
(1961) 06 KL CK 0020
In the High Court Of Kerala
Case No : T.R.C. No. 80 of 1959

T. Bapputty

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 06-06-1961

Acts Referred:

Constitution of India, 1950 — Article 286(2)
Travancore-Cochin General Sales Tax Act, 1125 — Section 2, 3

Citation : AIR 1962 Ker 69 : (1961) 12 STC 722

Hon'ble Judges : M.A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : N. Sundara Iyer, V.R. Venkitakrishnan and K. Narayanan, for the Appellant; M.U. Isaac, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—The revision petitioner is a registered firm dealing in timber, and had been assessed by the Sales-Tax Officer, Kozhikode, on price of sleepers sold to the railways. The petitioners had entered into the contract to supply on November 23, 1956 and supplied goods worth Rs. 1,34,115-15-1; which amount was asked to be exempted, due to the sleepers having been delivered outside the State, and the sales being thus inter-State. The Sales Tax Officer held that since the contract was concluded at Kozhikode and rail delivery was effected at Kallayi yard within the State, the sales were intra-State and the turnover taxable. On appeal the Appellate Assistant Commissioner had also declined to exempt the amount, and the Appellate Tribunal has dismissed the appeal relying on its previous decision in Tribunal Appeal No. 168/57. The ground is that the sale under the contract "had become complete at Kallai, within the State of Kerala, where the sleepers were loaded into wagons. Thereafter this petition has been filed and the following question been framed for our decision;--

"Whether the turnover of Rs. 1,34,115-15-1 referred in the order of the Sales-Tax Appellate Tribunal; represents "the proceeds of the sale of goods in the

course of inter-State trade or commerce and is not liable to be taxed under the Madras General Sales Tax Act, 1939?"

2. It is clear that the terms of the contract are important for purposes of deciding the question, and should be given in some detail. It provides that in consideration of the payment to be made by the Government, as detailed in the schedule attached to the agreement and other conditions of the contract, the contractor, undertakes to duly supply and deliver the sleepers to the number and description and quality and at the price or prices and at the times and places detailed and in manner provided in the agreement. The other conditions number thirty-one, of which Nos. 17, 18, 20 and 23 have been relied for purposes of determining this revision petition. They read as follows:--

"17. After passing, the contractor will apply to and obtain from the Chief Engineer orders as to the disposal of the sleepers passed. On receipt of instructions from the Chief Engineer the contractor shall load the sleepers into railway waggons and book them by rail to the consignee, to whom the sleepers are allotted.....

18. The contractor shall immediately after " loading apply for and obtain from the Sleeper Inspector a tally receipt for the number loaded. Such sleepers as are acknowledged by the consignee as possessing the passing mark of the passing officer and the private mark of the contractor will be deemed fully delivered subject, however, to the right of the Government to have such sleepers re-inspected at any time within 2 months after they have been passed.

20. If there be any shortage in the number of sleepers received by the consignee in any particular consignment, i.e., consignment covered by a single railway receipt, the contractor shall be paid only for the number of sleepers actually delivered at destination; provided all sleepers received by the consignee are passed sleepers and have not been rejected by the passing officer but if any part of such consignment consists of unpassed sleepers they shall be dealt with in accordance with clause 21.

23. Ninety per cent of the value of sleepers loaded on trucks tinder Clause 17 or 19 will be paid on production of the railway traffic receipts and the balance of 10 per cent will be retained until the said sleepers have actually been delivered at destination or two months after date of passing whichever period is longer.""

3. The revision petitioner's learned advocate has urged that, as the movement of the goods is occasioned by the agreement beyond the border of the State, the sales under it are inter-State; and in support of this argument ho has relied on *Birendra Nath Guha v. Commissioner of Taxes* (1959) 10 STC 327: AIR 1958 Ass 119). In that case the Assam High Court has held sales of sleepers under agreement, with conditions similar to those before us, to be interstate, and has also found that handing over of the sleepers to the carrier would constitute delivery to the buyer or his agent, should the sleepers be delivered in the allottee State for the purpose of consumption therein. Such sales were held exempt

under Article 286(2) of the Constitution and not liable to the taxation law of the State, where the sleepers been sold.

The petitioner's learned Advocate has further relied On Indian Standard Wagon Co. Ltd. v. Commercial Tax Officer (1958) 9 STC 553; AIR 1960 Cal 25), where a learned Judge of the Calcutta High Court has taken the view that sales of wagons to the railways were inter-State covered by the exemption under Article 286(2), but taxable due to the supplies being in the period saved by the Sales Tax Laws Validation Act, 1956, The petitioner's learned advocate has lastly relied on Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, , where the majority has held that the sales would be inter-State sales, should the agreement occasion them. The last case is conceded to be under the Central Sales Tax Act; but it is urged that the pronouncement of the Supreme Court on what constitutes inter-State sales would be a safe guide for deciding what would be sales in course of inter-State trade.

The learned Government Pleader has, on the other hand, argued that for claiming exemption under Article 286(2), the sales must form part of the channel, Which constitutes inter-State trade, and where the delivery to the purchaser concludes the transfer of ownership within the State, in which the contract been entered, the sales cease to be part of the commercial channel flowing between two States. He has argued that the exemption under Article 286(2) would not apply to such cases, and in support relies on Ashok Leyland Ltd., Ennore, Madras Vs. The State of Madras, . In this case the assesses company assembled motor-cars in Madras State and sold them to dealers outside the State. In certain sales the dealers outside the State sent their drivers to the assessee's factory, who took delivery of the cars, and transported them outside the State. Such sales were claimed to be exempt under Article 286(2) but the Madras High Court rejected the claim, and held that the stream of inter-State trade or commerce commenced only after the dealer, as buyer, took delivery of the goods, and the antecedent sale to him by the assesses was a distinct and closed transaction before that stream commenced.

The Government Pleader has next relied on Addison and Co. Ltd. v. State of Madras 1960 11 STC 345 where it has been held that a sale completed by delivery of the goods within the State to the buyer or his agent, was not a sale in the course of inter-State trade or commerce, within the meaning of Article 286(2) prior to it amendment by the Constitution (Sixth Amendment) Act, 1956, even if the buyer bought the goods solely for transporting them outside the State and did transport them. Indian Standard Wagon Co. Ltd. Vs. Commercial Tax Officer etc., is urged to be doubtful, in view of what been held by a Division Bench of the same High Court in Indian Standard Wagon Co. Ltd. Vs. Commercial Tax Officer and Others, .

We feel the correct legal position to be between the two arguments. It is clear that Parliament had not enacted in the Central Sales Tax Act something different to what Courts had earlier found to be the meaning of the movement of goods

between inter-States being free. It further follows that what the Supreme Court has held to be inter-State sales for purposes of the Central Sales Tax Act, would be a safe guide for determining what is part of inter-State commerce, and thus exempted under Article 286(2). Therefore, the test applied in the majority judgment of *Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others*, for sale being inter-State, may safely be adopted for deciding whether the bargain is entitled to the exemption. But it is clear that the movement contemplated in the aforesaid case must be closely linked with the sale of goods and is not intended to cover later movement undertaken for the better enjoyment of goods after the title had passed. A different conclusion would result in confusing subsequent carriage of goods with their sale even where the two be sufficiently separated.

We, therefore, think the decisions of the Madras High Court rest on sounder principle, which is that, should the owner move his own goods to outside State for their better enjoyment of what been earlier acquired, the journey would not in the commercial sense form part of the "now or course" of trade, and therefore would not be exempt. We would, therefore, apply this test to the facts of the case before us. The schedule to the agreement, which contains several particulars, provides for the sleepers being delivered free on railway and the sleepers in pursuance were delivered at Kallai. The petitioner's case is that the sales were inter-State because of the later despatch under Clause 17 to various places, because of the right of rejection under Clause 18, and because the contractor becoming entitled to full payment only after what been delivered at the destination.

The facts, however, remain that the several allottees under Clause 17 are not buyers under the agreement, the goods were carried by the purchaser free from a place within the State, and the payments under Clause 23 were not in anticipation of ownership passing later. The title therefore, passed with the delivery of sleepers at railway stations within Kerala State, and the later movement is for the better enjoyment of the goods, in which title had already been acquired. In other words, the agreement does not put the sleepers into the channel of inter-State trade, but the journey is started after the goods been delivered and largely paid. In these circumstances, the correct description of the position is that the later movement is carriage of goods by the buyers for their better enjoyment.

4. It was argued that the right of rejection at the Outside destination, with the risk of losses during the journey on the petitioner, distinguishes the case before us from those decided by the Madras High Court. But we feel that the carriage, after the delivery at the railway station within the State, cannot be treated as of goods belonging to another; nor vesting of ownership is postponed till the purchaser's delivery of the goods to his own agents. It follows that neither the right of rejection at the destination outside the State, nor other conditions vary the true nature of the journey which is by the owner for the better enjoyment of

is Own property; and the bargains, therefore, do not form part of inter-State trade channel. Therefore, the claim of exemption to the sales-tax must fail; and the revision petition is dismissed with costs, advocate's fee Rs. 100.