
(1954) 03 MAD CK 0013

In the Madras High Court

Case No : City Civil Court Appeal No's. 7 and 8 of 1952

The State of Madras

APPELLANT

Vs

Govindlal and Another

RESPONDENT

Date of Decision : 22-03-1954

Acts Referred:

Citation : (1956) 7 STC 409

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : The Government Pleader, for the Appellant; P.V. Subramaniam, Subramaniam and Rajagopal, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—These two appeals are preferred by the State against the judgment and decree of the Principal Judge of the City Civil

Court in O. S. No. 1377 of 1949 and O. S. No. 287 of 1950. C.C.C.A. No. 7 of 1952 is against the decision in O.S. No. 287 of 1950, and

C.C.C.A. No. 8 of 1952 is against the decision in O.S. No. 1377 of 1949. A common question of fact and law arises in both the suits and so they

were tried together and a common judgment was given. In each case the plaintiff sued for recovery of the sales tax which was levied from him by

the Government and which he paid under protest. The main question in both the cases is whether in respect of the two transactions, the sales took

place within the State of Madras or outside the State. In both cases, the goods were sent by rail consigned to self and the railway receipt was sent

to the agents of the plaintiffs outside Madras on condition that it should be given to the buyer on payment of the sale price. There is one clause in

the invoice to the effect that the responsibility of the seller ceases after the goods are booked and the railway receipt obtained and sent to the

party. It is on account of this clause, it was contended before the taxing officer, as well as before the lower court and here, that the goods have

passed to the buyer even at the time the goods were booked, and therefore the goods must be deemed to have been sold within the State.

2. The documents of title, viz., the railway receipts, as already stated, were drawn in favour of the vendors and were endorsed in favour of their

agents outside Madras for the purpose of collecting the sale price and to be delivered to the purchasers on payment of the price. The question is

whether in those circumstances it can be said that the goods have passed to the buyer. The fact that the railway receipts are drawn in favour of the

vendors themselves and that they can be delivered only on payment of the price, clearly shows that the intention of the sellers was not to part with

the goods till the price was paid and the railway receipts obtained by the buyers. The buyers can get title to the goods only when they obtain the

railway receipts endorsed in their favour. That, they will be entitled to get only on payment of price at the other end, which is outside the State of

Madras. They do not therefore get any title till they pay the price and obtain the railway receipt. But it is contended that the clause to the effect that

the responsibility of the vendor ceases after the goods are booked and the railway receipt obtained clearly shows that the risk follows ownership,

and that the risk having been incurred by the purchaser immediately after the booking, the ownership vests with the purchaser within the Madras

State itself. But, as has been pointed out by Pollock and Mulla, at page 122 of the Sale of Goods Act, such a clause is not inconsistent with the

ownership continuing with the vendors themselves. The observations of Lord Hatherley in *Anderson v. Morice* (1876) 1 App. Cas. 713, are

extracted at page 123 of the book and they are as under :-

It is perfectly conceivable, indeed, in many cases it has been so as a matter of fact, that a person selling some goods at a distant place to a person

living in this country, may say, "I am perfectly willing to sell you these goods; I am perfectly willing to complete the cargo so to be sold, but I do

not intend to be at the risk of their loss during the transit or on the voyage, and although you will not be expected to pay for the goods and acquire

the property until you have the bills and the documents attached sent to you, still in the meantime there will be a risk in transit, and that is a risk

which I am not desirous of undertaking, and I must throw that risk upon you as part of our bargain".

3. The above observations show that the clause as to risk is not inconsistent with the ownership of the goods continuing in the seller till the date of delivery.

4. In *Poppatlal Shah v. State of Madras* (1953) 1 M.L.J. 739, the question that came up for consideration before the Supreme Court was the

following:

The railway receipts and bills of lading are taken in the name of the vendor-company and so also are the insurance policies, and they are sent to the

company's bankers in Calcutta who deliver the same to the consignees on payment of prices and other charges. The sole point that requires

consideration is, whether in these circumstances the sale transactions were liable to be taxed under the General Sales Tax Act of Madras.

5. Their Lordships held that in such circumstances the vendors at Madras are not liable to be taxed under the General Sales Tax Act of Madras.

At page 743 of the report they observe:

...The mere fact that the contract for sale was entered into within the Province of Madras does not make the transaction, which was completed

admittedly within another Province, where the property in the goods passed, a sale within the Province of Madras according to the provisions of

the Madras Sales Tax Act and no tax could be levied upon such a transaction under the provisions of the Act.

6. The cases under appeal are on all fours with the above case and the principles will apply to the cases under appeal.

7. Learned counsel for the appellant relies upon the decision in *Brij Coomaree v. Salamander Fire Insurance Co.* (1905) 32 Cal. 816 There the

observations of Maclean, C. J., are :

It seems to me that there are certain clauses in the agreement of the 16th January, 1903, which point strongly to the conclusion that the property

was intended to pass and did pass to the buyer upon the execution of the contract. The provision that the sellers might on the happening of a

certain contingency, detain the oil unpaid for on the buyer's account at his risk,

charging interest on the contract price, and that the sellers might resell the oil, but only after giving four days' previous notice in writing of their intention appears to be inconsistent with the view that the property had not passed. The buyer was to take all risks of exchange, and there is the important provision that the goods were to be insured at the expense of the buyer, which seems to indicate that the risk was to be his and risk and property generally go together.

8. It is on the strength of the above observations that the learned counsel contends that the property has passed to the buyer and the risk is that of the buyer on account of the clause that the plaintiffs have ceased to hold themselves responsible for anything that might happen immediately after booking the goods in the train; and as risk accompanies property, property in this case has passed to the buyer even at Madras. But I have already pointed out how risk can be inconsistent with ownership also. The real question in all these cases is the intention of the parties whether they intended to pass the ownership in the goods to the purchaser or not. The decision in *The Ford Automobiles India Ltd. Vs. The Delhi Motor and Engineering Co., and Governor-General in Council Vs. Joynarain Ritolia*, go to establish in what circumstances the intention has to be gathered. In these cases under appeal as in these cases, the intention is clearly established by the circumstances that the vendors themselves have taken the railway receipt in their own names and have not allowed them to be delivered to the buyers except on payment of the price due. Till then, it is clear, their intention was to retain the ownership of the goods in themselves. The ownership in fact continues to vest in the sellers till the railway receipts are obtained after payment of price by the purchasers, which can happen only at the other end. The goods are therefore really sold outside the State and the State cannot therefore levy the tax on these goods. The judgment and decrees of the lower court are confirmed and the appeals are dismissed with costs.