1962

November, 30.

A. V. THOMAS & CO. LTD.

v.

DEPUTY COMMISSIONER OF AGRICULTURAL INCOME TAX

(S. K. DAS, J. L. KAPUR, A. K. SARKAR, M. HIDAYATULLAH AND RAGHUBAR DAYAL, JJ.)

Sales Tax—Goods stored in Travancore—Sale by auction in Madras by samples—Delivery in Travancore—Consumption neither in Madras nor in Travancore—Whether sales taxable in Travancore—Constitution of India, Art. 286 (1).

The sales of teas were by auction which was conducted in Fort Cochin in Madras State. The price was paid in Fort Cochin and delivery orders were also given there for goods which were at Willingdon Island in Travancore Cochin State. From Willingdon Islands the goods were sent for consumption to other States and to foreign countries. The State of Travancore Cochin sought to tax these transactions for sales tax.

Held, that the property in the goods passed when the contract was accepted on the fall of the hammer in Fort Cochin. Under Art. 286(1) it was the "passing of the property within the State" that was intended to be fastened on for the purpose of determining whether the sale was "inside" or "outside" the State. Subject to the operation of the "explanation" that State in which property passed would be the only State which would have the power levy the tax on the sale. But the explanation did not apply in the present case as there was no delivery as a direct result of the sale for consumption in any particular State.

Indian Copper Corporation Ltd. v. *State of Bihar*, [1961] 2 S.C.R. 276, followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 628 of 1961.

Appeal from the judgment and order dated February 24, 1960, of the Kerala High Court in Tax Revision Case No. 22 of 1957.

G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for the appellant.

V. P. Gopalan Nambiar, Advocate General, State of Kerala and *Sardar Bahadur,* for the respondent.

A. V. Viswanatha Sastri, S. N. Andley, Rameshwar Nath and *P. L. Vohra,* for the Interveners.

1962. November 30. The Judgement of the Court was delivered by

KAPUR, J.—This appeal by certificate of the High Court of Kerala raises the question of the taxability of sales of tea under the Travancore-Cochin General Sales Tax Act, hereinafter termed the Act, and the Rules made thereunder. The assessment period is 1952-53 and the turnover was of a sum of Rs.3,77,644/- on which a tax of Rs. 5900/11/- was levied. The appellant before us is the assessee company and the respondent is the Deputy Commissioner of Agricultural Income-tax and Sales tax.

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Mr. A. V. Viswanatha Sastri on behalf of Outcherlooey Valley Estates (1938) Ltd. has applied for intervention on the ground that in case of that company also the State of Kerala has, on similar facts, levied sales tax on certain transaction, that the High Court of Kerala has upheld the taxability of the transactions relying on the judgment which is under appeal in the present case, and that the intervener has obtained Special leave to appeal against that judgment and the records are under print. In view of these circumstances we have allowed that company to intervene in the present appeal.

The assessment was made on March 30, 1955, under r. 33(i) of the Act on the ground that the sales of tea had escaped assessment. The appeal against

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that order was unsuccessful and thereafter a further appeal was taken to the Sales tax Appellate Tribunal which by its order dated August 12, 1957, held that the ban under Art. 286(1)(a) of the Constitution on sales which are outside the State applied in regard to the sales of 'full lots' and therefore remanded the case to the Sales tax Officer. Against that order a revision was taken to the High Court which held that the decision of the Appellate Tribunal in regard to the applicability of Art. 286(1)(a) was erroneous and therefore the sales were subject to sales tax under the Act. It is against that judgment and order that the assessee company has come to this court on a certificate of the High Court.

Put shortly, the nature and procedure of sales of teas was this; that the teas were stored in the godowns at Willingdon Island which was in the State of Travancore Cochin, samples of those teas etc., were taken to Fort Cochin which at the relevant time was in the State of Madras. There by the samples the teas were sold by public auction in lots, some were purchased in their entirety and others in parts and after the consideration money was paid at Fort Cochin delivery orders were given to the buyers addressed to the godown keepers at Willingdon Island and actual delivery of tea was taken there. These teas were then sent out from Willingdon Island in Travancore Cochin for consumption either in other parts of India or were exported out of India.

The taxability of the sales of teas in the manner above-mentioned will depend upon whether the sales can be held to have taken place at Willingdon Island i.e. within the territory of Travancore Cochin State and were liable to the imposition of sales tax under the Act or they were what for convenience are called "outside sales" and therefore not subject to sales tax in the State of Travancore-Cochin. The argument raised on behalf of the assessee company was that

these sales were effected at Fort Cochin which was outside the territory of Travancore Cochin and therefore were not liable to tax because of the ban imposed by Art. 286(1)(a) of the Constitution. That Aricle with the Explanation at the relevant time was as follows :

> "Art. 286(1) 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 purpose 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 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".

Under the Sale of Goods Act in an auction sale the title in goods passes and the sale is complete as soon as the hammer falls. The relevant portion of s. 64 of the Sale of Goods Act dealing with sale by auction reads as follows :

> "In the case of a sale by auction.....
>
> (1) where goods are put up for sale in lots, each lot is prima

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facie deemed to be the subject of the separate contract of sale;

(2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in the customery manner; and until such announcement is made any bidder may retract his bid."

Specific goods in s. 2 (14) of the Sale of Goods Act means goods identified and agreed upon at the time contract is made. Therefore on the fall of the hammer the offer is accepted and if the goods are specified goods the title passes to the buyer.

In the present case as soon as the hammer fell the title in the goods passed to the buyer as the goods were specific goods i.e. goods which were auctioned in full lots and this event took place at Fort Cochin which was in the State of Madras. But in the case of unascertained goods the title in the goods does not pass to the buyer unless and until the goods are ascertained. It was for this reason that a distinction was drawn by the Sales tax Appellate Tribunal between goods which were sold in full lots and those which were sold in portions. In regard to the former it was held that the title passed as soon as the hammer fell but not so in regard to the latter and therefore the sale of "full lots" was held to have taken place outside the State of Travancore Cochin and of portions of lots inside that State. The case was consequently remanded to the Sales tax Officer for determining the amount of the tax.

The High Court in revision held that the words in Art. 286 (1) (a) "outside the State" do not mean transfer of ownership, according to the Sale of Goods

Act but it was *lex situs* which determines the taxability of the transaction and the correct position is that the ownership in the goods is transferred according to the law of the place where the goods are situate. Therefore the sale in the present case was in the State of Travancore Cochin and there is nothing in the Explanation to Art. 286 (1) (a) which provides to the contrary.

It has been found and it has not been disputed that the title to the goods in the present case passed at Fort Cochin. The purchase money was paid there and the purchaser obtained from the auctioneer delivery notes directing the godown keepers at Willingdon Island to deliver the goods and only the actual physical delivery of the goods took place at Willingdon Island. In these circumstances the question is whether the sale was "outside" or "inside sale" as the expressions have been compendiously used in various judgments to indicate sales taking place within a State or without it. The Explanation to Art. 286 (1) (a) which has been set out above explains what a sale outside the State is. According to that Explanation a fiction is created as between two States, one where the goods are delivered for consumption in that State and the other where the title in the goods passes and the former is treated as the situs of the taxable event to the exclusion of the latter. Therefore where the Explanation applies the difficulty about the situs is resolved but in a case like the present one the difficulty still remains because the explanation does not operate in the sense that the rival States claiming to tax the same taxable event are not the States of delivery for consumption in that State and those where the title in the goods passes. In somewhat similar circumstances this court in *Indian Copper Corporation Ltd.* v. *State of Bihar* (1) held by a majority decision that the opening words of Art: 286 (1) which speak of a sale or purchase *taking place* and the *non-obstante* clause in

(1) [1961] 2 S.C.R. 276, 286.

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the Explanation which refers to the general law relating to the sale of goods, indicated that it was the "passing of property within the State" that was intended to be fastened on, for the purpose of determining, whether the sale in question was "inside" or "outside" the State and therefore subject to the operation of the "Explanation", that State in which property passed would be the *only* State which would have the power to levy a tax on the sale. At page 286 it was observed :

> "The conclusion reached therefore is that where the property in the goods passed within a State as a direct result of the sale, the sale transaction is not outside the State for the purpose of Art. 286 (1) (a) unless the Explanation operates".

The majority decision in *Indian Copper Corporation Ltd.* v. *State of Bihar* (1) concludes the point in favour of the appellant. On the facts of this case it was found by the Sales Tax Appellate Tribunal that in regard to the sales of tea in 'full lots' the property passed at Fort Cochin and this view has not been challenged in this court. Therefore, on the majority decision in *Indian Copper Corporation Ltd.* v. *State of Bihar* (1) the only State which would have the power to levy a tax on such sales would be the State of Madras and so far as Travancore Cochin was concerned, the sale would be an outside sale.

In the present case therefore the sale was an "outside sale" and cannot be said to be an "inside sale" qua Travancore Cochin because the title passed at Fort Cochin which is in the State of Madras. Apart from that the money was paid there and the delivery order was also received there even though the actual physical delivery of goods was made at a Willingdon Island in the State of Tranvancore Cochin. The fiction created by the Explanation to Art. 286 (1)(a) is inapplicable

(1) [1961] 2 S.C.R. 276.

becaase there was no delivery as a direct result of sale for the purpose of consumption in any particular State.

There then remains the question of goods which were exported out of India from Willingdon Island. In the case of those goods also it cannot be said that there was a sale inside the State of Travancore Cochin because the same considerations will apply to those sales as to the sales already discussed i.e. goods the title to which passed at Fort Cochin were delivered at Willingdon Island and were delivered for consumption in parts of India other than Travancore Cochin.

In our view therefore the High Court was in error and the appeal should therefore be allowed and the judgment and order of the High Court of Kerala set aside. The appellant will have its costs in this court and in the High Court.

Appeal allowed.