Supreme Court of India
State Of Andhra Pradesh vs Kolla Sreerama Murthy on 2 April, 1962
Equivalent citations: 1962 AIR 1585, 1963 SCR (1) 184
Author: N R Ayyangar
Bench: Ayyangar, N. Rajagopala

PETITIONER:
STATE OF ANDHRA PRADESH

Vs.

RESPONDENT:
KOLLA SREERAMA MURTHY

DATE OF JUDGMENT:
02/04/1962

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
AIYYAR, T.L. VENKATARAMA
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.

CITATION:
1962 AIR 1585 1963 SCR (1) 184
CITATOR INFO :
R 1973 SC2061 (12)
D 1975 SC1996 (5)
D 1978 SC 389 (22,46)

ACT:
Sales Tax-Delivery order-Endorsement-Property in goods passes on taking delivery by the last endorsee-Effect-Original holder of delivery order, if liable to pay sales tax-Madras General Sales tax Act, 1939 (Mad. IX of 1939). s. 3.

HEADNOTE:
The respondent was a dealer in gunny bags. He purchased gunnies from the Mills on terms of a written contract which was on a printed form. The Mills after receiving a part of purchase price, issued "delivery orders" directing the delivery of goods as per the contract. Instead of taking delivery himself the respondent endorsed the delivery orders and these passed through several hands before the ultimate holder of the delivery order presented it the Mills and obtain delivery of the gunnies from them,

185

At the date of the contract for purchase, the goods which were the subject matter of the purchase were not appropriated to the contract so that there was no completed sale since no property passed but only an agreement of sale.

The Sales Tax Officer assessed the respondent and collected sales tax on the said transactions. The question was whether the transactions were or were not "Sales of goods" within s. 3 the Madras Sales Tax Act, 1939, so as to enable the turnover represented by these sales to be brought to tax under the Act, or were mere sales or transfers of delivery orders: and further what was the effect of the property in the goods passing to the ultimate endorsee of the delivery order.

Held, that the principle laid- down in Butterworth v. Kingway Motors Ltd., which is the basis of the decision in the case of Bayyana Bhimayya v. State of Andhra Pradesh, would equally apply to the facts of the present case.

Bayyana Bhimayya v. Government of Andhra Pradesh, (1961' 3 S. C. R. 267 and Butteiworth v. Kingway Motors Ltd. (1954) 2 All E. R. 694, applied.

JUDGMENT:

CIVIL APPELLATE, JURISDICTION Civil Appeal No. 368 and 369 of 1961..

Appeals from the judgment and decree dated June 27, 1957, of the Andhra Pradesh High Court in S. A. Nos. 194 and 195 of 1954.

K. N. Rajgopal Sastri and P. D. Menon, for the appellants. A.V. Viswanatha Satstri and T. Satyanarayana, for the respondents.

1962. April 2. The Judgment of the Court was delivered by AYYANGAR, J.-These two appeals are before us by virtue of certificates of fitness granted by the High Court of Andhra Pradesh under Art. 13 3 (1) (c) of the Constitution. The State of Andhra Pradesh is the appellant in both the appeals and one Kolla Sreerama Murthy a dealer in gunnies-is the respondent in each of them and the point involved relates to the liability of the respondent to Sales Tax in respect of the transactions to which we shall later refer.

Civil Appeal No. 368 of 1961 arises out of original suit No. 268 of 1951 in the file of the District Munsif's Court, Rajahmundry by the respondent for setting aside an assessment and obtain refund of a sum of Its. 2,941/7/- which was partly the sum assessed and collected as sales-tax for the assessment year 1947-48, while Civil Appeal No. 369 of 1961 is from a similar suit praying for dentical reliefs in respect of the year 1946-47, the amount of which refund was sought however being Rs. 1,631/12/-. The basis of the suits briefly was that the transactions whose turnover was included in his assessment, were not " sales of goods" within the Madras General Sales Tax Act 1939

(Mad. IX of 1939) and that consequently the assessment to tax and recovery of the same were illegal and without jurisdiction. Both the suits were decreed by the District Munsif-a decision which was affirmed by the Subordinate Judge of Rajahmundry on appeal by the State and by the High Court of Andhra Pradesh on further appeal also by the State. It is from these two judgments and decrees in the two second appeals that the' present appeals have been brought. It was common ground that the respondent was a "dealer" within the Madras Sales Tax Act (which for convenience we shall call the Act) being " a person who carries on the business of buying or selling goods", and that the transactions whose legal character is now in dispute were put through by him by way of business. Section 3 of the Act which is the charging section-enacts that "every dealer shall pay for each year a tax on his total turnover for such year". ',Turnover" is defined in the Act as:

> " 'Turnover' means the aggregate amount for which goods are bought or sold, or suppli- ed or distributed, by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable considera- tion provided that the proceeds of the sales by a person of agricultural or horticultural produce grown 'by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise shall be excluded from his turnover".

and clauses (c) and (h) of s. .2 of the Act define ,,'goods" and ',sale" respectively thus :

> " `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 include s all growing crops, grass and things attached to or forming part of the land which are' agreed to be severed before sale or under the contract of sale".
>
> "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 a mortgage, hypothecation, charge or pledge".

The only matter therefore which is in controversy between the parties is as to whether the transactions to whose details we shall presently refer, ,Which the respondent admittedly entered into, wore, or were not "sales of goods" within the Madras General Sales Tax Act (Act IX of 1939) so as to enable the turnover represented by these sales to be brought to tax under the Act.

We shall now set out the nature of the transactions which the learned Judges of the High Court have held have not resulted in "'a sale of goods" by the respondent so as to attract the tax under the .charging section in respect of the "turnover" represented by such sales. The respondent is, as .stated earlier, a dealer in gunny bags. The gunny bags dealt with by him were those manufactured, in two mills known as Chittivalsa and Nellimerla Mills. both situated 'in Chittivalsa in Visakhapatnam

District. The purchase, by the respondent from the mills was on terms of a written contract which was on printed form. We shall set out the relevant terms of one of the sample contracts for understanding the point involved, as it is common ground that every contract entered into by the respondent with the mills was in this form. These contracts were entered into by brokers acting for the respondent and who sent him "bought-notes" setting out the terms upon which the purchases had been effected from the mills, and one of these Ex. Al, filed in O.S. 268 of 1951, has been treated as typical. It recites the purchase on behalf of the respondent of 30,000 bags from the Chittivalsa mills, specifies the. description of the goods, the manner of their packing and the fact that delivery was to be affected within a period of three months. The buyer was required to make a deposit of Rs. 15,/- per bale within 24 hours after the contract was handed over to him and the respondent fulfilled this requirement. The Mills having thus received a part of the purchase price, they issued 'delivery orders" directing the delivery of goods as per the contract and these were handed over to the buyer on his honoring a hundi for the value of the goods, the buyer in this case being the respondent. It was common ground that by the date when the delivery orders were issued, there were goods answering the contract description and of quantity sufficient to comply with the relativeterm in the contract, in the godown of the mills wherefrom on the terms of the contract, delivery was to be effected. It was.open to the buyer himself to have gone to the mills and taken delivery of the goods, but this was not done and it is the departure in this respect that has given rise, to the legal controversy involved in these appeals. Instead of taking delivery himself, the respondent (and this appears to have been the practice of others as well) endorsed the delivers orders and these passed through several hands before the ultimate holder of the delivery order presented it to the mills and obtained delivery of the gunnies from them. It need hardly be stated that at each endorsement of the delivery order the price of the bales represented by the quantity specified in the delivery order would be collected by the successive endorsers which would, in most cases, include the profit, if it was a rising market. The case in the Courts below as well as before us was argued on the basis of this pattern of dealing. The learned trial Judge and the appellate Courts including the learned Judges of the High Court came to the conclusion that on these facts there was no "sale of goods" by the respondent, because the transaction so far as he was concerned consisted merely of the endorsement of the delivery order issued by the mills and that the fact that the ultimate endorses of the delivery order got delivery of the goods from the mills was treated as irrelevant for considering whether by the transfer of the delivery order coupled with the delivery of the goods to such endorsee, there was in fact a completed sale effected by the 'respondent. Put in another form the argument which was upheld by the Courts below was that the transactions entered into by the respondent were mere sales or transfers of delivery orders and not any "sale of goods" so as to bring them to charge under s. 3 of the Act. It is the correctness of this conclusion that is in controvery in these appeals.

It is unnecessary for us to canvass in detail the argument which found favour with the Courts below by reason of the judgment of this Court in Bayyana Bhimayya versus Government of Andhra Pradesh (1), where the points urged in favour of the respondent were considered and repelled. The correctness of this decision was not disputed before US. Dealing with the transaction involved in the successive endorsements of the delivery orders issued to the purchaser from the Mills, this Court said :

> "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 (1) [1961] 3 S C. R 26 order to the third parties against the Mills, action could lie at the instance of the appel- lants. be third parties could proceed on breach of contract only against the appellants and not against the Mills. In our opinion, there being to separate transactions of sale, tax was payable at both the points, as has been correctly pointed out by the tax authori- ties and the High Court".

The position would appear to be this. At the date of the contract for purchase by the respondent the goods which were the subject of the purchase were not appropriated to the contract, so that there was no completed sale since no property passed, but only an agreement for sale. Whether or not the goads which were the subject of the agreement for sale were in existence on the date of the agreement, they were existing goods on the date the delivery order was issued., and they would have been appropriated to the contract and property in the appropriated goods would have passed to the respondent if he had cared to present the delivery order at the Mills godown. The respondent however without taking delivery himself, endorsed the delivery order and enabled his endorsee to take delivery and that endorsee (and it makes no difference to the principle if a further endorsee from him did so) took delivery of the goods and the goods became appropriated to the contract and property in goods passed to him. One view to take, and it was this that found favour with the Courts below, was that since no goods had been appropriated to the respondents contract before the delivery orders were endorsed, the successive endorsements of the delivery orders were not "sales of goods" but were merely transfers of the delivery order as some paper, though this was of some value in that it enable the endorsee to approach the mills and obtain delivery of the goods. The result of the acceptance of this view would be to eliminate the respondent altogether from the chain and so to speak, treat the ultimate endorsee as the purchaser from the mills. Naturally if that was correct the respondent would have effected no purchase of the goods nor, of course, any sale of goods, there being only one transaction of sale by the mills to the ultimate endorsee of the delivery order. In Davvana's case this Court held that this was not a correct understanding of the legal effect of the endorsment of the delivery orders No doubt, without an appropriation of goods to an agreement for sale there cannot be a completed contract in which the property in the goods passes to the purchaser and unless property in the goods passes, there is no sale. But the question is what is the effect of the property in the goods passing to the ultimate endorsee of the delivery order.

In this connection reference could usefully be made to the decision in Butterworty v. Kingsway Motors Ltd. (1). It was a case where a hirer of a motor-car under a hire-purchase agreement under which the necessary payments of installment etc. bad not been made and so his title had not matured(i.e. where the title remained in the owner) transferred the vehicle or such rights as he possessed in it, to others and the ultimate transfers paid the balance of the purchase price to the owner and thus acquired title to the motor-car. The question before the Court related to the effect of this completion in the title of the ultimate transferee on the legal position of the intermediate parties. Pearson J. dealing with this matter expressed himself in these terms "The various purported sales all took place at times when Bowmaker, Ltd. were still the owners of the car, so that all the purported sellers in this rather long chain had no title to it at the times when the purported sales were made. But on or about (1) [1954] 2 AU E. R. 694 July 25, 1952 Miss Rudolph acquired a good title from Bowmaker, Ltd., or, at any rate, made payment to Bowmaker, Ltd. which ext-

inguished their title and induced them to relinquish any claim which they had to the car. I think that the right view is that Miss Rudolph acquired the title as between her and Bowmaker, Ltd. but I further hold on authority that the title so acquired went to feed the previously defective titles of the subsequent buyers and ensured to their benefit.....

We consider that it is this principle that forms the basis of the decision of this Court in Bayyana's case and that it would equally apply to the facts of the present case. Learned Counsel for the respondent placed some reliance on the penultimate paragraph of the judgment in Bayyana's case where this Court referring to the judgments now under appeal stated:

> "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'.

We are unable to read this observation as a decision by this Court that the High Court was right in distinguishing the earlier decision. The circumstance that in Bayyana's case besides the contract of purchase of the gunny bags there was a further agreement that the mills would give delivery of the goods to the nominees of the purchaser does not really affect the principle, in view of the admitted fact that on the uncontradicted evidence 'in this case, it was the common understanding of the parties that the mills would honour the endorsement of the delivery order and deliver the goods contracted for to the endorsee who produced it.

Learned Counsel for the respondent made a suggestion that in the present case there was no proof that the goods represented by the contract had been delivered to the ultimate endorsee, with the result that the appellant had not established a "sale of goods" at any stage. No doubt if on the facts there was no delivery of the goods to the last holder of the delivery' order, the entire fabric on which the case for the appellant rests would disappear. There is however no factual basis for this submission. This fact was not alleged by the respondent at any stage of the proceedings starting

from the plaint in the Court of the District Munsif right up to the statement of the case in this Court and besides, all the Courts have proceeded on the basis that such delivery was effected to the last endorsee of the delivery order but they held that such delivery did not become a sale by the respondent so as to attract the liability to tax under s. 3 of the Act. We have therefore no hesitation in rejecting this argument. Before concluding, however, it is necessary to refer to one matter. 0. S. 268 of 1951 was filed on July 25, 1951 and the plaint in O.S. 309 of 1951 on September 6, 1951. Even, however, before that date, on May 15, 1951 the Madras General Sales Tax Act, 1939 was amended by Madras Act VI of 1951 by which, inter alia, s. 18A was added to the parent Act. This section nuns:

> ",No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any Court to set aside or modify any ass- essment made under this Act."

No plea based upon the bar contained in this section was raised before 'any Court right up to the High Court and not even in the grounds of appeal to this Court or even in the appellant's statement of the case as originally filed. At the beginning of 1962 however the appellant applied to this Court for leave to urge additional grounds and in pursuance of the leave so granted it has raised a point that the suit should have been dismissed by the Courts below as not maintainable, being barred by the section just now set out. In answer to this new plea the respondent put forward two objections: (1) that on a proper construction of s. 18A particularly taken in conjunction with the other amendment effected by Act VI of 1951 by which is. 18A was inserted in the parent Act, the section had no retrospective effect and could be invoked only in the case of those assessments which were completed after the new section came into force. (2) In the alternative, he raised the contention that if s. 18A barred even suits in respect of illegal assessments which had been completed and had become final, the provision was unconstitutional as violative of rights guaranteed by Art. 19(1)(f) & (g). Though we heard arguments of learned Counsel in relation to these points, we consider it unnecessary to make any pronouncement on them in view of the conclusion that we have reached on the merits of the appeals.

The result is that these appeals succeed and are allowed with costs. Hearing fee one Set.

Appeals allowed.