four annas for each imperial gallon of motor spirit or at such other rate as the Government may prescribe from time to time. The charging section does not require that for the purpose of assessment of tax the assessee should have his place of business or his storage depot within the State of Jammu & Kashmir. Nor is it a requirement of the section that the assessee should hold a licence of a retail dealer under the Act. The provisions in regard to licence contained in ss. 6 and 7 deal with the machinery of collection and it is not permissible, in our opinion, to construe the language of s. 3 of the Act with reference to ss. 6 and 7 or to place any restriction on the scope and effect of the charge of tax in the context of these sections. We may, in this context, refer to the provisions of s. 10 of the Act which states :

> "10. Whoever contravenes the provisions of section 6 shall be punishable with fine which may extend to one thousand rupees or to a sum double the amount of tax due in respect of the sale of any motor spirit conducted by or on behalf of such person, whichever is greater."

It is evident from the section that a person who trades in petrol without taking out a licence under s. 6 of the Act is liable to pay double the amount of tax due from him. In other words, the requirement of s. 6 is only a matter of machinery and does not affect the liability of the person who trades in petrol to pay tax in accordance with the charging section. It follows therefore that the respondent will be liable to pay sales-tax if it is shown that it has made retail sales of motor spirit within the meaning of s. 3 of the Act. This takes us to the question whether the transactions of sale between January 1, 1955 to September 6, 1955 were "retail sales of motor spirit" within the meaning of s. 3 of the Act. As observed earlier, the procedure for supply of petrol was that the officer in-charge of the Nandpur

A farm placed indents on the Pathankot depot of the respondent for supplies of specified quantities of petrol to the farm. On receipt of the indent the Pathankot depot transported the petrol in its own tank-lorries to Nandpur within the State of Jammu and Kashmir and decanted the petrol in its own underground tanks where it was measured by means of dipping rods and approved B by the indenting officer and was then delivered to Nandpur farm. In this state of facts it was contended by the Solicitor-General that the property in the petrol passed to Nandpur farm inside the State of Jammu & Kashmir. It was submitted that the sales were, therefore, liable to be taxed under s. 3 of the Act for the period from January 1, 1955 to September 6, 1955 when the ban was C removed. On behalf of the respondent Mr. Setalvad said that there was appropriation of the goods to the contract at the bulk depot of the respondent at Pathankot and therefore the property of the goods passed to the Nandpur farm at Pathankot outside the State of Jammu & Kashmir. No such argument appears to have D been advanced on behalf of the respondent before the High Court which decided the case on the assumption that there was appropriation of the goods to the contract at Srinagar when the petrol was transferred from the tank-lorries of the respondent for delivery to Nandpur farm and measured by means of dipping rods and approved by the indenting officer. The question as to passing of E title of goods is essentially a question of fact and we must deal with the present case on the same basis as the High Court has done, *viz.*, that there was passing of title inside the State of Jammu & Kashmir. We accordingly hold that s. 3 of the Act applies to transactions of sale of petrol made by the respondent for the period from January 1, 1955 to September 6, 1955 and F assessment of sales-tax made by the taxing authorities for this period is legally valid.

It was lastly contended by the Solicitor-General that the High Court was in error in taking the view that the taxing authorities were not entitled to levy sales-tax for the period from January 1, G 1955 to September 6, 1955, because the assessment was one composite whole relating to the entire period from January 1, 1955 to May, 1959, and the assessment which was bad in part was infected throughout and must be treated as invalid. In our opinion, the criticism of the Solicitor-General on this point is well-founded and must be accepted as correct. It is true that H there was one order of assessment for the period from January 1, 1955 to May, 1959 but the assessment can be easily split up and dissected and the items of sale can be separated and taxed for differ-

ent periods. In reaching the conclusion that the entire assessment was invalid the High Court has relied on the decision of the Judicial Committee in *Bennett & White (Calgary) Ltd.* v. *Municipal District of Sugar City No. 5*(1) in which Lord Reid observed as follows at page 816 of the Report :

> "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") is on any view not assessable and wrongly included, it would seem clear that such a procedure is barred, and the assessment is bad wholly."

But the principle has no application in the present case because the sales-tax is imposed, in ultimate analysis, on receipts from individuals sales or purchases of goods effected during the entire period and it is possible to separate the assessment of the receipts derived from the sales for the period from January 1, 1955 to September 6, 1955 and to allow the taxing authorities to enforce the statute with respect to the sales taking place in this period and also prevent them by grant of a writ from imposing the tax with regard to sales for the exempted period. In other words, the assessment for the period from January 1, 1955 to September 6, 1955 can be separated and dissected from the assessment of the rest of the period and the High Court was in error in holding that the assessment for the entire period was invalid *in toto*. The view that we have expressed is borne out by the decision of this Court in *The State of Bombay* v. *The United Motors (India) Ltd.*(2).

For these reasons we allow this appeal in part and order that the respondent should be granted a writ in the nature of *mandamus* directing the appellants not to realise sales-tax with regard to transactions of sale between the period from September 7, 1955 to May, 1959 but the respondent will not be entitled to any writ with regard to transactions of sale between January 1, 1955 to September 6, 1955. The appeal is accordingly allowed to this extent but the parties will bear their own costs.

Appeal allowed in part.

(1) [1951] A.C. 786.
(2) [1953] S.C.R. 1069 at p. 1097.