(1956) 09 KL CK 0007

In the High Court Of Kerala

Case No : O.P. No. 279 of 1956

K.A. Davies APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 11-09-1956

Acts Referred:
Constitution of India, 1950 — Article 286(2)

Citation : (1956) 7 STC 829

Hon'ble Judges : M.S. Menon, J

Bench : Single Bench

Advocate : P.K. Krishnankutty Menon and K.A. Chakkappan, for the Appellant;

Final Decision : Dismissed

Judgement

M.S. Menon, J.—The only contention urged before me is that the petitioner should not have been assessed to sales tax in respect of certain sales in which the buyers were outside the State and delivery was effected to the agents of those buyers within the State either at Trichur or at Mattancherry, According to the petitioner those sales took place "in the course of inter-State trade or commerce" and are hence exempt from taxation under Article 286(2) of the Constitution.

2. There is nothing in the papers produced before me to indicate that the sales concerned were "in the course of inter-State trade or commerce". As pointed out by Venkatarama Ayyar, J., in the Bengal Immunity case [1955] 6 S.T.C. 446 :

A sale could be said to be in the course of inter-State trade only if two conditions concur : (1) A sale of goods, and (2) a transport of those goods from one State to another under the contract of sale. Unless both these conditions are satisfied, there can be no sale in the course of inter-State trade.

3. The two conditions do not concur in this case and in the light of the observations in the Bengal Immunity case [1955] 6 S.T.C. 446 and the judgment of this Court in The Cochin Coal Company Limited v. The State of Travancore-

Cochin and Ors. (O. P. No. 191 of 1955) since reported at [1956] 7 S.T.C. 731, I see no reason to order "notice" on this petition.

4. In Clements and Marshall Ply. Ltd. v. Field Peas Marketing Board (1947) 76 C.L.R. 401, Dixon, J., said :

We should consider the commercial significance of transaction and whether they form an integral part of a continuous flow or course of trade, which, apart from the theoretical legal possibilities, must commercially involve transfer from one State to another", and the passage was quoted with approval by Das, J., in State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, . I am quite prepared to look at the transactions purely from the point of view of their commercial significance. Even then it is impossible to say that they form "an integral part of a continuous flow or course" of inter-State trade or commerce.

5. The petition is hereby rejected.