

(1957) 06 AP CK 0003

In the Andhra Pradesh High Court

Case No : Second Appeal No"s. 194 and 195 of 1954

The State of Andhra (now Andhra Pradesh)

APPELLANT

Vs

Kolla Sree Ramamurthy

RESPONDENT

Date of Decision : 27-06-1957

Acts Referred:

Sales of Goods Act, 1930 — Section 23

Citation : AIR 1959 AP 21 : (1958) 9 STC 547

Hon'ble Judges : K. Subba Rao, C.J.;Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : D. Venkatappayya Sastry, for Govt. Pleader, for the Appellant; K.B. Krishnamurthy, for the Respondent

Final Decision : Dismissed

Judgement

K. Subba Rao, C.J.—These two second appeals arise out of two connected suits, O. S. Nos. 268 and 309 of 1951 filed by the respondent against the appellant, the State of Madras, in the Court of the District Munsif, Rajahmundry,

2. O. S. No. 268 of 1951 was a suit filed by the plaintiff to set aside the orders of assessment made by the Commercial Tax Officer levying from him sales tax of Rs. 2941-7-0 for the year 1947-48 in respect of the turnover relating to the sale of delivery orders as first dealer and for refund of the same. O. S. No. 309 of 1951 is a similar suit filed by him to set aside the order of assessment of the Commercial Tax Department assessing him to sales tax of Rs. 1613-12-0 for the year 1946-47 relating to the sale of delivery orders as first dealer and for refund of the same.

3. The learned District Munsif held that the said sales were not sale of goods within the meaning of the General Sales Tax Act and, on that basis, decreed the suits. On appeal, the learned Sub-ordinate Judge agreed with the first Court and dismissed the appeals. Hence," the second appeals.

4. The only question raised in the Courts below and reiterated before us is

whether the turnover in respect of the sale of delivery orders is liable to be assessed to sales tax. To appreciate this contention, it is necessary to state briefly the nature of the transactions carried on by the respondent.

5. Chittivalasa and Nellimerla Mills situated (in Chittivalsa) in Visakhapatnam District manufacture gunny bags. They are stored collectively in their godowns. They put the gunny bags into the market through guaranteed brokers. Intending purchasers of gunnies enter into contracts with the mills through the brokers. At that time, the gunnies sold are not ear-marked against any particular contract.

They send the delivery orders with hundis to the purchasers for payment of the price of the gunnies. The delivery order is a letter of authorisation to the manager of the mills to deliver the goods against certain contracts. On payment of the hundis, the purchasers receive delivery orders. The delivery orders can be endorsed by the holders any number of times and when they are presented to the mills by the ultimate holders, delivery of the gunnies will be given to them by the mills.

Both the parties argued the appeals on the basis that the aforesaid pattern of transactions was followed by the mills and the plaintiff in the two suits. It is, therefore, unnecessary to give particulars of the transaction as nothing turns upon them. The plaintiff is a purchaser from the mills. He endorsed the delivery order to third parties, who took delivery of the goods from the mills.

The short question is whether the endorsement of delivery orders in favour of third parties was a sale of goods within the meaning of the Madras General Sales Tax Act.

6. Section 2(c) defines "goods" as follows;

"'Goods' means all kinds of movable property other than actionable claims, stocks and shares and securities and includes all materials, commodities and articles including those to be used in the construction, fitting out, improvement or repair of Immovable property or in the fitting out, improvement or repair of movable property and also includes all growing crops, grass and things attached to be severed before sale or under the contract of sale."

Sale is defined in Section 2 (h) thus:

"Sale with all its grammatical variations and cognate expressions means every transfer of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration and includes also a transfer of property in goods involved in the execution of a works contract, but does not include mortgage, hypothecation, charge or pledge."

"Dealer" is defined to mean any person who carries on the business of buying or selling goods. Section 3 is the charging section, which says that every dealer shall pay for each year a tax on his total turnover for such year.

7. A combined reading of these provisions so far as is material to the present

purpose indicates that a person carrying on the business of buying or selling all kinds of moveable property other than actionable claims etc., would be liable to sales tax on his total turnover. The question, therefore, is whether the assignment of the delivery orders by the purchaser of the goods from the mill would be a sale of goods within the meaning of the Act.

8. It is contended that the delivery order is a document of title authorising the possessor of the document to transfer the goods, and therefore, the sale of delivery order constituted transfer of the goods. This argument presupposes that the mill, by issuing the delivery order to a purchaser, transfers the property in the goods to the purchaser.

From the nature of the transactions, it is seen that the goods sold by the mill are not ascertained till the delivery order is presented to the manager. The goods sold are stored in the godowns of the mill along with other stock and the entire stock in the godowns is insured by the mill on a single policy. The goods are separated only when the delivery order is presented to the manager.

The question when a transfer of ownership in goods is effected is governed by the provisions of the Sales of Goods Act. The Legislature has laid down certain rules under Sections 20 - 24 of the Indian Sale of Goods Act for construing the intention of the parties when the intention is not expressed in the contract. Section 23 says that, in the case of un- ascertained goods sold by description, the property passes if goods of that description in the deliverable state are unconditionally appropriated by the seller or his buyer with the consent of the other party.

In this case, it is not contended that the original contract between the miller and the purchaser expresses an intention that the property in the goods should pass on the receipt of the delivery order by the purchaser irrespective of the fact whether the goods are appropriated against a particular contract. In the absence of any such expressed intention, by reason of the provisions of Section 23, the property in the goods must be deemed to have passed only to the buyer when they are separated from the entire stock and delivered on the production of the delivery order.

Therefore, the passing of a delivery order from the manager is not decisive on the question whether the property in the goods passed to the buyer. If the property in the goods passed to the buyer at the time the delivery order is given to him, there is much room for argument that the delivery order is a document of title. But where the goods are not ascertained, the delivery order is nothing more than an authority conferred upon the buyer or his nominee to take delivery of the goods from the godowns.

In the present case, as no property in the goods passed from the mill to the buyer, till the goods are separated from the joint stock, we have no hesitation to hold that the delivery orders in question are not documents of title. As the buyer himself had no title to the goods, it follows that the endorsement of

delivery orders in favour of the third parties could not be a sale of goods within the meaning of the Act.

9. Strong reliance is placed by the learned Government Pleader on the decision of a Division Bench of this Court in *Bhimayya v. Govt. of Andhra*, 19571 Andh WR 69: (AIR 1957 Ara 389) (A). There the mills sold the goods to the assesseees, who, in their turn, entered into contracts of sale with third parties. Along with the Contracts, they also endorsed over the delivery orders, which they received from the mills, to third parties, who took delivery of the goods from the mills.

It was also found there that the goods when sold to the assesseees were ascertained and appropriated towards the sales to them. It was contended that there was only one sale and, as the tax was collected from the mills, no second tax could be collected and levied from the assesseees. The Court held that there were two sales, one by the mills to the assesseees and the other by the assesseees to the third parties. At page 73 (of Andh WR) (at p. 392 of AIR) the basis for the judgment is stated thus:

"It is also clear from the said agreement that the goods were ascertained and the delivery of the goods was postponed to a subsequent date. Even assuming for the sake of argument that the goods were not in existence at the time of the contract, it docs not help the case of the assesseees, for it is admitted by them that at a later date the goods were delivered to the third person, If this was so, then that person would acquire a right from the date of the delivery of the goods and the original contract would become complete."

10. From the aforesaid observations, it will be seen that the sale by the mills was of ascertained goods and, therefore, the assesseees, to whom property in the goods passed, had validly transferred the goods to the purchasers. That would be sufficient to dispose of the case. Even on the assumption that the goods were not ascertained at the time of the first sale, the Division Bench negatived the contention of the assesseees on the ground that the ultimate delivery of the goods to third parties simultaneously fed both the contracts.

It would be seen from the facts in that case that the assessee entered into an agreement to sell the goods to a third party. When delivery was taken at the other end, it was construed to have a composite effect, namely, delivery by the mills to the assesseees and delivery by the assessee to a third party. But in the present case, on the facts found by the Courts below, there is no scope for the application of either of the two principles for the property in the goods did not pass from the mills to the assessee and there was no agreement of sale of goods to be obtained in future between the assessee and the third party.

That decision, therefore, is not helpful in deciding this case. We hold that, on the facts found in this case, the transfer of the delivery orders is not a sale of goods within the meaning of the Madras General Sales Tax Act.

11. In the result, the appeals fail and are dismissed with costs in S. A. No. 195 of

1954.