
(1979) 12 MAD CK 0026

In the Madras High Court

Case No : Tax (Appeal) Cases No's. 252 and 255 of 1977

C.A. Akhtar and Company

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-12-1979

Acts Referred:

Contract Act, 1872 — Section 186, 187

Citation : (1979) 12 MAD CK 0026

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : C. Natarajan, for the Appellant; P. Suryaprakasam, for the Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Sethuraman, J.—These are two appeals against the order of the Board of Revenue dated 21st February, 1977, in a suo motu revision in the cases of two assesseees. One of the assesseees is known as C. A. Akhtar & Company dealing in hides and skins. The taxable turnover determined by the assessing officer included a sum of Rs. 4,97,320.26 relating to the sales of dressed hides and skins which were exported. The assessing authority brought it to tax, but on appeal, the Appellate Assistant Commissioner held that these sales were export sales and allowed the appeal.

2. Similarly in the case of the other assessee, Shafeeq Ahmed & Company, the taxable turnover included Rs. 18,81,949.43 representing the sales of dressed hides and skins which were exported. In this case also, the amount had been brought to tax as if they were local sales. But on appeal, the Appellate Assistant Commissioner held that the turnover represented sales in the course of export and hence was exempt from tax.

3. The orders of the Appellate Assistant Commissioner were examined by the Board in the light of the decision in Mod. Serajuddin v. State of Orissa [1975] 36

S.T.C. 136 and the decisions of this Court in *State of Tamil Nadu v Abdul Shukoor & Company T.C. No. 438 of 1971* decided on 16th February, 1976 (Madras High Court) and *State of Tamil Nadu v. K. A.K. Anwar & Company T.C. No. 60 of 1972* decided on 18th February, 1976 (Madras High Court). In the view of the Board, in these two cases there was no privity of contract between the assesseees and the foreign buyers and the transactions had been entered into through one Sulaiman & Company in one case, and Abdul Shukoor & Company in the other. In the view of the Commissioner, these two persons were the actual exporters and, therefore, the sales effected by the respective assesseees were only local sales assessable to tax under the Tamil Nadu General Sales Tax Act. The result was that the respective amounts were brought to tax under the Act. The respective assesseees have brought the matter on appeal to this Court.

4. The only question that arises for consideration is whether there is a sale in favour of Sulaiman & Company in one case, and Abdul Shukoor & Company in the other, and whether as a result of such sale these two persons exported goods out of India or whether the respective assesseees effected export sales through the said entities ? The matter requires to be considered in the light of the facts that arise in the respective cases.

5. Taking the case of Akhtar & Company, the modus operandi of the export transaction has been explained in an affidavit dated 1st April, 1972, sworn to by one Ommahani, partner of Sulaiman & Company. Sulaiman & Company were acting as the agents of Akhtar & Company and in the affidavit it is stated that they exported on behalf of Akhtar & Company tanned hides to foreign buyers. Akhtar & Company have a tannery at Ranipet. Tanned hides and skins were directly received by Sulaiman & Company in their godowns at No. 11, Vepery High Road, Madras, for assortment, packing and export. They contact foreign buyers for direct export of the goods. After obtaining confirmation of the rates and terms of sales, they negotiate and finalise export contracts on the prices agreeable to their principals. Letters of credit were opened by foreign buyers in the name of Sulaiman & Company and written communication was sent by Sulaiman & Company to the assessee as the principal, indicating the quantity, rate specification, shipment details, term of payment, discount to be offered, etc. The goods were assorted and packed, baled and shipped by Sulaiman & Company for and on behalf of Akhtar & Company and the entire expenses were debited to the principal. Invoices were raised by Sulaiman & Company on the foreign buyers and the principals were debited with reference to all the expenses including handling, lorry freight, packing, baling charges, ocean freight, insurance, charges for obtaining forms and other expenses at their actuals. The net amount, after deducting the expenses, was credited to the account of the principals and every month statement of stocks, expenses, etc., were declared to the principals. The stocks, at any point of time, in the hands of Sulaiman & Company, were treated as goods of principals. They were paid commission on the sales effected for and on behalf of Akhtar & Company as their agents. They offered to produce their books of account before the authorities.

6. These statements are found in the affidavit mentioned above. They remain uncontradicted. Taking a particular transaction as typical of the transactions entered into between Sulaiman & Company and the foreign buyers, it is found that on 3rd April, 1970, the sole agent of the foreign principal in London wrote a letter confirming having accepted from Sulaiman & Company certain goods, i.e., ten bales. The shipment was to be within two months from the date of contract and payment was to be by drafts at 90 days sight on London and the brokerage was to be at Rs. 4.50 per bale to be paid to the Indian agents by the foreign principal after shipment. Sulaiman & Company thereafter received a letter from the foreign principal reporting the purchase of ten bales and confirming the terms of the contract. The agent reported on the same date, viz., 3rd April, 1970, to Akhtar & Company about having entered into a transaction of sale of ten bales with the party in London. The invoice was prepared by Sulaiman & Company and the amounts were itemised and credited in their books in the name of the assessee. All the items of expenditure relating to the sales were also debited therein in the assessee's name and it was the balance after deducting also the commission due to the agent that was passed on to the assessee.

7. Similarly, in the case of Shafeeq Ahmed & Company, there was an agreement dated 14th May, 1969, between the said firm and Abdul Shukoor & Company constituting the latter as their agent. Except for the agreement, the other facts relating to the transactions are identical with those described in the case of Akhtar & Company. There is one special feature in this case and that is, when an affidavit describing the nature of the transaction was filed before the Appellate Assistant Commissioner, in which the agents stated that they had exported on behalf of Shafeeq Ahmed & Company, tanned skins to the extent of Rs. 18,81,949.43 to destinations outside the territory of India and acted strictly as agents of the said firm and the assessee has placed a statement disclosing the names and addresses of the buyers in the foreign territory, the contract details, the value determined, commission and shipping expenses paid to Abdul Shukoor & Company and the net amount paid by Abdul Shukoor & Company as selling agent, the departmental representative was requested to examine the details and the connected records. He submitted a report after examining the contents of the affidavit and other records stating that the case was similar to the transactions with Abdul Shukoor & Company in respect of the previous year. The statements contained in the affidavit were not found to be incorrect or false.

8. It is on the basis of these facts, the question as to whether these transactions are liable to tax has to be examined. In *State of Tamil Nadu v. A. Shafeeq Ahmed and Company* [1979] 44 S.T.C. 263 which was reported at page 263 of 44 Sales Tax Cases as an appendix to the decision in *Hajee Abdul Khalique Sahib and Company v. State of Tamil Nadu* [1979] 44 S.T.C. 261, a Bench of this Court pointed out that

If the contention of the assessee is that they were the exporters in fact and any other person was acting only as their agent, the privity of contract between the

assesseees and the foreign exporter would be established and the assesseees themselves could become an exporter. But, if the facts were to be that the contract was entered into by the agent on his own right and not as an agent of the assesseees, there shall be deemed to be a sale by the assesseees to the agent and there would be no privity of contract between the assesseees and the foreign buyer and it would amount to a case of sale for export to a local agent.

9. This part of the judgment was adopted in the decision of this Court in *Hajee Abdul Khaliq Sahib and Company v. State of Tamil Nadu* [1979] 44 S.T.C. 261. The earlier decisions of the Supreme Court in *Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras* [1970] 25 S.T.C. 528 and *Mod. Serajuddin v. State of Orissa* [1975] 36 S.T.C. 136 have also been noticed in these decisions. The result is that so long as there is proof of agency and so long as the agent has sent the goods, not as his own, but as agent of another principal, there is privity of contract between the principal and the foreign purchaser, even in cases when the agent has not disclosed the name of the principal. In the light of this well-accepted legal position, it is clear that in the present case, the export transactions have been effected only by the respective assesseees through the agents. The case of *Mod. Serajuddin v. State of Orissa* [1975] 36 S.T.C. 136 cannot therefore apply as to render assessable the transactions as if the assesseees had effected the sale to the agents in India, who, on their own, exported the goods outside India. There are no facts affirming such a sale to the Indian agents.

10. Before the Board all these facts had been placed by the respective assesseees. But unfortunately, the Board, in the common order that was passed, has summarily dealt with these factual points. In relation to *Shafeeq Ahmed & Company*, in paragraph 7 of its order the Board has observed, "in the case of *Tvl. A. Shafeeq Ahmed and Company*, they have sold the goods to *Tvl. A. Abdul Shukoor and Company*, the local buyers and exporters. The privity of contract was between the foreign buyers, *Bevington & Sons Limited*, London, and *Tvl. A. Abdul Shukoor & Company*. There was no contract between the assesseees and the foreign buyers. In the absence of privity of contract between the assesseees and the foreign buyers their transactions are only local sales and are not exempt. The decision of the Supreme Court in the *Serajuddin's* case [1975] 36 S.T.C. 136 is directly applicable". In the other case also, the Board has pointed out : "The course of the transaction cannot be anything else as a contract was only between *Sulaiman & Co.* and *Rallis Willcox*, London. The essence for construing a sale by the assessee to the foreign buyer is privity of contract between the two, which is absent in this case. There cannot be any privity of contract by reason of" the agency as contended"

(emphasis added).

It is also stated lower down in the order that the assesseees had not produced any contract to prove that *Sulaiman & Company* were constituted as the agents.

11. The Board should have examined the question whether there was any agency in the light of the facts. We are satisfied that on the facts, as described above, Sulaiman & Company have acted only as agents. As we have pointed out earlier, it is not necessary that the agent should disclose the name of the Indian principal in respect of the transaction, which was entered into with the foreign buyer. Nor should (sic) there be any written contract or agency between the Indian principal and the agent (vide Sections 186 and 187 of the Indian Contract Act). So long as the transactions were only on behalf of the Indian principal, there would be privity of contract as laid down in the extract from the judgment of this Court already referred to.

12. The result is that the transactions in both the cases would be cases of export transactions entered into by the respective assesseees. They were, therefore, exempt from tax. The order of the Appellate Assistant Commissioner is therefore correct and the Board was wrong in interfering with the said order. The appeals are allowed with costs. Counsel's fee Rs. 125 in each.