BAYYANA BHIMAYYA

v.

THE GOVERNMENT OF ANDHRA PRADESH

1960

December 14.

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Sales Tax—Delivery order—Meaning of—Two separate transactions—Sales-tax, if leviable at both points—Sale of Goods Act, 1930 (III of 1930), s. 2(4)—Madras General Sales Tax Act, 1939 (Mad. IX of 1939).

The respondents dealt in gunnies. They first entered into contracts with two Mills agreeing to purchase gunnies at a certain rate for future delivery, and also entered into agreement with third parties, by which they charged something extra from those third parties and handed over the delivery order known as *kutcha* delivery order. The Mills however did not accept the third parties as contracting parties, but only as the agents of the appellants and delivered the goods against the *kutcha* delivery orders, and collected the Sales Tax from the third parties. The tax authorities treated these transactions between the appellant and the third parties as fresh sales and sought to levy sales-tax again, which the appellants contended, was not demandable as there were no second sales; the delivery of a *kutcha* delivery order did not amount to a sale of goods, but was only an assignment of a right to obtain delivery of gunnies which were not in existence and not appropriated to the contract; this was only an assignment of a forward contract.

Held, that the agreements between the parties showed that third parties were not recognised by the sellers. A delivery order being a document of title to goods, the possession of such a document not only gave the right to recover the goods but also to transfer them to another by endorsement or delivery. There being two separate transactions of sale, one between the Mills and the original purchasers and the other between the original purchasers and third parties, tax was payable at both the points.

The Sales Tax Officer, Pilibhit v. *M/s. Budh Prakash Jai Prakash*, [1955] 1 S.C.R. 243, *Poppatlal Shah* v. *The State of Madras*, [1953] S.C.R. 677, and *The State of Andhra* v. *Kolla Sreeramamurthy*, decided on June 27, 1957, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 223 and 224 of 1960.

Appeals from the order dated November 23, 1956, of the Andhra Pradesh High Court, Hyderabad, in Tax Revision Cases Nos. 17 and 18 of 1956.

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C. K. Daphtary, Solicitor-General of India and *T. V. R. Tatachari*, for the appellants.

K. N. Rajagopal Sastri and *D. Gupta*, for the respondent.

1960. December 14. The Judgment of the Court was delivered by

HIDAYATULLAH, J.—These are two appeals on certificates granted by the High Court of Andhra Pradesh against a common judgment in a sales tax revision filed by the appellants in the High Court.

The facts are as follows: In the year 1952-53, for which the assessment of sales tax was in question, the appellants dealt in gunnies, and purchased them from two Mills in Vishakapatnam District and in respect of which they issued delivery orders to third parties, with whom they had entered into separate transactions. The procedure followed by the appellants was this: They first entered into contracts with the Mills agreeing to purchase gunnies at a certain rate for future delivery. Exhibit A-1 is a specimen of such contracts. The appellants also entered into agreements with the Mills, by which the Mills agreed to deliver the goods to third parties if requested by the appellants. The Mills, however, did not accept the third parties as contracting parties but only as agents of the appellants. Exhibits A-2 and A-2(a) are specimen agreements of this kind. Before the date of delivery, the appellants entered into agreements with third parties, by which they charged something extra from the third parties and handed over to them the delivery orders, which were known as *kutcha* delivery orders. Exhibits A-3 and A-4 are specimens of the agreement and the delivery orders respectively. The Mills used to deliver the goods against the *kutcha* delivery orders along with an invoice and a bill, of which Exs. A-6 and A-7 are specimens respectively, and collected the sales tax from the third parties. The tax authorities, however, treated the transaction between the appellants and third parties as a fresh sale, and sought to levy sales tax on it

again, which, the appellants, contended, was not demandable, as there was no second sale.

The appellants failed in their contentions before the Deputy Commercial Tax Officer, Guntur, and their appeals to the Deputy Commissioner of Commercial Taxes, Guntur and the Andhra Sales Tax Appellate Tribunal, Guntur, were unsuccessful. The appellants then went up in revision to the High Court under the Madras General Sales Tax Act, 1939 (as amended by Madras Act No. 6 of 1951), but were again unsuccessful. The High Court, however, granted certificates, on which these appeals have been filed.

The contentions of the appellants are that the agreement and the delivery of the *kutcha* delivery order did not amount to a sale of goods, but was only an assignment of a right to obtain delivery of the gunnies, which were not in existence at the time of the transaction with third parties, and were not appropriated to the contract, or, in the alternative, that this was only an assignment of a forward contract. They seem to have relied in the High Court upon the decisions of this Court reported in *The Sales Tax Officer, Pilibhit* v. *Messrs. Budh Prakash Jai Prakash*(1) and *Poppatlal Shah* v. *The State of Madras* (2) to show that these transactions were not sales. These cases were not relied upon by the appellants before us, presumably because the High Court has adequately shown their inapplicability to the facts here.

The learned Solicitor-General appearing for the appellants rested his case entirely upon the first contention, namely, that there was only an assignment of a right to obtain delivery of the gunnies and not a sale. He contended that there was only one transaction of sale between the Mills and the third parties, who, on the strength of the assignment of the right to take delivery, had received the goods from the Mills. In our opinion, this does not represent the true nature of the transactions, either in fact, or in law.

To begin with, the Mills had made clear in their agreements that they were not recognising the third parties as contracting parties having privity with

(1) [1955] 1 S.C.R. 243. (2) [1953] S.C.R. 677.

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them, and that delivery would be given against the *kutcha* delivery orders to the third parties as agents of the appellants. The Mills, therefore, recognised only the appellants as contracting parties, and there was thus a sale to the appellants from the Mills, on which sales tax was correctly demanded and was paid. In so far as the third parties were concerned, they had purchased the goods by payment of an extra price, and the transaction must, in law and in fact, be considered a fresh transaction of sale between the appellants and the third parties. A delivery order is a document of title to goods (vide s. 2(4) of the Sale of Goods Act), and the possessor of such a document has the right not only to receive the goods but also to transfer it to another by endorsement or delivery. At the moment of delivery by the Mills to the third parties, there were, in effect, two deliveries, one by the Mills to the Appellants, represented, in so far as the Mills were concerned, by the appellants' agents, the third parties, and the other, by the appellants to the third parties as buyers from the appellants. These two deliveries might synchronise in point of time, but were separate, in point of fact and in the eye of law. If a dispute arose as to the goods delivered under the *kutcha* delivery order to the third parties against the Mills, action could lie at the instance of the appellants. The third parties could proceed on breach of contract only against the appellants and not against the Mills. In our opinion, there being two separate transactions of sale, tax was payable at both the points, as has been correctly pointed out by the tax authorities and the High Court.

The appellants relied upon a decision of the Andhra Pradesh High Court in *The State of Andhra* v. *Kolla Sreeramamurty* (3), but there, the facts were different, and the Division Bench itself in dealing with the case, distinguished the judgment under appeal, observing that there was no scope for the application of the principles laid down in the judgment under appeal, because in the cited case, "the property in the goods did not pass from the mills to the assessee and

(3) Second Appeals Nos. 194 & 195 of 1954 decided on June 27, 1957.

there was no agreement of sale of goods to be obtained in future between the assessee and the third party".

In the result, the appeals fail, and are dismissed with costs. One hearing fee.

Appeals dismissed.

R. G. S. NAIDU AND CO.

v.

COMMISSIONER OF INCOME-TAX AND EXCESS PROFITS TAX, MADRAS

(And connected appeals)

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Excess Profits Tax—Excess profits, unassessed or underassessed —Assessment, if can be reopened—Apportionment of income—Excess Profits Tax Act, 1940 (XV of 1940), s. 15, r. 9, Sch. 1.

Under an agreement dated July 11, 1945, the appellants were appointed managing agents of the Coimbatore Spinning and Weaving Co. Ltd., for 20 years, and certain remuneration was provided for them including 10% commission on the net profits of the company due and payable yearly immediately after the accounts of the company were closed and commissions on purchases and capital expenditure of the company. Prior to October 1, 1944, the appellants were the managing agents of the Coimbatore Mills Agency Ltd., who were the managing agents of the Coimbatore Spinning and Weaving Co. Ltd. The year of account of the appellants ended on March 31, of the company on June 30, and of the Agency Company on September 30. For the assessment year 1945-46 the appellants submitted a return of their income which included the stipulated remuneration and commissions. This return was accepted by the Income-tax Officer, and Excess Profits Tax liability for the chargeable accounting period ending March 31, 1945, was also worked out on that basis. A return of income was submitted by the appellants for the assessment year 1946-47 which included commission for the period 1-4-45 to 30-6-45 on purchases of cotton and stores and on capital expenditure. The Tax Officer directed that the commission on purchases and capital expenditure be taken into account