

Ram. Kishan and others
 v.
 Jagdish Khatar and others

have his costs of the trial Court while the costs in the lower appellate Court and in this Court will be borne by the parties.

R.S.

Harbans Singh, J.

SALES TAX REFERENCE

Before D. Falshaw, C.J. and Daya Krishan Mahajan, J.

M/S PREM PAYARI AGGARWAL,—*Appellants*

versus

PUNJAB STATE,—*Respondent.*

General Sales Tax Reference No. 4 of 1965.

1966.

February 16th

Central Sales-tax Act (LXXIV of 1956)—S. 6—Goods sent from Punjab to Uttar Pradesh per V.P.P. and thus sold—Whether liable to Central Sales Tax—S. 3—Inter-State sale—Essentials of.

Held, that in a sale by V.P.P., there is an order placed by the buyer on the seller. The seller despatches the goods by postal parcel and the goods are to be delivered by the postal authorities to the buyer on payment of their price. In some cases goods may even be sent by V.P.P. without an order. The property in the goods sent by V.P.P. will pass to the buyer and the sale will be complete on the buyer paying the price of the goods and not before that. Therefore where the buyer does not accept the goods and returns them there is no sale and the question of levying any sales-tax thereon does not arise. The question of levy of sales-tax only arises in those cases where the goods have been accepted by the buyer and the postal parcel have been paid for. In such a case the sale takes place in the State where the parcel is received and its value paid to the post office.

Held, that for the purposes of law, it hardly matters whether the goods move before the sale is completed or after the sale is completed. In order to be an inter-State sale, the sale must answer the definition of the same in section 3 of the Central Sales Tax Act, that is, there must be movement of goods in connection with the sale. Two things must co-exist—a sale of goods and the movement of goods from one State to another. In the present case both the requirements of section 3 are satisfied and the sale is an inter-State sale. The goods sent by V.P.P. from Punjab to Uttar Pradesh are, therefore, liable to Central Sales tax and such tax is leviable by Punjab authorities as the goods moved from this State.

Application under Section 22(1) of the Punjab General Sales Tax Act, 1948, praying that the Financial Commissioner, Punjab be directed to refer the following question of law in the Hon'ble High Court arising out of the order of the Financial Commissioner, dated 19th April, 1962 affirming the order of the Additional Assistant Excise and Taxation Commissioner, Punjab and that of the Assessing Authority, Bhatinda :—

- (i) *Where goods are sent from one State (called the first State) to another State (called the Second State) through the agency of the Post Office, per V.P.P. to destinations outside the first State and inside the second State and the price of the goods is realised by the sendor of the goods per V.P.P. through the Post Office acting as agent of the sendor at the destination stations in the second State, where the goods are delivered to the purchaser, whether in such a case it can be said that the sale has taken place in the course of inter-State trade as contemplated by Section 3 of the General-Sales Tax, Act, 1956, and that such a sale is liable to sales tax under the provisions of Section 6 of the Central Sales-Tax Act, 1956 ?*
- (ii) *Whether to such sales the provisions of Section 4 of the Central Sales Tax Act, 1956, have any applicability at all and it can be said that such sales shall be deemed to have taken place inside the first State, wherefrom the goods were sent per V.P.P. to destinations inside the second State and outside the first State ?*
- (iii) *Whether such sales are not exempt from the payment, of sales tax under the provisions of the Central Sales Tax Act, 1956 read with the rules framed thereunder?*
- (iv) *Were the Assessing Authorities in the circumstances of the present case acting within their jurisdiction in levying sales tax on the applicants purporting to act under the provisions of Section 6 read with Sections 3 and 4 of the Central Sales Tax Act, 1956 and the rules framed thereunder?*

H. L. SARIN, BALRAJ BAHL, AND MISS ASHA KOHLI, ADVOCATES, for the Petitioner.

M. R. SHARMA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondent.

JUDGMENT.

MAHAJAN, J.—This order will dispose of Sales Tax Reference Nos. 4 of 1965 and 4-A of 1965. One common question of law has been referred by the financial Commissioner in pursuance of the orders of this Court, dated the

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It may be pointed out that while referring the question of law, the learned Financial Commissioner has not stated the case as required by section 22(3) of the Punjab General Sales Tax Act, 1948. In order to enable us to answer a question of law effectively, it is the duty of the Financial Commissioner to state the case properly. However, we have not thought it fit to send the cases back to the Financial Commissioner to enable him to restate them properly because the question that has been referred to us is a pure question of law and does not depend, for its determination, on the facts of both the cases.

The question of law, that has been referred to us, is as follows :—

“Whether, on the facts and circumstances of this case, the goods sent from Punjab to Uttar Pradesh per V.P.P. and thus sold are not liable to tax under the Central Sales Tax Act, 1956, and such tax is not leviable by the Punjab authorities?”

The contention of the learned counsel for the assessee is that the sale by V.P.P. is not an inter-State sale and thus not taxable under the Central Sales Tax, 1956. Inter-State Sales tax is to be levied from the seller as would be apparent from section 6 of the Central Sales Tax Act and if we come to the conclusion that the present sale is an inter-State sale, it is not disputed and indeed it could not be that the Punjab authorities could levy the sales-tax in conformity with the Central Sales Tax Act. Thus, the only question that requires determination is—whether the sale by V.P.P. in the present cases is an inter State sale? The sale by V.P.P., there is an order placed by the buyer on the seller. The seller despatches the goods by postal parcel and the goods are to be delivered by the postal authorities to the buyer on payment of their price. In some cases goods may even be sent by V.P.P. without an order. It is common ground before us that the property in the goods would pass and the sale would be complete on the buyer paying the price of the goods and not before that. Therefore where the buyer does not accept the goods and returns

them, there is no sale and the question of levying any sales-tax thereon does not arise. The question of levy of sales-tax only arises in those cases where the goods have been accepted by the buyer and the postal parcel has been paid for. Section 3 of the Central Sales-Tax Act defines 'inter-State sale' as follows :—

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"A sale of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale—

(a) occasions the movement of goods from one State to another.

* * * * *

We are not concerned with the remaining part of this provision for our purposes. The sale by V.P.P. would surely be covered by section 3. The expression "occasions the movement of goods" has been considered by their Lordships of the Supreme Court in *Tata Iron and Steel Co., Ltd., Bombay v. S. R. Sarkar and others* (1), to mean 'in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and the property in the goods passes in either State'. This view was again reiterated in *State Trading Corporation of India Ltd., and another v. The State of Mysore and another* (2). In the present case, actual sale in terms of the definition of 'sale' in section 3(g) of the Central Sales Tax Act took place in the State of Uttar Pradesh where the parcel was received and its value paid to the post office. See in this connection the decision of the Supreme Court in *Commissioner of Income-tax, Delhi, v. P. M. Rathod and Company* (3), wherein it was observed by their Lordships as follows :—

"In the case of delivery of goods by V.P.P. it is immaterial whether the buyer directs the goods to be sent by V.P.P. or the seller does so on his own accord, because the goods handed over to the post office by the seller can only be delivered on

(1) A.I.R. 1961 S.C. 65.

(2) A.I.R. 1963 S.C. 548.

(3) 10 S.T.C. 493.

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the buyer against payment and this payment is received for and on behalf of the seller. The buyer does not pay till the goods are received by him and once he has paid the price, it is the post office that is responsible for payment of the money received by it to the seller. The principle governing a despatch of articles by V.P.P. is that the appropriation is conditional and goods only pass when the condition is fulfilled, that is, the price is paid against delivery. The post office is an agent for the seller and receives the price from the buyer at the place of delivery for transmission to the seller."

The goods, that were sold, had to move from Punjab to Uttar Pradesh in order to complete that sale. The movement of goods is a direct result of the sale. For the purposes of law, it hardly matters whether the goods move before the sale is completed or after the sale is completed. In order to be an inter-State sale, the sale must answer the definition of the same in section 3 of the Central Sales Tax Act, that is, there must be movement of goods in connection with the sale. Two things must co-exist—a sale of goods and the movement of goods from one State to another. In the present case, both the requirements of section 3 are satisfied. We are, therefore, clearly of the view that the sale in the present case is an inter-State sale. The contention of the learned counsel for the assessee that the movement of the goods must precede the sale before it can be an inter-State sale, is wholly untenable.

Mr. Sarin, learned counsel for the assessee, relied upon the decision of the Supreme Court in *Commissioner of Income tax, Delhi v. P. M. Rathod and Company* (3), for his contention that the sales in the present cases are not inter-State sales. This decision does not help the contention of the learned counsel. Their Lordships of the Supreme Court were not considering the provisions of the Sales Tax Act, with which we are concerned in the present cases.

For the reasons given above, we answer the question referred to us in the negative, that is, the goods sent by V.P.P. from Punjab to Uttar Pradesh are liable to Central Sales-tax and such tax is leviable by the Punjab authorities

We further direct that the assessee will pay the costs of these references to the department. The costs are assessed of Rs. 100 in each case.

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D. FALSHAW, C.J.—I agree.

Falshaw, C.J.

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APPELLATE CIVIL

Before S. S. Dulat and S. K. Kapur, JJ.

UNIONS OF INDIA,—Appellant

versus

RAM NATH—Respondent.

Regular First Appeal No. 81-D of 1960.

Limitation Act (IX of 1908)—Art. 102—Suit for arrears of salary by a public servant on the ground that his dismissal was illegal—Terminus a quo—Whether the date of accrual of salary or the date of declaration of his dismissal as being illegal.

1966.

February 16th

Held, that a suit for arrears of salary is governed by Article 102 of the Indian Limitation Act, 1908, according to which the starting point of limitation is "when the wages accrue due." The expression "wages" includes salary, and the period of limitation starts, not from the date of declaration by the Court, but from the date the salary accrues due irrespective of such a declaration. By granting a declaration about the legality or illegality of dismissal, the Court does not create any right in the plaintiff. It merely removes an illegal order from the way of the plaintiff. That would not affect the accrual of the cause of action in any manner, and the cause of action would still arise on the day the salary for a particular period becomes due under the terms and conditions of employment. It must follow that the suit of the plaintiff so far as arrears of the salary are concerned could be decreed only for a period of three years and two months.

Regular First Appeal from the decree of the Court of Shri Om Parkash Aggarwal. Sub-Judge 1st Class, Delhi, dated the 11th day of February, 1960, passing a declaratory decree in favour of the plaintiff against the defendant to the effect that the order dated the 19th January, 1952 dismissing the plaintiff from the defendant's service is illegal, ultravires and void and also for the recovery of Rs. 24,175.65 nP. together with proportionate costs of this suit but dismissing the rest of the claim in suit.

S. N. SHANKAR, WITH N. SRINIVASA RAO, ADVOCATES, for the Petitioner.

HARDAYAL HARDY SENIOR ADVOCATE, WITH KESHAV DAYAL, ADVOCATE, for the Respondent.