(1957) 06 MP CK 0005

In the Madhya Pradesh High Court

Case No : C. Misc C. No. 35 of 1955

Commr. Income Tax APPELLANT

Vs

Ramchandra Rathore RESPONDENT

Date of Decision : 15-06-1957

Acts Referred:

Constitution of India, 1950 — Article 286

Citation : (1958) JLJ 67

Hon'ble Judges : G.P. Bhutt, J;B.K. Chaturvedi, J

Bench : Division Bench

Advocate : K.K. Dube, for the Appellant; S.B. Sen, for the Respondent

Judgement

1. This is a reference by the Board of Revenue, Madhya Pradesh, u/s 23(1) of the C. P. and Berar Sales Tax Act 1947, hereinafter called the Act.

2. The reference has arisen out of an order of assessment of Sales tax on the bidis of the value of Rs. 3,39,949/- despatched by Ramchandra Rathore and Bros, of Sagar, the assessee-company, to one Kanhaiyalal Pradhan at Bareilly in Uttar Pradesh in the year ending 31st December 1949, The despatches were made in pursuance of an agreement executed on 1st April 1937 by the assessee-company on the one hand and the predecessor-in-title of Kanhaiyalal Pradhan on the other. The terms of the agreement are reproduced below : -

(I) The agent shall stock for sale sufficient stock of Cannon Brand bidi from any other source of Sagar or of Sagar side.

(II) The rates for sales shall be fixed by the Company. The agent is bound to adhere to these rates, any reduction or increase in which shall be made whenever desirable by the company,

(III) Out of the commission allowed to the agent as per para XI below, the agent will pay to the wholesale dealer a commission of Rs. -/-/3 per thousand bidis.

(IV) The company will not be responsible for any shortage in transit.

(V) The company undertaken to take back any stock found inferior in quality.

(VI) The packing materials (excepting the crate) supplied will be returned to the company who will pay for its freight.

(VII) The agent will always keep an adequate stock of the Cannon Brand bidi to meet the local requirements and will keep the company always informed of the conditions, as to increase or fall in demand.

(VIII) In the event of breach of the part of the agent of any of the conditions mentioned above, the company reserves to it the right instantly to cancel the agreement and to stop supply. Normally this agreement will be terminated as laid down in para XII below.

(IX) The agent will deposit with the company a sum of Rs. 50/- (Rupees fifty only) as a security for conducting the business honestly and according to the conditions cited above. The agent will forfeit to the company this sum or part of it as the company may decide in the event of any adulteration in the company''s goods having been made by the agent being discovered or in the event any such act on the part of the Agent that tends to disrepute the good-name of the company.

(X) It will be incumbent on the agent promptly to submit to the company every month true and accurate account of stock received and sold and the balance on hand at the end of every month so that the company is in the position to know the situation of the business.

(XI) The company agrees to : -

Supply the goods as required from time to time. The despatch will be made freight pre-paid and the money will be realised through the Allahabad Bank to whom the documents will be addressed or through V. P. P.

(XII) To pay the agent a commission at Rs. -/-/9 (pies nine only) per thousand bidis on receipt every quarter of the claim from the agent showing the amount due and how it is arrived at.

(XIII) This agreement can be terminated by 60 days notice on either side, showing sufficient reasons. The company will not be responsible to receive any unsold stock.

3. Apart from the agreement, there was also a statement made on column affirmation before the Assistant Commissioner of Sales Tax by the representative of the assessee-company. It is reproduced below: --

...He (the consignee at Bareilly) is our sole-agent and we pay a fixed commission of Rs. -/2/- per 1,000 bidis which he is allowed to charge over and above the billed amounts......Goods are despatched by post parcel or trains. The R/Rs and bills are sent by post......At pages 61 we have got the personal accounts of the dealer Kanhaiyalal Pradhan. All despatches as per bills are debited to his accounts showing the value, bill and the date. On the credit we note the receipts giving details of the amounts received and the bill Nos. against which received Since the rates are controlled by us, he has to remit the same amount at which I prepare the bill unless I lower or increase the selling rate.

4. The Board of Revenue following its decision in Abdul Rashid Vs. State (1952 N. L J. 346 held that the despatch in question constituted sales taxable under the Act. The question referred to this Court is the following

Do the despatches of bidis made in the circumstances described in paragraphs 1 and 2 above constitute sales taxable under the Sales Tax Act ?

5. The terms ''sale'' has been defined in section 2(g) of the Act as below: -

''sale'' with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration, including a transfer of property in goods made in course of the execution of a contract, but does not include a mortgage, hypothecation, charge or pledge and the word ''purchase'' shall be construed accordingly.

Explanation (II) to this Section which is relevant in this connection is reprodused below: -

Notwithstanding anything to the contrary in the Indian Sale of Goods Act, 1930, but subject to the provision contained in Explanation to clause (I) of Article 286 of the Constitution, the sale or purchase of 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 case the contract was for the Sale or purchase of future goods by description, then, if the goods are actually produced or found in this State at any time after the contract of sale or purchase in respect thereof was made.

6. It appears from the above provisions that a taxable sale would be deemed to have taken place if the following conditions are fulfilled, namely:-

(1) That there is transfer of property in goods;

(2) that this transfer is for cash or deferred payment or other valuable consideration; and

(3) that the goods are in the State at the time the contract of sale is made.

7. It is clear from the statement of the representative of the assessee-company, reproduced above, that when the despatches were made, the price was debited to Kanhaiyalal Pradhan and credited to him when the money was received. The terms of the agreement further show that the assessee was not responsible for any shortage in transit or liable to receive any unsold stock if the agreement was

terminated. These conditions indicate that the property in bidis pass to Kanhaiyalal Pradhan when they were despatched to him. This conclusion is not affected by the fact that the payment was deferred. It is also clear that at the time the contract was made, the goods were within the State. It thus appears that the conditions which are essential for a taxable sale are fulfilled in this case.

8. It was, however, urged that according to the agreement Kanhaiyalal Pradhan was only an agent of the assessee-company in U. P. particularly as he had to sell the goods at the rate fixed by it and this militates against the contention that the transactions amounted to sales. It is no doubt true that under the agreement, he had to sell the bidis at the price fixed by the assessee-company, and for the sales effected at that price, he was entitled to receive a commission. But for the bidis that he got for sale, he had to pay the price. If he made any profits, they apparently went into his own pocket, for which he had not to give any account. What he had to submit to the assessee-company was only an account "of stock-received and sold and the balance on hand at the end of every month", so that assessee-company was in a position to know "the situation of the business". The real effect of the transactions, however, was to confer on the assesssee-company all the rights of a vendor and on Kanhaiyalal Pradhan, all those of a purchaser. In W. T., Lamb & Sons vs. Goring Brick Co. 1932 (1) K. B. 710, the plaintiffs were appointed as selling agent under an agreement with the defendants who subsequently cancelled it and began selling the goods themselves. One of the terms between them was that the plaintiffs shall pay the defendants for all the goods supplied by the end of the month following the dealings. On account of this condition, Greer L. J. and Slesser L. J. held the view that the relationship between the parties was that of a seller and purchaser. Although nothing turned upon this question, the view of the noble Lords indicates the special features of a sale, which are in no way contrary to the conditions mentioned in section 2(g) of the Sales Tax Act. Therefore Kanhaiyalal Pradhan was not, under law, an agent but only a favoured buyer, although the agreement was ostensibly one of agency.

9. As the facts of the present case establish, the conditions mentioned in section 2(g), read with Explanation II, the Board of Revenue was right in holding that the transactions constituted sales taxable under the Act. We accordingly answer the question in the affirmative. Costs shall be on the assessee-company. Hearing fee Rs. 50/-.

