NOTES AND COMMENTS

MULTIPLE TAXATION OF AN INTRASTATE SALE

Instalment Supply Ltd. v. *Sales Tax Officer*

THE LEGISLATURE and the courts are engaged in the co-operative endeavour to evolve law to regulate human relationship in a way that meets the needs of the society. The legislature may consciously or unconsciously leave gaps or ambiguities in a statute, and it is the great task of the courts to develop law to fulfil the objectives of the statute for which it was enacted, to remedy the evils sought to be curbed by the legislature, and to adapt it to the needs of the prevalent economic and social conditions. This is exactly what the Supreme Court seems to have failed to do in its judgment in *Instalment Supply Ltd.* v. *Sales Tax Officer*.[1] The facts of the case were as follows. The petitioner, which was a limited company having its registered office in New Delhi, entered into hire-purchase agreements with regard to motor vehicles. The Bengal Finance (Sales Tax) Act, 1941, which applies to Delhi, had at that time defined "sale" to include transfer of goods on hire-purchase. Thus, a hire-purchase transaction was deemed to be a "sale" and subject to tax. This power to levy sales tax on a hire-purchase transaction by the Union Territory of Delhi had been upheld by the Supreme Court in *Instalment Supply (P) Ltd.* v. *Union of India*,[2] as a parliamentary legislation was not subject to entry 54 of List II of the seventh schedule of the Constitution. When subsequently the hire-purchase agreement in question had fructified into "sale" by transfer of property from the company to the hirer, the vehicle covered by the agreement happened to be in Gujarat, and accordingly Gujarat also imposed sales tax on the transaction. The Supreme Court held in the present *Instalment Supply* case that Gujarat could tax the transaction when the property in the vehicle passed even though the transaction had already been taxed by Delhi at the time of agreement of hire-purchase. The State of Gujarat got jurisdiction to tax the transaction on account of the definition of *situs* of a sale as contained in section 4(2) of the Central Sales Tax Act, 1956, which definition was adopted in the Gujarat Sales Tax Act, 1969 as well. Section 4(2) of the Central Sales Tax Act says that a sale or purchase shall be deemed to take place inside a state (and outside of all other states) if the goods are within the state :

1. (1974) 34 S.T.C. 65.
2. (1961) 12 S.T.C. 489.

(*a*) in the case of specific or ascertained goods, at the time the contract of sale is made ; and

(*b*) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

The basis for the court's opinion was that section 4 (2) (*a*) used the words "contract of sale", which under section 4 of the Sale of Goods Act means two things : (*a*) actual "sale" ; and (*b*) agreement to sell. Delhi got the power to tax the transaction on account of the vehicle being there at the time of "agreement to sell", and Gujarat when the vehicle was inside that state at the time of "sale". By adopting both the criteria ("agreement to sell" and "sale") for determining the *situs* of a sale, the result is that a sale transaction could have *situs* in two states, enabling both of them to tax it. This result is completely contrary to what the law-makers desired and wanted.

It may be recalled that the above definition by Parliament was enacted in pursuance of the directive of article 286 of the Constitution, which prohibits a state from taxing an outside sale and empowers Parliament to define such a sale. The underlying policy of enacting article 286 of the Constitution is too well-known to need mention here. However, for the sake of ready reference it may be pointed out that before the enactment of the Constitution, the position was that every state in which the different ingredients of a sale had taken place could impose tax on it on the theory of territorial nexus. This created a chaotic situation and multiple taxation of the same sale transaction.[3] The Constitution-makers by enacting article 286 sought to remove this situation. The definition of an outside sale was adopted in the Central Sales Tax Act as recommended by the Law Commission of India. The commission had emphasized that the definition should be such as prevents "the same transaction of sale or purchase being taxed by more than one State", and that there should not be "overlapping taxation."[4] The objectives of article 286 and section 4 (2) of the Central Sales Tax Act were crystal clear that an intrastate sale transaction should be taxed only by one state and that there should not be multiple taxation of the same sale transaction. However, the Supreme Court simply brushed aside this laudable objective of both the Constitution-makers and the draftsmen of the legislation by saying : "There is no rule that any goods can be subjected to tax only once."[5]

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3. See S.N. Jain, *Interstate Trade Barriers and Sales Tax Laws in India*, chap. II (I.L.I., 1962) ; Law Commission of India, *Second Report* (*Parliamentary Legislation Relating to Sales Tax*) 6 (1956).

4. *Ibid.*

5. *Supra* note 1 at 72.

In taking the view it did, the court does not seem to have taken due notice of the context in, and the purpose for, which the words "contract of sale" were used in the statute. If this is borne in mind it is obvious that these words refer only to "agreement to sell" and not "sale". It would have been certainly better if the legislature had explicitly used the words "agreement to sell". But perhaps the draftsmen were at that time not conscious or forgot that the "contract of sale", which in common parlance is understood in the sense of "agreement to sell", has another meaning also under the Sale of Goods Act. That the Law Commission, while recommending the present definition of *situs* of a sale, had clearly in mind the concept of "agreement to sell" is clearly depicted by the following sentence occurring in its report : "We have come to the conclusion that in the case of all sales of a specific or ascertained goods their location at the time of *making* of the contract of sale should determine their *situs* for the purpose of Article 286 (1) (*a*) "[6] The use of the word *making* is crucial in this context, and the question of *making* has reference only to "agreement to sell". Further, as stated above, the Law Commission wanted to adopt such a definition of *situs* of a sale as would avoid multiple taxation of a sale transaction and, therefore, from this also it is to be inferred that it did not want to suggest a criterion which would enable two states to tax a transaction of sale. The author had examined the position earlier in 1962 also and his comments were as follows :

> The use of the words "contract of sale" in the section may create some difficulty. Under section 4 of the Sale of Goods Act the words may mean either "sale" or "agreement to sell". For purposes of section 4 of the Central Sales Tax Act it cannot mean both because, if it means both, the exact evil which the section was intended to prevent, *viz.*, multiple taxation of the same sale transaction, may result. Then which of the two definitions do the words contemplate ? Going through the Law Commission's Report, which recommended enactment of section 4 of the Central Sales Tax Act, and some of the provisions in the Act, the words appear to refer only to "agreement to sell". The Law Commission's Report uses the words "contract of sale" differently from passing of property in the goods, which event alone converts an "agreement to sell" into a "sale." That the Act itself uses the words "contract of sale" at variance with "sale" is clear from a reading of section 4 itself because section 4 (2) (*b*) becomes meaningless if the words are to mean "sale", since the question of appropriation of goods arises only in the case of "agreement to sell". Therefore, the expression "contract of sale" used in the Act only refers to "agreement to sell"....[7]

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6. Law Commission's Report, *supra* note 3 at 7. (Emphasis added).
7. S.N. Jain, *supra* note 3 at 35.

The impact of the Supreme Court decision in the present *Instalment Supply* case is, thus, that the same sale transaction could be taxed by two states. It may not be possible to confine its holding to the peculiar facts of this case, a few words on which may be said here. Here the court perhaps presumed that there were two sales—one, at the time of hire-purchase agreement due to the fiction adopted by Parliament in defining a "sale" (under its residuary power),[8] and the other when property in the vehicle passed. However, the agreement under which this had happened was one and, because of this, in reality there was one sale. Parliament under its residuary power may choose to tax any person, transaction or commodity in any way it likes, so long as there is no direct conflict with the state power, yet if it resorts to the facade of "sale" to tax a transaction, the exercise of such power should not be immune from the tenacles of the general laws pertaining to regulation of such a transaction in the national interest. When Delhi had taxed the transaction in question, Gujarat should not have been allowed to tax it subsequently. Even if it be presumed that there were two sales, only Delhi had the power to tax them both and not Gujarat in accordance with the true object and purport of the Central Sales Tax Act, as the "agreement to sell" had taken place inside Delhi and the vehicle was in that state at that material time and it was immaterial where it was at the time of "sale".

In any case, under the court's interpretation of the words "contract of sale", even a single sale transaction, as opposed to two sale transactions owing to the adoption of a fiction, may now be taxed by two states in which the two ingredients of a sale may have taken place, namely, agreement to sell and passing of property. This creates an anomalous situation which is not conducive to the national economy and free flow of trade and commerce. The ruling runs counter to the objectives of both the law and the Constitution.

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8. Entry 97 of List I of the seventh schedule of the Constitution.

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