(1961) 09 MAD CK 0037

In the Madras High Court

M.M. Mohideen Thumby and Co. — APPELLANT

Vs

The State of Madras — RESPONDENT

Date of Decision : 22-09-1961

Acts Referred:
Constitution of India, 1950 — Article 286

Citation : (1962) 2 MLJ 197

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Judgement

Srinivasan, J.—The assessee-petitioner is a dealer in hides and skins. Before the Sales Tax Appellate Tribunal, the claim was advanced by the assessee that a turnover of Rs. 4,45,125 and odd represented export sales to foreign buyers 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 up 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 effected to local exporting houses, the transfer of property being completed within the State and the transaction of export in consequence becoming wholly disassociated with the precedent sale transaction. In this Revision, the correctness of this conclusion of the 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) Messrs. Beard-sell and Company, 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 accordingly proceed to examine the nature of the transactions entered into by

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 he 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 which would establish that the sale was a direct sale to a foreign buyer.

4. It is not pretended by the learned Counsel for the assessee that it was on foot of any contracts of sale entered into by either Messrs. Beardsell or Messrs. 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 abroad 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, in which a similar question arose, we observed:

The various exporting firms with 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 principals entering into the contracts with the petitioner. An export sale is one which is effected between a seller in the State and a buyer abroad outside the Indian territory. The foundation of such a sale is the contract between the two in respect of goods or merchandize 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 sale without this essential element of a privity of contract between the two contracting parties. Neither the fact that the seller consigns the goods to another for the purpose of shipment and transit to a foreign territory, nor the fact that the seller includes in his price for 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 the foreign buyer. The absence of a contract either in the form of an actual agreement signed by the seller and the buyer or their respective agents or in the form of letters between the buyer and the seller evidencing the terms of the agreement, is definitely fata 1 to any claim that any sale transaction by a local dealer is an export sale hit by the provisions of Article 286 of the Constitution.

Though 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 a 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 contract is one between that company and the 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 or hides which do not come up to the standard. Irrespective of this examination, the assessee is also liable to reimburse Messrs. Beardsell in respect of claims, if any, made by the buyers, however arising, including 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 for thus. On the delivery of the goods in the godowns, an advance of 90 per cent. of the value is made to the assessee. Oh this advance interest at 5 per cent. is charged till the date of the bill of lading. The balance of 10 per cent. 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 price, less 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 such an agent, one would normally expect 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 term of the contract is that Messrs. 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 as above.

It appears to us that there is no warrant for inferring from the terms of the contract that Messrs. Beardsell were agents of the assessee and were under the terms of this contract 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 Messrs. Rallis. This contract reads : " We confirm your sale through our London Correspondents of the following ". The other conditions of the contract are almost similar to those of the contract with Messrs. Beardsell. In dealing with a similar contract in T.C. No. 150 of 1959, we held

This transaction certainly does not evidence a contract between the petitioner and any foreign buyer. Rallis did not 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 at 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 Beardsell 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 through any export sale.

9. The next contention that has been advanced by the learned Counsel on behalf of the assessee is that these sales 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 passed to the buyers even regarding these exporting houses as the buyers, only after the goods had entered the stream of export. What is claimed in this regard is that the bills of lading were taken in the names of the assessees themselves, though the goods were deliverable at the foreign destination to the orders of Messrs. Rallis Brothers in the one case and to the orders of the consignor in the case of Beardsell. There is however no stipulation in the contract as to when the property in the goods was to pass 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 per cent. on delivery of the goods in their godowns in Madras, in the case of the contract with Beardsell, delivery is

contemplated to be made in their godown to enable Messrs. Beardsell to ship the goods. In this case also, the advance of the purchase price is payable on the delivery of the goods. The mere circumstance that the bill of lading was taken in the name of the seller, the assessee, cannot derogate from the other specific terms of the contract which seem 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 goods 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 made 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 results in the passing of the property in the goods from the seller to the buyer. The other stipulations in the contract with regard to the quality or the liability of the seller in that regard, or other terms with regard to, who 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 have referred to. The question then is, if the property in the goods passed to Messrs. Beardsell or the Rallis, as the case may be, when the goods were delivered in their godowns, can it 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 in the view that we have expressed, the Revision Petition fails and has to be dismissed.

12. Our attention has been drawn to a decision of a Bench of this Court in O.S.A. No. 22 of 1955. That was a case where a dealer in hides and skins sued Messrs. Gorden 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 Messrs. Gorden Woodroffe were functioning as agents. We had to deal with the argument 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.G. No. 150 of 1959 which we have referred to. We took the view then that in O.S.A. No. 22 of 1955, the learned Judges did not have to consider whether the transaction was an export sale or sale in the course of export. They were not even called upon to consider whether Messrs. Gordon Woodroffe acted as the agents of the dealer in hides and skins in effecting a sale of the goods. On the particular terms of the contract between the parties, Messrs. Gorden Woodroffe undertook to do certain things on behalf of the sellers in relation to the goods 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 to in the Original Side Appeal with regard to the agency relationship set up, that decision can have no bearing upon

the question whether Messrs. Gorden 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 the petitioner in that sense, and it could not therefore be held that the sales were export sales. The decision in O.S.A. No. 22 of 1955 cannot affect the conclusion which we have reached on the facts before us.

13. The petition is dismissed with costs. Counsel''s fee Rs. 100.

