

# Judgment: State of Madras vs. Abdul Kader and Anr. - Part 2: Sales Tax and Export Transactions

... (i) the aggregate amount for which goods are sold to a registered dealer for the purpose of resale within the State; (ii) the aggregate amount for which goods are sold to the Government, or to a registered dealer for the purpose of export of goods out of the territory of India; (iii) the aggregate amount for which goods are sold outside the State of Travancore-Cochin (whether in the course of inter-State trade or commerce or not) if such sale is liable to tax under section 5A; and (iv) the aggregate amount for which goods are sold in the course of export of the goods out of the territory of India, after and subject to such conditions as may be prescribed and to such restrictions as may be placed on the use of the goods as may be specified in the rules; and the tax payable by the dealer under this Act shall be levied on his taxable turnover at such rates as may be prescribed." The next relevant section is section 5A which reads: "Notwithstanding anything contained in this Act, if the dealer has had his usual place of business outside the State of Travancore-Cochin but had a place of business within the State of Travancore-Cochin, the turnover of sales of such dealer outside the State of Travancore-Cochin shall be deemed to be the turnover of sales inside the State of Travancore-Cochin, unless the goods are delivered by him to a place outside the State of Travancore-Cochin or are despatched by him to a consignee outside that State, by transfer of documents of title to the goods effected either outside the State or inside the State if the goods are capable of being so despatched. " There is no dispute in these appeals that at the material time the appellant was a dealer and was carrying on the business of selling tea in the State of Travancore-Cochin. This finding is common to all the authorities who have dealt with the case and the jurisdiction of this Court to entertain the appeals is not challenged by the respondent. The tea that was sold in auction at Fort Cochin at the material time was admittedly tea which was stored in godowns in Willingdon Island within the State of Travancore-Cochin and before the High Court, the only contention advanced on behalf of the appellant was that since these sales took place by auction at Fort Cochin, they must be deemed to have taken place in the State of Madras by virtue of the definition of "sale" contained in Explanation 2 to section 2(j) read with section 26. The contention which was accepted by the Tribunal was that these sales took place in the State of Madras, and hence outside the State of Travancore-Cochin and were not liable to sales tax in the State of Travancore-Cochin. As we have already indicated the High Court accepted the contention advanced on behalf of the State and held that these sales took place within the State of Travancore-Cochin. In view of the nature of the questions raised before us it is necessary to examine the legal position that arises for decision in the light of the constitutional provisions and the relevant statutory provisions. Before we proceed to consider the provisions of the Constitution and the statutes, it is necessary to determine the true character of the transactions which resulted in the sale of tea. Mr. Pathak on behalf of the appellant relied on the terms of the contract between the auctioneer and the buyers, the incidents of the auction sales as set out in the judgment of the Tribunal and the peculiar features of tea auction transactions generally to contend that the property in the tea sold did not pass at Fort Cochin and that the sales should, therefore, be deemed to have taken place in the State of Madras where the goods were, at the time of the contract of sale. On the other hand, it was urged by Mr. Govinda Menon that these transactions should be regarded as composite transactions; the property in the goods having passed at Fort Cochin where the auction sales were conducted and the sales being integrated with the contract of sale which was the basis of the auction. According to Mr. Menon, there were no two separate transactions as contended on behalf of the appellant, viz., a sale in the course of export of goods from the State of Travancore-Cochin to the State of Madras and a subsequent sale by the buyers in the State of Madras to the foreign buyers. In this connection, reliance was placed on certain features of the auctions and the definition of "sale" in the General Sales Tax Act of Travancore-Cochin. We have already extracted the definition of "sale" in section

2(j) and the relevant provisions of section 26 which are relied on by the appellant and, therefore, they do not require repetition. It is, however, necessary to refer to the provisions of section 5-A which were the basis of the order of the Tribunal and section 5(3) which prescribes the manner in which the taxable turnover should be computed, for these provisions were considered by the High Court and have been referred to in the arguments before us. It is on these provisions that the principal arguments of the appellant were founded and, therefore, we shall first consider these two sections. Section 5(3) of the Act provides that the taxable turnover of a dealer shall, for the purposes of the Act, be the gross turnover of sales by him after deducting there from certain specified amounts, which are not material for the present purpose. One of the items which has to be deducted in computing the taxable turnover is the aggregate amount for which goods are sold outside the State of Travancore-Cochin, whether in the course of inter-State trade or commerce or not, if such sale is liable to tax under section 5-A. Therefore, the taxable turnover includes the aggregate amount for which goods are sold outside the State of Travancore-Cochin unless such sale is liable to tax under section 5-A. Section 5-A is enacted in these terms: "Notwithstanding anything contained in this Act, if the dealer has his usual place of business outside the State of Travancore-Cochin but has a place of business within the State of Travancore-Cochin, the turnover of sales of such dealer outside the State of Travancore-Cochin shall be deemed to be the turnover of sales inside the State of Travancore-Cochin unless the goods are delivered by him to a place outside the State of Travancore-Cochin or are despatched by him to a consignee outside that State, by transfer of documents of title to the goods effected either outside the State or inside the State if the goods are capable of being so despatched. " The contention raised on behalf of the appellant is that since the goods were despatched to a place outside the State of Travancore-Cochin, the turnover represented by the sales of the goods outside the State of Travancore-Cochin is not liable to tax under the Act, and that, therefore, it is not liable to be included in the computation of the taxable turnover. The provisions of section 5-A are relied on for the appellant, for, it is urged that the turnover of sales of the dealer outside the State of Travancore-Cochin shall be deemed to be the turnover of sales inside the State of Travancore-Cochin only if the goods are not delivered by him to a place outside the State of Travancore-Cochin or are not despatched by him to a consignee outside that State by transfer of documents of title to the goods effected either outside the State or inside the State if the goods are capable of being so despatched. If the goods are despatched to a place outside the State of Travancore-Cochin, it is urged, the turnover is not liable to tax under the Act and cannot be deemed to be the turnover of sales inside the State of Travancore-Cochin. That takes us to the definition of "sale" contained in section 2(j). The definition of "sale" in section 2(j) means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes also a transfer of property in goods involved in the execution of a works contract, or in the hire-purchase or any other system of payment by instalments, but does not include a mortgage, hypothecation, charge or pledge. The explanation to section 2(j) says that for the purpose of the definition of "sale", "works contract" means a contract for carrying out for cash or for deferred payment or for any other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any moveable or immovable property. The definition of "sale" contained in section 2(j) is a wide definition, and if the goods are delivered by the seller to the buyer, the sale is complete and the property in the goods passes to the buyer. As we shall presently show, the features of the tea auction sales clearly indicate that the property in the tea sold passed at the time of the auction and the delivery of the goods was effected by the seller to the buyer. But the appellant contends that even so, these sales do not fall within the definition of "sale" contained in section 2(j) for they are, according to the appellant, sales in the course of export of the goods out of the territory of India and the Explanation to section 2(j) says that the sale or purchase of goods shall be deemed to take place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of 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. According to the appellant, the Explanation has the effect of deeming the sale or purchase to take place in the State in which the goods are actually delivered for consumption in that State and this deeming provision overrides the definition of "sale" contained in section 2(j). In other words, the appellant contends that these sales must be deemed to have taken place outside the State of Travancore-Cochin, as the goods were actually delivered outside that State for consumption outside that State. We are not impressed by this argument. It is true that section 2(j) includes a transfer of property in goods involved in the execution of a works contract or in the hire-purchase or any

other system of payment by instalments and that shows that the definition of "sale" is not exhaustive. But the fact that section 2(j) includes a transfer of property in goods involved in the execution of a works contract or in the hire-purchase or any other system of payment by instalments does not mean that a sale which falls within the general definition contained in that section can be excluded from the scope of the definition by invoking the deeming provision contained in the Explanation. The Explanation deals with a special class of sales or purchases, namely, sales or purchases which are deemed to take place in the State in which the goods have actually been delivered for the purpose of consumption in that State, and it provides that such sales or purchases shall be deemed to take place in the State in which the goods are actually delivered notwithstanding the fact that under the general law relating to the sale of goods the property in the goods has by reason of such sale or purchase passed in another State. Therefore, the Explanation does not deal with the general definition of "sale" contained in section 2(j). The Explanation is super-imposed on the definition of "sale" and deals with a special class of sales or purchases, and the effect of the Explanation is to provide that in respect of sales or purchases of goods which are deemed to take place in the State in which the goods are actually delivered for consumption in that State, the situs of the sale or purchase is the State in which the goods are actually delivered for consumption and not the State in which the property in the goods passes by reason of the sale or purchase. It is, therefore, clear that the Explanation is not intended to exclude sales or purchases of goods which fall within the definition of "sale" contained in section 2(j) and which are not covered by the special class of sales or purchases dealt with by the Explanation. The appellant's argument is that the deeming provision contained in the Explanation overrides the definition of "sale" in section 2(j), for, according to the appellant, the Explanation says that for the purpose of the definition of "sale", the sale shall be deemed to take place in the State in which the goods have actually been delivered for consumption in that State, and that means that the deeming provision is made applicable to sales which fall within the definition of "sale" in section 2(j). That, in our opinion, is not the correct construction of the Explanation. The Explanation is a proviso or an exception to the definition of "sale" contained in section 2(j), and it says that notwithstanding anything contained in the general law relating to the sale of goods, the situs of the sale or purchase for the purpose of the definition of "sale" shall be the State in which the goods have actually been delivered for consumption in that State, if the sale or purchase is of a class of goods in respect of which it is provided by the Explanation that they shall be deemed to take place in the State in which the goods are actually delivered for consumption in that State. The object of the Explanation is to determine the situs of the sale or purchase for the purpose of the definition of "sale" in section 2(j) in respect of goods of a class which are deemed to take place in the State in which they are actually delivered for consumption in that State, and it does not deal with the definition of "sale" contained in section 2(j). Therefore, the deeming provision contained in the Explanation does not override the definition of "sale" contained in section 2(j), but operates in a different field. The appellant's contention that the Explanation must be read as qualifying the definition of "sale" contained in section 2(j) is not supported by the language of the Explanation, and we are unable to accept it. In fact, the appellant concedes that if these sales are sales in the course of export of goods out of the territory of India, they would not be liable to tax under the Act. Therefore, the real question is whether these sales are sales in the course of export of the goods out of the territory of India. The definition of "sale" in section 2(j) includes any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and it is common ground that these sales satisfy the general definition of "sale" contained in section 2(j) for there was a transfer of property in the goods by the seller to the buyer for cash. But the appellant contends that these sales are sales in the course of export of the goods out of the territory of India and are, therefore, excluded from the definition of "sale" contained in section 2(j) by reason of the provisions of section 5 of the Central Sales Tax Act, 1956, and the Explanation to section 2(j) of the Act. In other words, the appellant contends that though these sales satisfy the general definition of "sale" contained in section 2(j), they are excluded from the scope of the definition by reason of the special provisions contained in section 5 of the Central Sales Tax Act, 1956, and the Explanation to section 2(j) of the Act. It is true that section 5 of the Central Sales Tax Act, 1956, provides that a sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase: (a) occasions the movement of goods from one State to another; or (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. It is also true that Explanation 2 to section 2(j) of the Act provides that the sale of goods shall be deemed to take place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in that State notwithstanding the fact that under

the general law relating to the sale of goods the property in the goods has by reason of such sale or purchase passed in another State. Therefore, it is urged that if the sales of tea satisfy the conditions specified in section 5 of the Central Sales Tax Act, 1956, and Explanation 2 to section 2(j) of the Act, the sales must be deemed to be sales in the course of export of goods out of the territory of India and are, therefore, outside the scope of the definition of "sale" contained in section 2(j). This argument is not well-founded. The first and the foremost question to be considered is whether the sales of tea in the course of auction were sales in the course of export of goods out of the territory of India. If they were sales in the course of export of goods out of the territory of India, it is not disputed that they would be excluded from the definition of "sale" contained in section 2(j) by reason of the provisions of section 5 of the Central Sales Tax Act, 1956, and the Explanation to section 2(j) of the Act. Therefore, the crucial question is whether the sales of tea in the course of auction were sales in the course of export of goods out of the territory of India. The determination of this question involves the consideration of two aspects, namely, (1) whether the tea sold at the auction constituted "goods" and (2) whether the sales were in the course of export of the goods out of the territory of India. If the tea sold at the auction constituted "goods" and the sales were in the course of export of the goods out of the territory of India, the sales would be outside the scope of the definition of "sale" contained in section 2(j). Let us, therefore, proceed to consider these two aspects. The first aspect is whether the tea sold at the auction constituted "goods". There is no dispute that the tea sold at the auction was stored in godowns in Willingdon Island within the State of Travancore-Cochin and that delivery of the tea was effected to the buyers by transfer of documents of title to the goods. Therefore, the property in the tea passed by reason of the sale and the definition of "sale" contained in section 2(j) is satisfied. But the appellant contends that the tea sold at the auction constituted "goods" and fell within the scope of the definition of "goods" contained in section 2(d) of the Act. Section 2(d) defines "goods" as meaning all kinds of movable property other than actionable claims, stocks, shares or securities and includes all materials, commodities and articles. The appellant contends that tea is a "commodity" and is, therefore, "goods" within the meaning of section 2(d). In support of this contention, reliance was placed on the decision of this Court in the United Commercial Bank's case<sup>(1)</sup>, where it was held that gold is a commodity and is, therefore, "goods" within the meaning of section 2(d) of the Bengal Finance (Sales Tax) Act, 1941. That case arose under the Bengal Finance (Sales Tax) Act, 1941, and this Court had to consider whether the sales tax levied by the State of West Bengal under that Act on the sale of gold was ultra vires the powers of the State Legislature as it contravened the provisions of section 297 of the Government of India Act, 1935. This Court held that gold was a "commodity" and was, therefore, "goods" within the meaning of section 2(d) of the Bengal Finance (Sales Tax) Act, 1941. The appellant contends that if gold is a commodity and is, therefore, "goods" within the meaning of section 2(d) of the Bengal Finance (Sales Tax) Act, 1941, tea is also a commodity and is, therefore, "goods" within the meaning of section 2(d) of the Act. It is not disputed that tea is a commodity and is, therefore, "goods" within the meaning of section 2(d) of the Act. But the appellant contends that tea is also a "commodity" and is, therefore, "goods" within the meaning of section 2(d) of the Act. In other words, the appellant contends that though tea is a "commodity" and is, therefore, "goods" within the meaning of section 2(d) of the Act, the definition of "goods" contained in section 2(d) is wide enough to include tea which is also a "commodity". This contention, in our opinion, is not well-founded. It is true that the definition of "goods" contained in section 2(d) is an inclusive definition and it says that "goods" includes all materials, commodities and articles. The word "commodity" is, therefore, included in the definition of "goods", and it has the effect of widening the scope of the definition. But the word "commodity" is not defined in the Act and it is, therefore, necessary to fall back upon its ordinary dictionary meaning. According to the Oxford English Dictionary, the word "commodity" means an article of trade; an article of merchandise or of commerce; a thing that can be bought or sold. In the Oxford English Dictionary, the word "commodity" is used in the sense of an article of trade or merchandise or commerce, and in that sense it means an article which can be bought or sold. The word "commodity" does not mean all articles, materials or things; it means only articles which are the subject of trade or merchandise or commerce. Therefore, the word "commodity" is used in a restricted sense, and it does not include all materials or articles or things. It includes only articles which are the subject of trade or commerce. In that sense, gold is a "commodity" and is, therefore, "goods" within the meaning of section 2(d) of the Bengal Finance (Sales Tax) Act, 1941. But it does not follow that every article which is the subject of trade or commerce is a "commodity". The word "commodity" is used in the sense of an article which is the subject of trade or commerce and in that sense, gold is a "commodity" and is, therefore, "goods" within the meaning of section 2(d) of the Bengal Finance (Sales Tax) Act, 1941.

But every article which is the subject of trade or commerce is not a "commodity". Every article which is the subject of trade or commerce is "goods" but it does not follow that it is also a "commodity". The word "commodity" is used in a restricted sense and it includes only articles which are the subject of trade or commerce. Therefore, the appellant's contention that tea is a "commodity" and is, therefore, "goods" within the meaning of section 2(d) of the Act is not well-founded, for, though tea is a "commodity" in the sense that it is an article which is the subject of trade or commerce, it is not a "commodity" in the restricted sense in which the word "commodity" is used in section 2(d). The definition of "goods" contained in section 2(d) is, therefore, not wide enough to include every article which is the subject of trade or commerce; it includes only articles which are the subject of trade or commerce and which are, therefore, commodities. The appellant's contention that tea is a "commodity" and is, therefore, "goods" within the meaning of section 2(d) must, therefore, be rejected. In our opinion, the tea sold at the auction constituted "goods" and was, therefore, "goods" within the meaning of section 2(d) of the Act. If the tea sold at the auction constituted "goods", the property in the tea passed by reason of the sale and the sales of tea satisfied the definition of "sale" contained in section 2(j) of the Act. If the sales of tea satisfied the definition of "sale" contained in section 2(j) of the Act, they were liable to tax under the Act unless they fell within the scope of section 5-A. The appellant's contention that the tea sold at the auction constituted "goods" and was, therefore, "goods" within the meaning of section 2(d) of the Act must, therefore, be rejected. The second aspect is whether the sales of tea in the course of auction were in the course of export of the goods out of the territory of India. The appellant contends that the sales of tea in the course of auction were sales in the course of export of the goods out of the territory of India and were, therefore, outside the scope of the definition of "sale" contained in section 2(j). The appellant's contention is that as the tea was delivered to the foreign buyers at Fort Cochin, the sales of tea were sales in the course of export of the goods out of the territory of India. In support of this contention, reliance was placed on the decision of the Bombay High Court in the *Tata Iron & Steel Co. Ltd. v. Chief Revenue Authority*(1). That case arose under the Central Provinces and Berar Sales Tax Act, 1947, and the question was whether the sales tax levied by the State of Madhya Pradesh on the sale of iron and steel was ultra vires the powers of the State Legislature as it contravened the provisions of section 297 of the Government of India Act, 1935. The facts of that case were that the Tata Iron & Steel Co. Ltd. had its registered office and its head office in Bombay, and it carried on business in the Central Provinces and Berar. It owned collieries and iron ore mines and manufactured iron and steel at Jamshedpur. The iron and steel so manufactured was sold to various buyers in India, and it was also sold to foreign buyers. The sales tax levied by the State of Madhya Pradesh was on the sale of iron and steel within the State, and the question was whether the sales of iron and steel to foreign buyers took place within the State or outside the State. It was held by the Bombay High Court that the sales of iron and steel to foreign buyers took place outside the State as the property in the goods passed at the time of the contract of sale and the sales were, therefore, outside the scope of the definition of "sale" contained in section 2(h) of the Central Provinces and Berar Sales Tax Act, 1947. This decision is clearly distinguishable on the facts, for, in that case, the property in the goods passed at the time of the contract of sale and the sales were, therefore, outside the scope of the definition of "sale" contained in section 2(h) of the Central Provinces and Berar Sales Tax Act, 1947. But in the present case, the property in the tea passed at the time of the auction and the sales were, therefore, within the scope of the definition of "sale" contained in section 2(j) of the Act. The decision of the Bombay High Court in the *Tata Iron & Steel Co. Ltd.'s case*(1), is, therefore, not applicable to the present case. The appellant also relied on the decision of the Madras High Court in *Ganesh Prasad Dixit v. State of Madras*(2), where it was held that the sale of cotton in the course of export out of the territory of India was not liable to tax under the Madras General Sales Tax Act, 1939. But in that case, the property in the cotton passed at the time of the contract of sale and the sale was, therefore, outside the scope of the definition of "sale" contained in section 2(h) of the Madras General Sales Tax Act, 1939. This decision is also clearly distinguishable on the facts, for, in that case, the property in the goods passed at the time of the contract of sale and the sale was, therefore, outside the scope of the definition of "sale" contained in section 2(h) of the Madras General Sales Tax Act, 1939. But in the present case, the property in the tea passed at the time of the auction and the sales were, therefore, within the scope of the definition of "sale" contained in section 2(j) of the Act. The appellant's contention that the sales of tea in the course of auction were sales in the course of export of the goods out of the territory of India must, therefore, be rejected. The appellant's contention that the sales of tea in the course of auction were sales in the course of export of goods out of the territory of India and were, therefore, outside the scope of the definition of "sale" contained in section 2(j) of the

Act is not well-founded. The appellant's contention that the tea sold at the auction constituted "goods" and was, therefore, "goods" within the meaning of section 2(d) of the Act is also not well-founded. If the tea sold at the auction constituted "goods" and the sales of tea were sales in the course of export of goods out of the territory of India, the sales would be outside the scope of the definition of "sale" contained in section 2(j) of the Act, and they would, therefore, be excluded from the definition of "sale" by reason of the provisions of section 5 of the Central Sales Tax Act, 1956, and Explanation 2 to section 2(j) of the Act. But the appellant's contention that the tea sold at the auction constituted "goods" and the sales of tea were sales in the course of export of goods out of the territory of India is not well-founded. The result is that the sales of tea in the course of auction were liable to tax under the Act, and the appellant is, therefore, not entitled to the refund of the sales tax paid by him. The appellant is, therefore, not entitled to the refund of the sales tax paid by him. The order of the High Court is, therefore, confirmed and the appeals are dismissed with costs. Appeals dismissed.