

(1957) 11 MAD CK 0050

In the Madras High Court

Case No : T.A. No. 1036 of 1952 and Tax Revision Case No. 6 of 1954

Haji Abdul Gaffoor Sahib and Co.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 18-11-1957

Acts Referred:

Constitution of India, 1950 — Article 286
Sales of Goods Act, 1930 — Section 25

Citation : AIR 1958 Mad 314 : (1958) 71 LW 253 : (1958) 1 MLJ 225 : (1958) 9 STC 208

Hon'ble Judges : Rajagopalan, O.C.J.; Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : M R.M. Abdul Kareem and Azeez Badsha, for the Appellant; K. Veeraswami, Additional Government Pleader, for the Respondent

Judgement

Rajagopalan, Offg. C.J.

1. The petitioner was assessed to sales tax on his turnover in hides and skins for the assessment year 1950-51. The liability still in dispute before the Appellate Tribunal was with reference to the following items, which the department claimed represented the sales of hides and skins within the State of Madras. Sales under contracts entered into with :--

(1) Gordon Woodroffe and Co. (Madras) Ltd. Rs. 1,80,925 2 10 (2) Madras Hides and Skins Exporters Ltd. Rs. 1,19,846 10 2 (3) Rallis (India) Ltd. ... Rs. 2,05,101 1 0 (4) South Indian Export Co., Ltd. ... Rs. 31,035 6 1 (5) Anwar and Co. ... Rs. 12,231 13 5 (6) Best and Co., Ltd. ... Rs. 10,432 7 11 (7) Haji Abdul Wahab and Sons ... Rs. 6,68,500 4 8 (8) Srinivas and Co. ... Rs. 24,582 7 4

2. The Tribunal took the view that all these items of turnover were liable to be taxed. The contentions of the learned counsel for the assessee were (1) that all these items represented sales outside India and that the companies listed above acted only as the agents of the petitioner assessee to effect these export sales ;

(2) even if the sales be viewed as sales to each of the companies mentioned above, the sales were in the course of export and were therefore covered by the exemption guaranteed by Article 286 of the Constitution; and (3) the sales were completed only on the acceptance of the exported goods by the foreign buyers at the ports of destination and were therefore not liable to be taxed under the Madras General Sales Tax Act.

3. At the stage of the arguments before us the learned counsel for the petitioner did not press the claim under and of these heads with reference to the sales in favour of Srinivas and Co., which were to the extent of Rs. 24,582-7-4. The petitioner's liability to pay tax on that turnover is therefore no longer in dispute.

4. With reference to items 1 and 2, sales to Gordon Woodroffe and Co., and to the Madras Hides and Skins Exporters Ltd., the sales themselves were effected by the assessee at Madras. The contracts with the Madras Hides and Skins Exporters Ltd. provided that "the property in the goods shall pass to the vendees as soon, as the shipping documents came into their possession and notwithstanding that payment has or has not been made in part or in full;" and the contracts with Gordon Woodroffe and Co., Ltd., provided "for payment on presentation of the shipping documents in order." These contracts also provided for the payment of the prices on C.I.F. terms.

5. In *Gandhi Sons, Ltd. v. State of Madras* 1955 6 S.T.C. 694, we held that where the property in the goods did not pass to the buyers until the relevant bills of lading were presented to the buyers, the sales were in the course of export, which entitled the assessee to the constitutional exemption under Article 286(1) (b) of the Constitution. The learned Government Pleader could not refer us to anything in the contracts entered into by the assessee with the Madras Hides and Skins Exporters Ltd., and with Gordon Woodroffe and Co., Ltd., to take them outside the scope of the principle laid down by us in *Gandhi Sons Ltd. v. State of Madras* 1955 6 S.T.C. 694.. At page 703 of our judgment in *Gandhi's case*, 1955 6 S.T.C. 694 we pointed out that what had to be considered was "whether the assessee had been able to establish that they remained owners of the goods until after the goods had crossed the customs barrier for if the agreement of sale entered into by them took effect and became a completed sale, only thereafter as the goods started on the course of export at that stage the sale by them would be one "in the course of export" to which Article 286(i)(b) would apply."

At page 709 we stated :

"The bills of lading though taken in the name of the buyers were retained by the sellers and were deliverable only against payment. Two views are possible as to the inference to be drawn from the goods being consigned in the name of the buyers. One is that the seller reserves the *jus disponendi* in himself till the documents are presented to the buyer and the payment is made. That is the case which is provided by Section 25(3) of the Sale of Goods Act. The other is that the property passes immediately and the seller retains possession of the

bills only for the purpose of claiming a lien on the goods to secure payment of the price, he having parted with the property in them. That the first of the above alternatives is the normal rule would appear to be favoured by the judgment of the Supreme Court in *The Commissioner of Income Tax, Madras Vs. Mysore Chromite Limited*, "

6. The contracts with the Madras Hides and Skins Exporters Ltd., specifically provided that the property in the goods sold passed to the, vendees only after the delivery of the shipping documents. The specific recital in the contracts with Gordon Woodroffe and Co., Ltd., was that payment was to be on presentation of the shipping documents which clearly implied that the property in the goods passed to Gordon Woodroffe and Co., Ltd., as the buyers only after the presentation of the shipping documents. In both cases the property in the goods sold passed to the buyers only after the goods crossed the customs barrier and got into the stream of export. Thus they were sales in the course of export. The assessee's claim that these two items of turnover of Rs.1,80,925-2-10 and Rs. 1,19,846-10-2 were exempt from tax liability will have to be upheld. To that extent the order of the Tribunal will have to be modified. In the view we have taken of these sales and their liability to be assessed to sales tax, it may not be necessary to consider the first and the third of the contentions of the learned counsel for the assessee which we have mentioned above.

7. The next set of contracts we have to consider is what the petitioner-assessee entered into with Rallis (India) Ltd. The turnover of these sales was Rs. 2,05,101-1-0. The contracts specifically recited:--

We (Rallis India Ltd.) have confirmed having bought from you today the undermentioned goods.

8. Another of the relevant terms of the contracts was that the delivery of the goods sold should be at the godowns of the buyer, Rallis (India) Ltd., at Madras. That should suffice to repel the contention of the learned counsel for the petitioner, that the sales were by the assessee to buyers resident abroad and that Rallis (India) Ltd., acted only as selling agents of the petitioner. The sales were completed at Madras by delivery of the goods sold at Madras. The petitioner was the seller and Rallis (India) Ltd., were the buyers. No doubt the hides and skins were sold by the petitioner to Rallis (India) Ltd., for export abroad, but then it was the buyers, Rallis (India) Ltd., that were the exporters. There was no privity of contract at any time between the petitioner and the persons abroad to whom the goods were ultimately sold by Rallis (India) Ltd. It is true the terms of the contract between the petitioner and Rallis (India) Ltd., provided that the petitioner should bear the shipping charges, freight and insurance. These came out of the price payable by Rallis to the petitioner. The determination of the price payable for the goods sold did not by itself make it a C. I. F. contract, in the sense in which the learned counsel for the assessee wanted us to construe the contract. It did not affect either the jural relationship of the petitioner and Rallis as seller and buyer of the goods in question. The learned counsel for the

petitioner next referred to the terms of payment in the contracts. They provided :--

We (Rallis India Ltd.) will pay you an advance of 95 per cent of the value thereof, after deducting the discount, brokerage, marine insurance, freight, shipping charges and fire and R. and C.C. risks insurance....You also agree to pay us interest at the rate of 5 per cent per annum from the date of payment to the date of the bill of lading. Any balance amount after allowing for all items as herein stated will be paid to you or collected from you after shipment is completed. We have a charge or lien on all goods covered by this contract for all moneys advanced by us including expenses incurred and interest thereon.

9. These again were terms for the payment of the price of the goods sold and did not, in our opinion, really affect the question for determination, when did the title to the goods sold pass from the petitioner as vendor to Rallis (India) Ltd., as vendees. We are unable to accept the plea of the learned counsel for the petitioner that on these terms we should hold that title to the goods passed to Rallis (India) Ltd., only after delivery to them of the shipping documents. We have pointed out earlier that the sales were completed by delivery of the goods sold to the buyer at his godown at Madras.

10. We are clearly of opinion that the sales to Rallis (India) Ltd., did not constitute either export sales or sales in the course of export. The sales were completed before export and it was the buyer that exported the goods. They were sales for export. Viewed from the point of view of the buyer, Rallis, they were purchased for export. Such sales are not within the scope of Article 286 of the Constitution. That was what we pointed out in *Gandhi and Sons* case 1955 6 S.T.C. 694 in which we applied the principles laid down by the Supreme Court in the *First Travancore* case 1952 3 S.T.C. 434 and the *Second Travancore* case 1953 4 S.T.C. 205. The Tribunal was right in holding that this item of the petitioner's turnover was liable to be taxed.

11. Items 4, 5 and 6, the sales to South Indian Export Company Ltd., Anwar and Co., and Best and Co. Ltd., may be taken together. The contracts the petitioner entered into with each of these firms were of the same pattern. The specimen contract entered into by the petitioner with the South Indian Export Co. Ltd., again opened with the words "We confirm having purchased from you the goods specified." That showed that the transaction of purchase was completed at Madras and title to the goods passed from the petitioner to the buyer before the goods were shipped by the buyer. No doubt, the price quoted was the sum specified per lb. C. I. F. London. As we have explained in the case of the contracts which the petitioner entered into with Rallis" (India) Ltd., this was only a mode for computing the price payable by the buyer to the petitioner, and that did not affect the question, when the title to the goods passed to the buyer. It is true the contract specified that shipment was to be within one month from the date of the contract. But that could only be construed to mean that the petitioner as seller was bound to deliver the goods sold to the buyer in time for the buyer

as the exporter of the goods to complete the shipment within one month. That again did not affect the real position, the sales effected by the petitioner were not export sales--there was never any privity of contract between the petitioner and the buyer abroad--nor were they sales in the course of export--delivery was completed long before the shipping documents came into existence. As in the case of Rallis (India) Ltd., they were sales for export and they were not covered by Article 286 of the Constitution.

12. Item 7 of the list we have furnished above represented the sales to the extent of Rs. 6,68,500-4-8 in favour of Haji Abdul Wahab and Sons. The Tribunal recorded that the petitioner was a partner of this firm, but that is not a relevant factor at all. Even at the stage of the arguments before us the petitioner could not produce any contract he had entered into with Haji Abdul Wahab and Sons. There was really no material on the basis of which we could accept any of the three contentions put forward by the learned counsel on behalf of the petitioner. The learned counsel invited our attention to some of the entries in the account books of Haji Abdul Wahab and Sons. But he admitted that those proceeded on the basis of purchases of the goods by Abdul Wahab from the petitioner, debiting him with their price. No doubt the price was computed, as in the case of Rallis, after providing for the deduction of shipping charges, freight and insurance charges. We have again to point out that the mode of computation of the price payable is not enough to make it a C.I.F. contract, in the sense that the purchase was concluded only by delivery of the shipping documents.. The amount may be large, but in the absence of material, which the petitioner alone could have furnished, to determine the true scope of the contracts between himself and Haji Abdul Wahab and Sons, we have to reject the claim of the petitioner, that the sales should be viewed either as export sales or at least as sales in the course of export. They were sales for export--export by the buyer Haji Abdul Wahab and Sons--and they were therefore not within the scope of Article 286 of the Constitution.

13. Though what we have said earlier is enough to dispose of the third of the contentions of the learned counsel for the petitioner, that the sales in the case of each of the items 3 to 7 of the list we have furnished above were completed only on the acceptance of the exported goods by the foreign buyers at the ports of destination, we have to advert to that argument again to deal with the further arguments of the petitioner's learned counsel on this aspect. We have already pointed out that at no time was there any privity of contract between the petitioner and ultimate buyer of the goods abroad. Vis-a-vis that ultimate buyer, the firms to which the petitioner sold the goods at Madras were sellers. That the contracts between the petitioner and those firms provided that, if the buyer abroad ultimately rejected any of the goods as not up to the standard, the petitioner should reimburse the firms for the value of the rejected goods did not again affect the question at issue, when and where were the sales to the firms completed. They were completed by delivery of the goods to these firms at Madras when title to the goods sold passed to them, the appropriation of goods

to the contract becoming completed by the assent of the buyer, notwithstanding the reservation of a right in the buyer to return such of the goods as were not accepted by those who had bought these goods from the buyer for the petitioner. The learned counsel relied on the observations at page 452 in *Heilbutt v. Hickson* (1872) 7 Common Pleas 438. It may not be necessary to deal at any length with the facts of that case, which were totally different from what we have had to consider in these cases.

14. In our opinion the Tribunal was right in holding that the turnover of the sales included in items 3 to 8 of what we have listed above was liable to be taxed.

15. The revision is allowed in part. As we have already directed, the turnover of the sales in favour of Gordon Woodroffe and Co. (Rs. 1,80,925-2-10), and the sales in favour of the Madras Hides and Skins Exporters Ltd. (Rs. 1,19,846-10-2) will be deducted from the taxable turnover and the assessment will be accordingly revised. The rest of the claim of the petitioner fails.

16. As neither side has wholly succeeded before us, there will be no order as to costs.