**(1961) 09 MAD CK 0049**

**In the Madras High Court**

**Case No :** Tax Case No. 83 of 1959 (Revn No. 52)

M.M. Mohideed Thumby and Co., Madras APPELLANT

Vs

State of Madras RESPONDENT

**Date of Decision :** 22-09-1961

**Acts Referred:**

Constitution of India, 1950 — Article 286

**Citation :** AIR 1962 Mad 323 : (1962) 13 STC 805

**Hon'ble Judges :** Srinivasan, J;Jagadisan, J

**Bench :** Division Bench

## Judgement

Srinivasan, J.—The assessee petitioner is a dealer in hides and skins. Before the Sales-tax Tribunal, the claim was by the assessee that a turnover of Rs. 4,45,125/- and odd represented export sale to foreign buyer through the medium of local agents of the foreign buyers. This contention was examined and rejected except for a small turnover of Rs. 22,768/- After examining the several transactions which went to make this turnover, the Tribunal came to the conclusion that in none of these cases, could it be stated that there was any transaction which involved a foreign buyer; but that on the other hand the sales were all affected to local exporting houses, the transfer of the property being completed within the state and the transaction of the export in consequence becoming wholly disassociated with the precedent sale transaction. In this revision the correctness of this conclusion of Appellate Tribunal is canvassed.

2. Mr. T. T. Srinivasan, for the assessee, confines the present revision petition to two turnovers resulting from transactions effected with or through (1) Messers Beardsell and Co.--Rs. 1,90,638-13-8 and (2) Rallis India Ltd.--Rs. 52,074-4-0. The claim with regard to the balance of the turnover which was in dispute before the Tribunal has been given up before us principally for the reason that the assessee is not able to produce any documents connected with those transactions which would support the contention now put forward. We according proceed to examine the assessee with the above two firms.

3. The arguments have been placed under two heads. Firstly it is claimed that the exporting houses acted as the agents of the assessees and that the sale effected was one direct by the assessee to the foreign buyer. If this basis can be established, there is no doubt that the subsequent export would form part of the transaction of the previous sale which necessarily led to the export of the goods. Such a sale would be exempt from levy of sales-tax by the state. It follows therefore, that the contract and the nature of the transaction following the contract have to be examined in order to see whether there was any incident in the course of the transaction a direct sale to a foreign buyer.

4. It is not presented by the learned council for the assessee that it was on foot of any contracts of sale entered into by either Messers. Beardsell or Messers Rallis on their own account or on account of the assessee, with any specified foreign buyer that the goods were exported. It is conceded and in fact that position is fully supported by the documents before us, that when the goods were taken over (we use this expression at this stage designedly) by either of these two exporting firms, these exporting firms had not entered into any contracts with any foreign buyer. These firms clearly indicated in their contracts with the assessee that the goods were to be sold aboard in the United Kingdom. Who the ultimate buyers were does not appear to have been within the knowledge of even these exporting firms at this stage of the transaction. In T. C. No. 150 of 1959 (Mad) in which a similar que4stion arose, we observed:

The various exporting firms wit whom the petitioner entered into contracts are all carrying on business in the state of Madras and they have not been shown to have acted as agents of the foreign principles entering into the contracts with the petitioner. An export sale is one which is affected between a seller in a state and a buyer aboard outside the Indian Territory. The foundation of such a sale is the contract between the two in respect of goods of merchandise forming the subject matter of the sale. The contract can be entered into directly between the seller and the buyer or it can be brought about by their respective agents duly authorised in that behalf. It is impossible to conceive of an export of sale without this essential element of a privity of contract between the two contracting parties. Neither the facts the seller consigns the goods to another for the purpose of shipment and transits to a foreign territory nor the fact the seller includes in his price of the goods sold costs insurance, freight and all other charges and expenses incidental to place the goods on board the ship nor even the fact that the local person who obtains delivery from the seller charges commission and brokerage to the account of the seller, can afford any evidence of a contract between the local seller and foreign buyer. The absence of a contract either in the form of the actual agreement signed by the seller and the buyer of their respective agents or in the form of letters between the buyer and the evidencing the terms of the agreement, is definitely fatal to any claim that any sale hit by the provisions of Article 286 of the Constitution.

Through we were dealing in the portion extracted above with a case where it was claimed that the exporting house was the agent of the foreign buyer while in the present case before us the claim advanced is that the exporting firm is the agent of the assessee seller, the principles are just the same. Unless there is contract of sale with a foreign buyer which leads to the export of the goods in question it is impossible to label such a sale as an export sale as that expression has been interpreted.

5. In the case of the transaction with Beardsell and Co., the contracts is one between that company and assessee and it is styled "Contract for the purchase of outside marks." It purports to be a "confirmation of purchase of tanned hides and skins'' and reads "we hereby confirm having bought from you today the undermentioned goods on the following terms and conditions." Then the quantity, the description of the quality and the price of the goods are set out. The price is no doubt fixed on c. i. f. basis at so many pence per pound and the destination is given as United Kingdom ports. After providing for discount and brokerage, the further terms are "delivery in our godowns at Madras, delivery to be completed in time to enable us to ship within two months from the contract date." The terms in regard to freight and insurance follow.

In respect of quality, the seller the assessee is made liable in this manner. On delivery of the goods into the godowns of the exporting house, the latter examines the goods in respect of quality, the selection etc. The assessee is liable to replace any skins to hides which do not come up to the standard. Irrespective of this examination, the assessee is also liable to reimburse Messers. Beardsell in respect of claims, if any made by the buyers, however arising adulteration "Whether we pay claims after arbitration as provided in our contracts with our buyers or whether we settle without arbitration" the payment of the price of the goods is provided thus: On the delivery of the goods in the godowns in advance of 90 percent of the value is made to the assessee. On this advanced interest at 5 percent is charged till the date of the bill of landing. The balance of the 10 percent of the price after deducting certain charges which are incurred on account of the Assessee is to be paid after the completion of the shipment. The further term also provides for a charge or lien on the goods for the moneys advanced by the exporting house.

6. It is a fact that after the shipments are completed, a statement of account is furnished by the exporting house on the basis of the priceless advances paid, interest thereon and other charges incurred by the exporting house, and the balance is adjusted to the credit or debit of the assessee as the case may be.

7. Whatever else this contract may indicate it certainly does not purport to make out that the exporting houses acted as the agents of the assessee in putting through a sale transaction with a foreign buyer. If the exporting house was an such an agent, one would normally except that the exporting house would on behalf of the assessee have entered into any specific contract of sale with a foreign buyer;. That is certainly not the case. Neither the assessee nor even the exporting house is aware of any definite buyer for the goods in question. The

 

specific terms of the contract is that Messers Beardsell bought the goods from the assessee subject to the conditions set out. This contract is also signed by the assessee as the seller and the assessee subscribes to the following statement :

We confirm having sold to you above

It appears to us that there is no warrant for inferring from the terms of the contracts that Messers Beardsell were agents of the assessee and were under terms of contracts authorised to put through what is known as an export sale.

8. On this aspect of the matter we may immediately deal with the contract with Messers Rallis. This contract reads : "We confirm your sale through our London correspondents of the following." The other conditions of the contracts are almost similar to those of the contract with Messers Beadsell. In dealing a similar contract in T. C. No. 150 of 1959 (Mad), we held :

This transaction certainly does not evidence a contract between the petitioner and any foreign buyer. Rallis did no purport to act as the agents of any London buyer. Rallis called themselves buyer and dealt with the petitioner only in such capacity. It is quite clear that Rallis were intending to sell the goods in their turn to a purchaser in London as under the contract Rallis stipulate that the petitioner will be made liable to any claim which may be made against them by their buyers in regard to the inferiority of the quality of the goods sold.

We finally held that the sale with Rallis was only a local sale. It seems to us that on an examination of the two sets of contracts, those with Beadsell and those with Rallis the conclusion appears to be inescapable that neither of these firms was acting as the agents of the assessee in putting any export sale.

9. The next contention that has been advanced by the learned counsel on behalf of the assessee is that these sale are sales in the course of export and he invites us to hold on a consideration of all the attendant circumstances that the property in the goods were deliverable at the foreign destination to the order of Messers. Rallis brothers in the one case and in the order of consignor in the case of Beardsell. There is now ever no stipulation in the contract as to when the property in the goods was to pause in either case. That the goods were deliverable at the godowns of the exporting houses, on the happening of which event the assessee was to be paid a part of the purchase price is all that is evident in the contract. While the contract with Rallis merely indicates shipment within two months from the date of the contract and provides for the payment of advance of the value of 95 percent on delivery of the gods in their godown in Madras, in the case of the contract with Beardsell, delivery is contemplated to be made in their godowns to enable Messers. Beardsell to ship the goods.

In this case also, advance of the purchase price is payable on the delivery of the goods. The mere circumstances that the bill of landing was taken in the name of the seller, the assessee cannot derogate from the other specific terms of the contract which seems to us to indicate that the property in the goods passed on the delivery of the goods in the godowns of the exporting houses. Delivery of the godowns by the seller to the buyer passes the property in the goods, where the seller does not reserve the right of disposal, in most cases payment of price is against delivery, but it is immaterial whether the time for payment is postponed after delivery. Unless a different intention appears, delivery as such operates to appropriate the goods to the contract, and in the right in the passing of the property in the goods from the seller to the buyer. The other stipulations in the contract with regards to the quality or the liability of the seller in that regard or other terms with regard to wo was to bear the cost insurance and freight charges appear to be special terms of the contract which do not affect the question of the passing of property, particularly in the light of the conditions that we referred to. The question then is, if the property in the goods passed to Messers. Beadsell or the Rallis, as the case may be when the goods were delivered in their godowns it can still be said that the sale was in the course of export.

10. We are of the view that in such an event the sale cannot be said to be in the course of export.

11. It follows that the view that we have expressed the revision petition fails and has to be dismissed. Our attention has been drawn to a decision of a Bench of this court in O.S.A No.22 of 1955 (Mad). That was a case where a dealer in hides and skins sued Messers. Gordan Woodroffe and Co. for rendition of accounts. The contention advanced by the latter that they were not the agents of the dealer was not accepted by the Division Bench which held that on the terms of the contract between the parties Messers. Goverment Woodroffe were functioning as agents. We had to deal with the based on this decision, which was sought to be used in support of the petitioner''s contentions in the present case before us also in the earlier revision T. C. No. 150 of 1959 (Mad) which we have referred to. We took the view then that in O. S. A. No. 22 of 1955 (Mad) the learned judges did not consider whether the transactions was an export sale or a sale in the course of export. They were not even called upon to consider whether the transaction was an export sale or a sale in the course of export. The were not even called upon to consider whether Messers. Gordon Woodroffe acted as the agents of the dealer in hides and skins in effecting the sale of the goods. On the particular terms of the contract between the parties Messers. Gordon Woodroffe undertook to do certain things on behalf of the sellers, in relation to the good sold. But the learned judges were not called upon to consider whether this agency relationship extended to selling of the goods on behalf of the dealer. Whatever conclusions might have been come into the original side appeal with regard to the agency relationship set up, that decision can have no bearing upon the question whether Messers. Gordon Woodroffe did act as the agents of the sellers in effecting a sale of the goods. On the terms of the contracts that have been placed before us we have reached the conclusion that the two exporting houses in the present case were not agents of therefore be held that the sales were export sales. The decision in O.S.A. of 1955 (Mad) cannot affect the conclusion which we have reached on the facts before us. The petition is dismissed with costs. Counsel''s

fee Rs 100.

 