

Judgment: State of Madras vs. Abdul Kader and Anr. - Part 1: Interpretation of "Goods" and "Commodity"

Appeals from the judgment and order dated April 4, 1961 of the Kerala High Court in Tax Revision Nos. 52 & 53 / 1959. G.B. Pai, T. N. Ramachandra, J. B. Dadachanji, O. C. Mathur and Ravinder Narain, for the appellants (in all the appeals). Govinda Menon and V. A. Seyid Muhammad, for the respondent (in both the appeals). C.S. Pathak, section N. Andley, Rameshwar Nath and P. L. Vohra, for the interveners (in both the appeals). March 20, 1964. The judgment of GAJENDRAGADKAR, C.J., WANCHOO, RAJAGOPALA AYYANGAR AND SIKRI, JJ. was delivered by AYYANGAR J. SHAH, J. delivered a separate Opinion.

AYYANGAR, J. The appellant owns several estates wherein inter alia tea is grown and was assessed to sales tax in respect of the tea sold by it during the years 1954 55 and 1955 56, by the Sales Tax Officer, First Circle, Quilon in the State of Travancore Cochin by his order dated December 23. In the taxable turnover on which sales tax was computed by the assessing authority were included two items which are the subject of complaint in these two appeals which relate to these two years of assessment. Before the assessing officer the appellant claimed that certain sales of its tea which were conducted by auction at Fort Cochin a place which at the relevant date was in the Madras State, were sales "outside" the Travancore Cochin State and that consequently these sales were exempted from taxation by the State of Travancore Cochin under article 286(1)(a) of the Constitution. The Sales Tax Officer rejected this contention and included the sum involved in these sales in the taxable turnover. An appeal filed to the Appellate Assistant Commissioner also failed, this authority holding that as the tea sold was, at the date of the auction, admittedly in godowns in Willingdon Island in the State of Travancore Cochin, the sales must be deemed to have taken place within taxing State by virtue of a provision in the State Sales Tax Act to which we shall refer later and hence liable to be included in the taxable turnover. There was a further appeal taken by the Appellant to the Sales Tax Appellate Tribunal which upheld the appellant's contention and set aside the assessment in so far as it included the turnover relating to the auction sales of tea held at Fort Cochin, this turnover amounting to Rs. 56,43,184/11/in regard to the assessment year 1954 55 and Rs. 62,13,604/3/in regard to the assessment year 1955 56 and remanded the case for fresh disposal by excluding these sums from the computation of the taxable turnover. A revision petition was thereafter filed before the High Court by the State under section 15(b) of the General Sales Tax Act of Travancore Cochin and the learned Judges allowed the Revision and upheld the order of the assessing officer and the Appellate Commissioner holding the turnover represented by these auction sales to be validly taxable under the State law relating to sales tax. The appellant thereafter applied to the High Court for a certificate of fitness and this having been granted the appeals are now before us. Before proceeding further it is necessary to set out the statutory provision contained in the taxing enactment of the State. The General Sales Tax Act (Act XI of 1125 (ME) 1950) which imposed a sales tax on sales by dealers defines a "sale" by section 2(j) in these terms: " '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; x x x x Explanation (2) Notwithstanding anything to the contrary in the Sale of Goods Act for the time being in force, the sale or purchase of any goods shall be deemed for the purpose of this Act, to have taken place in the State wherever the contract of sale or purchase might have been made (a) if the goods were actually in the State at the time when the contract of sale or purchase in respect thereof was made . or (b) in case the contract was for the sale or purchase of future goods by description, then, if the goods are actually produced in the State at any time after the contract of sale or purchase in respect thereof was made. " When the Constitution came into force a new section numbered section 26 was inserted by the Adaptation Order bringing the Act into line with article 286(1) of the Constitution and this read: "No law of a State shall impose. or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place(a) outside the State or (b). . . . Explanation For the purposes of sub clause (a) a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the consumption in that State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason of such sale or purchase passed in another State. " The position, therefore, was that though cl. (a) to Explanation 2 to section 2(j) enacted that "notwithstanding anything contrary in the Sale of Goods Act, the sale or purchase of goods shall be deemed to take place in the State if the goods

were actually in the State at the time the contract for sale or purchase of goods thereof was made", still by the non obstante provision contained in section 26 a tax on the sale or purchase of goods could not be imposed where such sale or purchase took place "outside" the State of Travancore Cochin. It is only necessary to add that even if section 26 were ignored still by the terms of article 286(1)(a) the position would be the same and the State could not validly impose sales tax on sales which took place outside its territories. But this is not the end of the matter. There is a further provision in section 5 of the Act which enacted that "every dealer whose total turnover for a year is not less than Rs. 10,000/ or such lower than the Government may prescribe shall be liable to pay tax under this Act and every dealer whose liability to pay such tax shall be determined according to the read to the dealer in the course of his business any goods and tax under this Act shall be payable by him on his taxable turnover. " The term "total turnover " is defined by section 2(n) to mean "the aggregate amount of sales and purchases of goods by a dealer in a year, in other words the total amount for which goods are sold or purchased in a year to be included in the totals and be liable to tax. It may be pointed out that though the term "total turnover" takes in both sales and purchases, the Act imposed tax only on the turnover represented by sales and by cl. (b) of section 5(1) it was enacted that "the tax payable under this Act shall be levied at such rates as may be prescribed, on the taxable turnover of a dealer ". The computation of the "taxable turnover" is provided for by section 5(3) which reads: " The taxable turnover of a dealer, for the purpose of the Act, shall be the gross turnover of sales by him after deducting there from(i) ...