

(1963) 06 MAD CK 0003

In the Madras High Court

Case No : T.C. No. 94 of 1962, (Revision No. 33)

Rajeswari Mills Ltd.

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 24-06-1963

Acts Referred:

Constitution of India, 1950 — Article 286
Import (Control) Order, 1955 — Section 3(1)
Imports and Exports (Control) Act, 1947 — Section 3

Citation : AIR 1964 Mad 162 : (1964) ILR (Mad) 199 : (1964) 15 STC 1

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

Bench : Division Bench

Advocate : N. Srinivasan, for the Appellant; G. Ramanujam, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagadisan, J.—The petitioner is a company engaged in the business of producing and selling cotton yarn. In the assessment to tax under the

Madras General Sales-tax Act, 1939, an item of Rs. 1,34,426-80 was included in its taxable turnover on the ground that it represented the value

of purchase of raw cotton from a Bombay dealer called C. A. Galiokotwala and Co. The petitioner contended that the said amount was not

includible in the taxable turnover because there was no sale by Galiokotwala and Co. to it and that, in any event, the purchase being in the course

of import of cotton from Sudan, the levy of tax was prohibited by Article 286 of the Indian Constitution. The department as well as the Sales-tax

Appellate Tribunal did not accept the objection of the assessee and hence this revision petition.

2. Two contentions are urged before us. The first is that Galiokotwala and Co.,

was only the assessee's agent. in the matter of the import of raw cotton from Sudan, and that there was no sale by that company to the assessee. The second is that the import itself was occasioned by the purchase and that the transaction was in the course of such import and was within the constitutional ban.

3. In order to appreciate the true nature of the purchase of cotton effected by the assessee, it is necessary to refer to the statutory restrictions upon

the import of raw cotton from outside India and also to the actual dealing between Galiakotwala and Co., and tile assessee. The enactment that is

relevant is the Imports and Exports. (Control) Act 1947. Section 3 of the Act provides that the Central Government may, by order published in

the Official Gazette make provisions for prohibiting, restricting or otherwise controlling the import and export of goods of any specified description.

In exercise of the powers Conferred by Section 3 referred to the Government of India promulgated the Imports (Control) Order, 1955. Section

3(1) of the Order reads as follows:

1. Save as otherwise provided in the order, no person shall import any goods of the description specified in Sch. I, except, under, and in

accordance) with, a licence or a customs clearance permit granted by the Central Government or by any officer specified in Sch. II.

Raw cotton is one of the items specified in Sch. (Vide Sch. I part III, item 2). Without the necessary permit or licence obtained from the

Government, there can be no import of raw cotton front foreign territories. But a procedure has however been prescribed, enabling the consumers

of raw cotton for the purpose of manufacturing yarn to obtain licences. The indenting consumer has to apply to the Textile Commissioner stating his

needs and praying for permission to Import cotton of particular varieties from outside areas. Along with his application, the has to set out

particulars of consumption of cotton for the last three years preceding the year for which the permission to import cotton is sought. The textile

Commissioner, on scrutiny of these materials, issues an allotment fetter to the applicant indicating therein the quantity which can be imported.

Thereafter, the applicant has to contact the Joint Chief Controller of Imports and Exports for the necessary licence based upon the quantity allotted

by the Textile Commissioner.

The actual licence to import is issued by the Joint Chief Controller of Imports and Exports. In the present case, it is not in dispute that the Joint

Chief Controller of Imports and Exports issued a licence in favour of the assessee on 19-5-1958 to import 25 bales of 400 lbs. each, stapling; 1-

3/16""", from soft currency areas. Armed with this licence, the assessee issued a letter of authority to Galiakotwala and Co., for the purpose of

Importing the. quantity licensed. This is admitted by the State as we find that, in pursuance of the directions of the Sales-tax Appellate Tribunal, the

State representative filed the following statement:-

The appellants (the assessee) move the Joint Chief Controller for issue of letter of authority in favour of Messr. C. A. Galiakotwala and Co. On

the basis of this authority the latter firm imports cotton from abroad at Madras Harbour, clears the goods from customs and rail the goods from

Madras to the mills. The relative R. R. is invariably negotiated through bank. The appellants take delivery of the R. R. from: the bank on payment

of value and clear the goods from: railway. The cotton bales are weighed in. the presence of the seller's representative and on the basis of the

ascertained weights the final bill adopting the contracted rate is drawn up.

4. The procedure for the issue of letter of authority has also been prescribed (vide paragraph 19, page 68) of the Red Book-Hand book of Rules

and Procedure 1961 - Import Trade Control). The licensee who desires another party to import goods from abroad should apply for a letter of

authority to the licensing authority concerned. A letter of authority cannot be claimed as a matter of right; but; it is normally granted on application

to ""Actual users"". In the case of established importers letters of authority are: granted only in special circumstances where the licensing authority is

satisfied that the transactions involved are genuine and bona fide and that the licence-holder is not endeavouring to part with his licence for a

consideration. In view of the admission made] by the State, we shall assume that Galiakotwala and Co., imported 25 bales of raw cotton from

Sudan, only in* pursuance of the letter of authority issued to it by the appropriate authority and under cover of the licence in favour of the assessee.

We must however mention that there is no evidence before as establishing this fact.

5. Now it will be convenient to refer to the actual terms of the contract between;

Galiakotawala and Co. and the assessee. A typed copy of the contract has been placed before us. This contract is dated 18-6-1958. We find that C. R. Galiakotwala and Co. purports to be the seller and She

assessee purports to be the buyer of 25 bales of 400 lbs each of Egyptian cotton. The price fixed is Rs. 1950 per candy of 784 lbs F. O. R.

Gudiyattam. The sale price per candy premium for insurance, Marine rise, War risk and Comprehensive risk. The buyer (assessee) undertakes to

say 90 per cent of the value against R. R. negotiated through bank by the seller (Galiakotwala and Co) the balance of 10 per cent is payable on

wingment of the goods presumably in the mill premises of the assessee.

There is an arbitration clause in the agreement which provides that in case disputes arise between the parties, because of short delivery of supply of

cotton inferior to that sample originally produced and accepted, the matter should be referred to for arbitration under the Regulations of Alexandria

Cotton Exporters" Association for Egyptian Cotton. The following clause is not merely relevant but is also important:

Goods supplied under the contract cannot be rejected nor the sellers be called upon to replace the same. In case the buyers find the quality

inferior, samples out of the cotton bales tendered are to be: submitted to the Alexandria Cotton Exporters Association for arbitration and the

buyers shall be bound to accept the goods with such, allowance as may be awarded. This contract cannot be cancelled for any reason whatsoever

and is subject to the conditions stated on the reverse.

The tenor of this document, as can be gleaned from the express terms thereof, is consistent only with a transaction of sale of cotton by

Galiakotwala and Co. It is impossible to read from this contract that Galiakotwala was only the assessee"s agent. A reference to the typed papers

filed before us on behalf of the assessee shows that actually there was some dispute between Gauakotwara and Co. and the assessee regarding the

quality of a particular bale of cotton called Lot No. 394. On 18-9-1958 Galiakotwala and Co. wrote to the assesses stating that if it was not

satisfied with the quality of the particular lot. it was open to it to go in for arbitration before the Alexandria Cotton Exporters" Association. The

matter was referred to arbitration and the Arbitrators held that there was no defect in the quality in the cotton supplied which, according to them,

was in accordance with the samples. It is thus abundantly clear from the express terms of the contract and the conduct of the parties that they dealt

with each other, not as principal and agent, but as buyer and seller.

6. Mr. N. Srinivasan, learned counsel for the petitioner, draws our attention to the Appendix 9 of the Red Book which relates to the issue of letters

of authority. It is stated therein that in bona fide cases, where the licence-holders desire to employ an agent to perform the limited functions of

importing the licensed goods, the following procedure should be followed for consideration of requests for the grant of a letter of authority. There

should be a written request in specific terms by the licensee himself. When the goods are sought to be imported through an indenting agent, the

request for grant of a letter of authority should be accompanied by documentary evidence to show that the indenting house concerned has an

agency agreement with the foreign supplier. The letter of authority would authorise the person in whose favour it is issued to operate the licence on

behalf of the licensee and to open letters of credit.

The condition of the letter of authority is said to be, as per the Regulations as follows:-

(a) the person or firm: in whose favour it has been issued, will act purely as an agent of the licensee and the goods imported will be the property of

the licence holder both at the time of clearance through the Customs and subsequent thereto. The licence-holder will have to ensure that the goods

on Importation will be delivered to him and shall not be disposed of otherwise. The licensee shall not cause or permit the holder of the letter of

authority to dispose of the goods.

Considerable reliance has been placed by learned counsel on this portion of the Regulation (page 203 of the Red Book) to found an elaborate

argument that Galiakotwala and Co. was only the, statutory agent of the assessee.

7. Now, who is a statutory agent? It is necessary to have certain misconceptions about the true meaning of the said expression removed or

dispelled even at the risk of a little digression. The term ""statutory agent"" which was used by learned counsel for the petitioner describing the legal

status of Galiakotwala and Co. vis-a-vis the assessee would be misleading if it were to be understood as a species of agency like a contractual

agency. In ordinary legal parlance, agency is a relationship between the parties, created by agreement express or implied. It is essentially a

contractual product and it would not be in consonance with the provisions of the Indian Contract Act or the residuary general principles of law, to

impose either the character of an agent or principal upon anybody, willy-nilly. There must be consent on both sides; the principal should assent to the

agent acting on his behalf and the agent should consent so to act. The further requirement is that the mutual consent should become known to each

other. The assent may be express or implied but the relationship-principal-agent cannot exist without it: *Pole v. Leask*, (1863) 33 LJ Ch 155.

The Indian Contract Act relating to agency cannot be read departing from the basic principles of law on this subject. What constitutes agency is the

jural relationship of principal and agent. The rights and liabilities of the parties flow from such relationship.

An inference of agency should not however be concluded from the subsistence of a few of such rights or liabilities. "Logically that is only a post hoc

propter hoc deduction; and in practice it may be dangerous to assume the existence of the relation, because the result may sometimes be to attract

improperly some legal effects which result only from the proper establishment of the relation." (Powell on the Law of Agency - 2nd Edn. page

295). The imposition of some effects inherent in the relationship of principal and agent by a statute is not the formation of agency by legislation but

is only the fastening of a liability or clothing of a right in an individual as if the parties concerned occupied the position of agent and principal. An

agent is liable to render accounts of the principal's money in his hands. But the accounting liability of a person to another would not make him by

himself an agent of the other. To put it shortly, and tersely as we hope to, the rights and obligations are the legal incidents of the relationship, but the

relationship is not the resultant of such rights and obligations.

8. There can, however, be no doubt that a statute can create rights and impose liabilities some or all of which might be those pertaining to a

principal-agent relation. For example, a committee of the estate or receiver of the income of a lunatic's estate is regarded as his statutory agent: In

re E. G. 1914 1 Ch 927; In *re Whether* 1928 Ch 223. Under the Madras Rent Reduction Act, 1947, the State collects rents from ryots in

possession of ryoti lands. In respect of these collections, the State would occupy the position of an agent. The word "agent" in such contexts is used in a loose sense. There is no agency in the strict sense of the law but the person described as such might be said to occupy a fiduciary position analogous to that of an agent. We would therefore avoid the expression "a statutory agent" in determining the true rule of the Bombay dealer (Galiakotwala and Co.). The question still remains whether the Bombay dealer was only a representative of the assessee in importing the cotton from outside India.

9. We have now to consider the true scope of the Regulation (Appendix 9 of the Red book). Does it comprehend; the real relationship of the holder of the letter of authority and the licensee or does it indicate the position of the licensee despite its granting letter of authority to another as viewed by the Government? The object of the Regulation is to prevent trafficking in permits and import licences and to keep the licensee anchored to the licence and the goods imported" under it to ensure due performance of his obligations as such licensee. For the limited purpose of enabling the Government to enforce its rights relating to the import activities of the licensee, he is deemed to be the owner of the imported goods and his appointee under the letter of authority is deemed to be a mere agent representing the licensee.

In our opinion, the Regulation cannot be stretched beyond the specific purpose for which it was issued without making serious inroads into the contractual rights of the parties and without avoiding manifestly absurd results. If the person holding the letter of authority actually imported the licenced goods and sold them to the licensee, the transaction should be viewed as a sale and so far we are able to see there is nothing either in the provisions of the Imports (Control) Order or even the Regulations issued by the Central Government, which would compel the court to hold that though there was a sale it should not be held as such. We are unable to hold that the contract between Galiakotwala and Co., and the assessee was not a sale though. it purports to be a sale and was intended to be a sale by the parties, because of the provisions of the Regulation enabling the Government to treat the imported goods as belonging to the licensee for the purpose of its fiscal policy. The Tribunal reached the correct

conclusion in holding that it was a sale and that Galiakotwala and Co., was not a mere agent of the assessee. We may also point out that in

circumstances almost similar, a Division Bench of this court has taken the same view in Tax Case No. 100 of 1959, D/- 16-2-1962 (Mad) Arthur

Import Export Co. v. State of Madras.

10. There is no substance in the contention urged by learned counsel for the petitioner that the purchase of cotton was in the course of import. We

agree with the Tribunal that once it is held that it was a sale to the assessee by Galiakotwala and Co., the impart became completed after

Galiakotwala and Co. took delivery of the consignment and cleared the goods from the harbour. The sale was subsequent to the taking of such

delivery and was effected after the goods were taken out beyond the customs barrier. The Tribunal observes as follows in its order:

The import was occasioned by the sale between the Sudanese shipper and the appellant's sellers at Bombay. It is not the appellant's case that in

respect of the disputed transactions there was a sale in the course of import by transfer of documents of title to the goods. Admittedly the cotton

was cleared out of the customs by the Sellers and then delivered to the appellant at Gudlyattam within the State.

We accept this view of the Tribunal and it follows that the transaction is not hit by the constitutional ban under Article 286 of the Constitution.

11. In the result, the petition fails and is dismissed with costs. Counsel's fees Rs. 100.