

**Saraswatha Corporation Private Ltd. Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jul-25-1962

**Reported in :** [1963]14STC60(Ker)

**Judge :** M.S. Menon, C.J. and P. Govindan Nair, J.

**Appeal No. :** Tax Revision Cases Nos. 48, 49 and 50 of 1961

**Appellant :** Saraswatha Corporation Private Ltd.

**Respondent :** State of Kerala

**Advocate for Def. :** Government Pleader

**Advocate for Pet/Ap. :** S. Boothalingam Iyer, Adv.

**Disposition :** Suit allowed

**Judgement :**

P. Govindan Nair, J.

1. These three tax revision cases are by the same dealers, Messrs Saraswatha Corporation, a limited concern, and relate respectively to years of assessment 1952-53, 1954-55 and 1955-56. The revision petitioner has been assessed to sales tax for the above three years in relation to certain transactions, the details of which will be stated presently, and these assessments have been confirmed by the Sales Tax Appellate Tribunal by three orders which have been challenged in these three revision cases. It is admitted before us that the transactions for the three years are of the same pattern and that the statements in the order of the Tribunal in Tribunal Appeal No. 138 of 1960 pertaining to the year 1954-55 may be taken as giving a correct statement of the facts relating to these transactions. We are therefore disposing of these three cases by a single judgment. The Tribunal has described the transactions as follows :-

The appellant-company corresponds, enters into a contract with the non-resident seller for the purchase of a specified quantity of goods at a definite rate. The non-resident seller despatches the goods either by rail or by ship and the relative railway receipt or bill of lading is obtained by him in favour of 'self or 'order'. This document of title to goods is sent along with the D.D. drawn on the appellant-company through a local bank with the instructions to that bank to hand over the documents by endorsement or otherwise, on honouring D.D. or payment of the full sale consideration, to the appellant-company or his nominee. In the meanwhile the appellant-company enters into agreement with the local dealers. According to this

agreement the local dealer is to pay at the rate specified by the appellant-company, which is usually different from and more than the rate already fixed with the non-resident seller by the appellant-company. The payment of such price is effected by honouring the D.D. drawn by the non-resident seller on the appellant-company and paying the balance of the price in cash to the appellant-company. This agreement is different and distinct from the one entered into by the appellant-company and the non-resident seller. There is no privity of contract between the nonresident seller and the local dealer. The appellant-company then gives instructions to the bank through whom the documents have been sent along with D.D. to hand over the documents on payment either by direct endorsement or otherwise to the local dealer. The bank will never accept money from anybody other than the appellant-company or under instructions from the appellant-company and will deliver the documents only to the appellant-company or his nominee.

2. On the above facts, the Tribunal came to the conclusion that,

When the documents are delivered to the ultimate purchaser there are notionally two transfers, one from the non-resident seller through the bank to the appellant-company and from the appellant-company to the ultimate purchaser.

It further observed :-

When we say that on the delivery of the documents by the bank to the ultimate purchaser there are notionally two transfers of property in the goods, we are not without company.

Relying on the ruling in *Addepally Sobhanadri v. Board of Revenue (Andhra)* [1959] 10 S.T.C. 560 and we think particularly on the decision in *Bayyanna Bhimayya v. Government of Andhra* [1957] 8 S.T.C. 167 which has been confirmed by the Supreme Court in *Bayyanna Bhimayya v. Government of Andhra Pradesh* [1961] 12 S.T.C. 147 the Tribunal held that, there are two sales one from the non-resident seller to this appellant-company and another from this appellant-company to the third parties and the latter sale is taxable in the hands of the appellant-company.

3. The argument raised on behalf of the assessee before the Tribunal and summarised by the Tribunal in these words,

Even though the appellant-company has agreed to purchase the goods and the goods are despatched and the documents negotiated through bank, the title to the goods is retained by the non-resident seller and that retention is till the point of time the document is released from the bank and when the document is delivered by endorsement or otherwise to the ultimate purchaser, the title passed from the non-resident seller to the ultimate purchaser, the appellant-company being out of the picture having gained his money for making the ultimate buyer pay the non-resident seller the amount that the appellant had agreed to pay, and take delivery of the goods from the carriers. Therefore, there is only one sale and the appellant-company neither got the title to the goods nor did he part with such title

4. It is clear from the facts of these cases that the parties were dealing with ascertained goods. It cannot be otherwise, because specified ascertained goods would have to be put on board or on rail before the corresponding bills of lading or railway receipts could be sent down to the bank by the non-resident seller. These bills of

lading and railway receipts were in favour of 'self' or 'order'. The property in the goods covered by these documents of title can, therefore, pass only on endorsement of those documents of title to any particular person. The bank to which they were sent were authorised to endorse them either to the assessee or to some person nominated by him. It is admitted that all the documents of title in respect of the goods relating to the disputed turnover were in fact endorsed by the bank to persons other than the assessee. It is evident from these facts that the bank to which the documents of title were sent was authorised by the non-resident seller to endorse the documents in favour of the persons nominated by the assessee and that the bank was acting as the agent of the non-resident seller. There has been no transfer of the property in the goods to the assessee. Therefore, it was impossible for the assessee to effect a sale of such goods that were not owned by it. The assessee was also not authorised by the non-resident seller to effect any such transfer. There could, therefore, be only one sale. This position is got over by the Tribunal by holding that 'when the documents are delivered to the ultimate purchaser there are notionally two transfers', one from the non-resident seller to the assessee and another from the assessee to third parties. Reliance, as we said, for this proposition, has been placed by the Tribunal on the decision of the Supreme Court in *Bayyana Bhimayya v. Government of Andhra Pradesh* [1961] 12 S.T.C 147.

5. We cannot agree with this view. The facts of the Supreme Court case are quite different. There, the Mills that supplied the goods refused to deal with anybody other than the assessee. From the facts stated in the judgment, it is evident that the agreement between the Mills and the assessee in that case had specifically provided that the Mills will deal only with the assessee, It is further seen that the Mills, agreed to deliver the goods to others only on the basis that those who took delivery were the agents of the assessee. Delivery to such agents was taken to be delivery to the assessee in that case and it was by delivery the transfer of the property in the goods was effected. So there was a sale to the assessee by the Mills. The Supreme Court also said that the delivery by the Mills to the agent, in the facts and in the circumstances of that case, also constituted a delivery by the assessee to the third party pursuant to the contract of sale between them. The important point to be noticed is that by virtue of the terms of the contract entered into by the assessee with the Mills in that case, the Mills agreed to deal only with the assessee and the delivery of the goods necessarily resulted in a transfer of property in the goods by the Mills to the assessee. The principle of the decision cannot apply to a case where, as in this case, there is no transfer of the property in the goods to the assessee. This is made clear by the Supreme Court itself in the last paragraph of the judgment wherein they have distinguished the ruling of the Andhra Pradesh High Court reported in *State of Andhra v. Kolla Sree Ramamurty* [1961] 12 S.T.C 147. Referring to this case, the Supreme Court said:..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 there was no agreement of sale of goods to be obtained in future between the assessee and the third party.

In a case in which the property in the goods did not pass to the assessee, it appears to us there can be no sale by the assessee of the concerned goods to a third party within the meaning of the definition of the term 'sale' in the Sales Tax Act. We are, therefore, of the view that the conclusion reached by the Tribunal that 'when the documents are delivered to the ultimate purchaser there are notionally two transfers', is erroneous

and is not supported by the decision of the Supreme Court in Bayyana Bhimayya v. Government of Andhra Pradesh [1961] 12 S.T.C. 147 relied on by the Tribunal. We hold that the impugned transactions are not taxable. In the circumstances of these cases, we make no order as to costs.

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