
(1959) 09 MAD CK 0043

In the Madras High Court

Case No : Tax Revision Case No's. 228 and 229 of 1956

Stanes Amalgamated Estates Ltd.

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 17-09-1959

Acts Referred:

Citation : (1960) 11 STC 301

Hon'ble Judges : Ramachandra Iyer, J;Rajagopalan, J

Bench : Division Bench

Advocate : P. Govindan Nair, for King and Partridge, for the Appellant; The Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Iyer, J.—These two revision cases, which have been filed respectively by the Stanes Amalgamated Estates Ltd. and the United Nilgiri Tea Estates Co., Ltd., relate to the assessments to sales tax for 1953-54. The assessees are dealers in tea. In addition, they also own or otherwise have an interest in lands on which tea is grown. The disputed portions of the turnover in the two cases are respectively Rs. 54,053-15-6 and Rs. 1,89,714-1-9. They represent the sale price of tea grown on the lands owned by the assessees which was sold to M/s. the United Coffee Supply Co., Ltd. The agreement for sale fixed the price F.O.R. Kettery, railway station in the Madras State and stipulated that the sellers should have the goods packed, marked and despatched to destinations, in accordance with the instructions which the buyers were to give from time to time. After entering into the contract with the assessees, the buyers, the United Coffee Supply Co., Ltd., in turn, entered into contracts for sale of tea with various persons outside the Madras State. They then instructed their sellers to pack and send portions of the tea purchased by them to places where they had agreed to deliver to their own purchasers. The goods were accordingly consigned and despatched to destinations outside the State of Madras addressed to the United Coffee Supply Co., Ltd., the relevant railway receipts were also

taken in their names and delivered over to them. The consignment bore a mark to identify the purchasers from the United Coffee Supply Co., Ltd., for whom it was intended. From a typical case placed before us by the Government Pleader, it is seen that, after the despatch of the goods to the various places, the assessee issued an invoice to the United Coffee Supply Co., Ltd., for the price and incidental charges; presumably they were paid only thereafter. There can be no doubt that constructive delivery of the goods had been given by the assessee to their buyers within the State of Madras.

2. The claim of the assessee was that the turnover in respect of such sales should be exempted under the provisions of Section 5(v) of the Madras General Sales Tax Act from being included in the assessable turnover, as they represented the price of tea grown in their lands sold to the United Coffee Supply Co., Ltd., which was intended to be and actually delivered outside the Madras State. Section 5(v) which was in force during the year to which the assessment related stated :

The sale of tea grown by the seller or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, shall be exempt from taxation u/s 3, Sub-section (1), if the sale is for delivery outside the State and delivery is actually so made.

3. In order that an assessee may get exemption under the provisions of this section, three conditions should be satisfied: (1) the tea that was sold was grown by the seller on any land to which he would be entitled as owner, usufructuary mortgagee, tenant or otherwise, (2) the sale should be intended for delivery being made outside the Madras State and (3) the delivery should have been actually so made outside the Madras State. It is admitted that conditions 1 and 3 have been satisfied in the instant case, as the tea which was the subject-matter of the disputed turnover was grown in the lands owned by the assessee and was actually delivered outside the Madras State.

4. The only question to be determined in order to entitle the assessee to the exemption sought is whether the sale was made for the purpose of delivery being made outside the State of Madras. Both the Deputy Commercial Tax Officer as well as the Commercial Tax Officer on appeal negated the claim of the assessee. On further appeal the Sales Tax Appellate Tribunal held that the delivery in the instant case at the places outside the Madras State should be deemed to be a delivery in pursuance of the contract which the United Coffee Supply Co. Ltd., made with its own buyers and not one which was made by the assessee. They held that the property in the goods passed when they were unconditionally appropriated towards the purchases by the buyers from the assessee, the delivery should be deemed to have taken place within the Madras State immediately after that appropriation was made.

5. In our opinion, for the application of Section 5 (v), the question to be considered is not where the property passed to the buyer, but where the actual

delivery was intended and made. The circumstance, that the buyer agreed to give delivery to his purchaser at a particular place, will not exclude that place being the place of actual delivery contemplated by the assessee when they entered into a contract with the United Coffee Supply Co., Ltd. A simple case would afford an illustration. Suppose the United Coffee Supply Co., Ltd., had a branch of their own at "A", a place outside the State of Madras and there was an agreement to effect an actual delivery at that place by the assessee. The United Coffee Supply Co., Ltd., might have entered into a contract to sell the very goods to their customer and deliver the same there. But that cannot lead to the result that the original contract did not envisage a delivery at place A. In the present case the goods were delivered to the railway addressed to the assessee's buyers at a place outside Madras. The circumstance that the buyers' buyer was also at that place cannot prevent that place being the contemplated place of delivery as between the assessee and the buyer from the assessee.

6. The question has to be decided on the basis of the agreement between the assessee and their buyers, the United Coffee Supply Co., Ltd. The agreement was to pack, mark and despatch according to such instructions as the buyers might give thereafter. Later the buyers instructed the sellers that the goods should be packed and sent addressed to the United Coffee Supply Co., Ltd., outside the Madras State. Therefore, at the time when the contract of sale was entered into, the parties did make a stipulation in regard to delivery. But they did not then specify the place of actual delivery. Instead they agreed that the goods should be sent to such place as the buyer might direct. When, therefore, the buyers designated later the place to which the goods should be sent, it should be held that the parties had agreed all along that the goods should be actually delivered at the place then designated. It is not necessary that the intention to deliver the goods outside the State of Madras should be expressed at the time of the contract itself. It would be enough, if, at the time of the contract, the actual delivery was contemplated and the place of actual delivery was left to be determined at the option of one party or the other. As soon as that option is exercised by the concerned party, it should be held that both the parties intended to effect actual delivery at the place designated by the party having the option.

7. In the present case, there was such an option given to the buyers to designate the place of actual delivery. The buyers exercised the option and required their sellers to send the goods to the various places. It is true that the assessee, after loading the goods in railway wagons, took the relevant receipts in the names of the buyers, namely, the United Coffee Supply Co., Ltd. and thereby gave constructive delivery of the goods to the buyers, but actual delivery was all along intended to be given and was given only at the places designated by the buyers. It follows that the deliveries in the present case were intended to be effected outside the State of Madras and were so effected. The petitioners would be entitled to the exemption claimed.

8. The revision petitions are allowed with costs. Advocate's fee Rs. 100.