(1957) 08 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 53 of 1956

Shrigopal Rameshwardas APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 26-08-1957

Acts Referred:

Citation : (1958) 9 STC 16

Hon'ble Judges : M. Hidayatullah, C.J;B.K. Choudhari, J

Bench : Division Bench

Advocate : J.M. Thakkar, for the Appellant; M. Adhikari, for the Respondent

Judgement

1. This is a reference u/s 23(1) of the M. P. Sales Tax Act by the Board of Revenue referring the following question for the opinion of this Court:

Under the facts and circumstances of the case, could the despatches of oilseeds of the value of Rs. 2,64,386 made by the applicant to places outside the Province during the assessment period 13th November, 1947, to 31st October, 1948, constitute ''sale'' taxable under the Sales Tax Act ?

` The assessment period is before the commencement of the present Constitution and is governed by the Government of India Act, 1935. The question involves the application of Explanation (II) to Section 2(g) of the Sales Tax Act, 1947. The facts of the case are as follows.

2. The assessee employs pucca adatiyas including Ramdas Manohardas, Khadakpore, for the purpose of arranging sales of linseed and other oilseeds and food-grains which he despatches from Jabalpur to Khadakpore and other places outside the State. During the assessment year he sent various consignments to the pucca adatiya which were disposed of by the adatiya. The Board of Revenue in its statement of the case has given one typical example of how the transactions go through. In that example a consignment of 388 bags of sarso was despatched on 18th December, 1947, from Howbagh to Khadakpore. On 29th December, 1947, a bijak was sent by the pucca adatiya to the assessee

giving the details of the price and expenses, commission etc. showing a net balance of Rs. 21,368-2-9 as due to the assessee. Under the same date the assessee made a corresponding entry in the nakal bahi and debited Ramdas Manohardas, Khadakpore, with the amount of Rs. 21,368-2-9. The Board of Revenue held that this sale must have been made at a time when the commodity was within this State. The Board of Revenue distinguished an earlier decision of the Board reported in Hirji Govindji v. The State [1952] 3 S.T.C. 263 (Ruling No. 7) on the ground that in that case documents had been produced to show that the sale had taken place after the goods had left the Province. The learned President held that the bijak and the nakal entry taken together did not show that the transaction of sale took place on 29th December, 1947, or at a time when the goods had left the Province and, therefore, the Board presumed that the sale with the adatiya took place when the goods were within the Province. The question that arises is whether there was any material on which the Board could reach the conclusion that the sale transaction took place when the goods were within the Province.

3. To begin with, a pucca adatiya does not always purchase the goods himself. He finds customers for the goods and sells the goods to them. The difference between a pucca adatiya and a kachcha adatiya is well known and has been brought out by Chandavarkar, J., in the leading case reported in Kanji Devji v. Bhagvandas Narotamdas 7 Bom. L.R. 57. A pucca adatiya can adopt the transaction to himself if he so cares, but ordinarily he finds a customer for the goods, though the two principals are nof disclosed to each other, and the transaction is between the adatiya and the two principals on either end. When goods are sent to a pucca adatiya, there may be no sale to him. The sale to him comes into existence only if he appropriates the transaction for himself. If the pucca adatiya finds a customer there are no two sales, namely, one to the pucca adatiya and another to the buying principal. There is only one sale and that is to an undisclosed principal through the agency of the pucca adatiya.

4. Now, the documents which have been proved in this case are not sufficient to decide whether the transaction was between the principal at Jabalpur and an undisclosed principal outside the State. They are also insufficient to show that the transaction was between the pucca adatiya and the principal at Jabalpur. If one goes by the conclusion of the Board that the transaction was between the adatiya and the principal at Jabalpur, then the date of the transaction according to the pucca adat system would be the date of the sale when the bijak was submitted by the pucca adatiya to the principal at Jabalpur. By that date, admittedly, the goods had reached Khadakpore and were outside the State of Madhya Pradesh. In our opinion, therefore, there was nothing in this case which distinguished it from the earlier decision given by the President, to which we have referred. The absence of the documents did not prove that the goods were at the time of the supposed sale within the Province, and that inference cannot readily be drawn in view of the way in which the pucca adat system works. On the record, as it stood, it could only be held that the sale, if any, to the pucca

adatiya took place on the 29th December when he submitted the bijak to the principal at Jabalpur. The pucca adatiya being outside the State and the goods being also at the relevant period at Khadakpore, Explanation (II) to Section 2 (g) of the Sales Tax Act would not be made applicable.

5. We accordingly hold that the answer to the question posed by the President, Board of Revenue, is that under the facts and circumstances of the case the despatches of oilseeds of the value of Rs. 2,64,366 made by the applicant to places outside the Province during the assessment period 13th November, 1947, to 31st October, 1948, did not constitute sales taxable under the Sales Tax Act. We may add that we had the facts only of the one transaction before us, and what we say applies to such facts as are disclosed, and not to any other transaction in which there may be distinguishing features. The costs of this reference shall be borne by the non-applicant. Counsel''s fee Rs. 50.

