

(1958) 11 MAD CK 0027
In the Madras High Court

India Coffee and Tea Distributing Co. Ltd.	APPELLANT
Vs	
The State of Madras	RESPONDENT

Date of Decision : 13-11-1958

Acts Referred:

Sales of Goods Act, 1930 — Section 33

Citation : (1959) ILR (Mad) 1056 : (1959) 2 MLJ 222

Hon'ble Judges : Subrahmanyam, J

Bench : Single Bench

Judgement

Subrahmanyam, J.—Tea was sold by the plaintiff-company to buyers in Europe (inclusive of the United Kingdom) and in Ireland and the

United States. The contract, dated 25th October, 1948, in the documents marked today may be regarded as typical of the contracts of sale. The

buyers in that contract are Tea Importers Ltd., Dublin. The quantity of tea agreed to be sold had to be shipped to Dublin during November, 1948.

The contract terms was F.O.B. Cochin. Payment was guaranteed by an unconfirmed letter of credit at sight to be opened through the Bank of

Ireland for advice to National Bank of India Ltd., Madras. The way the contract was performed was for the plaintiff to put the tea in a steamer in

the Port of Cochin, take a bill of lading and in, appropriate cases, have the goods insured on the buyer's behalf and prepare an invoice and present

the bill of lading, the invoice and the policy of insurance at the branch of the National Bank of India at Madras. The National Bank pays the price

subject to discount in the case of a bill of exchange payable after sight and accepts the documents. The documents are then forwarded to the Bank

in Dublin, New York, San Francisco or other place in foreign territory, according to the instructions of the particular buyer and are delivered to the

buyer. The facts stated above are proved by the documents and are not disputed by either the plaintiff or the State of Madras. On these facts, we

have to ascertain whether the sale of tea made under these contracts is exempt from payment of sales-tax u/s 5(v) of the Madras General Sales

Tax Act.

2. Section 5(v) exempts from taxation the sale of tea "if the sale is for delivery outside the State and delivery is actually so made". So far as the

transfer of property in the tea is concerned, this Court at the original trial (presided over by Ramaswami, J.) found that the property in the goods

passed to the buyer at Madras. In O.S.A. Nos. 29 and 30 of 1955 preferred by the plaintiff, that finding was not challenged by the learned

advocate for the plaintiff-appellant. It is therefore not open to the plaintiff at present to contend that the property in the tea did not pass to the

buyer at Madras, It follows that he cannot seek to displace any subsidiary finding essentially implied in the finding relating to the passing of

property.

3. The plaintiff's learned Counsel said in opening his case at this hearing, that the National Bank of India, Madras, which paid the price or

discounted the bill of exchange presented by the plaintiff along "with the invoice and the insurance policy, was not acting as the buyer's agent but

was acting as the seller's agent; that the bank was discounting his bill of exchange and forwarding his documents to the buyer for acceptance.

The purpose of that contention is to enable the plaintiff to prove that title passed not at Madras, where the documents of title were delivered by the

plaintiff to the National Bank, but in the foreign country to which the National Bank forwarded the documents of title and where the buyer

accepted the documents with a view to take delivery at the appropriate Port. I declined to receive evidence to that effect because I held that the

finding that the property in the goods passed "to the buyer at Madras is not a finding which is open to reconsideration at this hearing and that

consequently evidence intended to prove that the property in the goods passed not at Madras, but in New York, Dublin or other foreign port of

consignment, was not admissible.

4. The only point that remains for consideration is whether the sale that was effected in Madras was for delivery outside the State of Madras and

whether delivery was in fact so effected, that is to say, effected outside the State of Madras.

5. The primary mode in which delivery of goods sold is effected is for the seller actually to place the goods in the hands of the buyer. That may, for

convenience, be described as physical or manual delivery. But delivery in the eye of the law may also be effected by other modes. They are

specified in Section 33 of the. Sale of Goods Act, 1930. Section 33 enacts:

Delivery of goods sold may be made by doing anything Which the parties agree shall be treated, as delivery or which has the effect of putting the

goods in the possession of the buyer or of any person, authorised to hold them on his behalf.

In so far as delivery may be effected u/s 33 in a manner other than the placing of the goods by the seller physically into the hands of the buyer, the

delivery that is effected may for convenience be described as delivery in law.

6. The first question that arises for consideration is whether, in the sales in the case before us, there was delivery in the State of Madras. There was

no physical delivery of the goods in the State of Madras. The tea was put in a steamer in the Port of Cochin and the tea was delivered in Ports in

countries beyond the seas. The question that we have to consider is whether there was delivery in law, of the tea, in Madras. Property in the tea

passed to the buyer at Madras by delivery of the documents of title to the National Bank at Madras. That finding implies the finding that the

National Bank accepted the documents as the buyers agent. Thereafter any person to whom the National Bank endorsed the bill of lading became

the owner of the goods and the Master of the ship was in possession of the goods on behalf of the buyer. Since carriage by sea was the mode

authorised by the contract of sale the carrier was the person authorised to hold the goods on behalf of the buyer, just as the National Bank in

Madras was the agent authorised to pay the price and accept the documents of title. Delivery in law of the tea was, by virtue of Section 33, made

by the seller in Madras to the buyer's agent and thereby to the buyer, by the delivery of the documents of title, and the carrier became the buyer's

agent.

7. The contract, of which the contract, dated 25th October, 1948, is typical, expressly stated that payment would be made by the buyer through

the National Bank at Madras. Therefore transfer of property at Madras was within the contemplation of the parties when they entered into the

contract. It follows that delivery in law of the tea at Madras was delivery effected in accordance with the terms of the agreement. Therefore, if the

term "delivery" in Section 5(v) of the General Sales Tax Act includes delivery in law and is not restricted to physical delivery of the goods the

assessment of the sales to tax would be correct. On the other hand, if the term "delivery" in Section 5(v) excludes delivery in law and is restricted

to delivery in fact or physical or manual delivery, then the assessment is beyond the jurisdiction of the State and is void.

8. Delivery may be either manual or physical delivery or may be delivery in law. In deciding whether the word "delivery" in Section 5(v) includes

delivery in law, we have to have regard to the objects of the Legislature in enacting Section 5(v). The object obviously was the promotion of the

export of tea. The Legislature intended that where tea was exported from the State for being delivered outside the State, the sale which resulted in

such export should be exempt from taxation. That object would not be wholly achieved if we hold that delivery of documents of title in the State of

Madras would make the sale liable to taxation. It is a rule of construction that general words in a statute admit of indefinite extension or restriction,

according to the subject to which they relate, and the scope and object in contemplation (Maxwell on Interpretation of Statutes, 10th edition, page

18). The same rule is thus stated by Craies. General words must be understood as used with reference to the subject-matter in the mind of the

Legislature and limited to it. (Craies on Statute Law, 5th edition, page 166). It does not seem reasonable to hold that the Legislature intended a sale

where tea grown in Madras was shipped in Cochin for being delivered in Dublin to be liable to tax in the State of Madras if the documents of title

were delivered to a Bank at Madras while a similar consignment of tea shipped from the same port to the same destination would be exempt from

taxation if the seller took the precaution of having the documents of title delivered to a bank in Quilon or Cochin or some place outside the State of

Madras. Subjecting sellers of tea in Madras to handicaps in the matter of the realisation of price of the goods exported to foreign countries is not

conducive to the promotion of exports.

9. The statute exempts from taxation sales of tea for delivery outside the State, that is to say, sales which are made in order that delivery may be effected outside the State. The word "delivery" in that context is deprived of substance if we regard it as other than delivery of the tea sold and construe it as extending to delivery of documents of title relating to the tea. I hold that the word "delivery" in Section 5(v) means physical delivery of the tea sold, and not delivery effected by documents. The word "delivery" does not include anything which the law deems to be delivery but is restricted to physical delivery of the thing sold. It is not disputed that in every one of the sales to which these suits relate the tea was actually delivered in ports in foreign countries.

10. I find that every one of the sales subject to the assessments complained of in these suits was a sale which was exempt from taxation u/s 5(v) of the Madras General Sales Tax Act.

11. The parties will file a memo. stating the statistical consequences of the findings recorded in the appeal and in this judgment. Post on 11th November.