

Public Prosecutor Vs. E.P. Varkey and ors.

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Court : Chennai

Decided On : Jul-30-1954

Reported in : AIR1955Mad541; 1955CriLJ1266

Judge : Somasundaram, J.

Acts : Madras General Sales Tax Act, 1939 - Sections 3; [Constitution of India](#) - Article 286

Appeal No. : Criminal Appeal Nos. 490 to 497 of 1953

Appellant : Public Prosecutor

Respondent : E.P. Varkey and ors.

Advocate for Def. : K.S. Desikan, Adv.

Advocate for Pet/Ap. : Party in person

Judgement :

Somasundaram, J.

1. These are a batch of appeals filed by the State against the acquittal of the respondent in each case by the Sessions Judge of South Malabar. All these cases relate to offences under the Sales-tax Act and all the respondents reside out of the State of Madras. The case for the prosecution is that the respondents were doing

business and effecting sales of their respective goods in Fort Cochin which is within the State of Madras and therefore they are liable to pay sales-tax to the Madras State.

Evidence was let in to show that the goods were delivered in Fort Cochin and the buyers paid the prices for the same in Fort Cochin. The learned Sessions Judge finds this in para 5 of his judgment in C. A. No. 490 of 1953. He also finds that this finding, viz., that the delivery of the goods was made in Fort Cochin and that the price was paid in Fort Cochin has not been challenged. But he proceeds further to find out where the contract of sale was entered into, whether it was within the Madras State or outside Madras State.

It is true that no evidence was let in as to where exactly the contract was entered into. To give the assessee the benefit of the decision of this court in -- 'Poppatlal Shah v. State of Madras', : AIR1953 Mad91 (A), the learned Sessions Judge finding that there is no evidence as to where the contract was entered into, proceeds on the footing and in fact presuming, that the agreements of sale were not entered into in Fort Cochin, within the Madras State.

In the absence of any evidence as to the place where the contract was entered into and in the face of the positive evidence let in by the prosecution that these goods were delivered at Fort Cochin and the prices for these goods were paid at Fort Cochin, one would have thought that there was no need to enter on this speculation as to where the contract of sale took place,, because undoubtedly the sales have been effected in terms of the definition of the term 'sale' in the Sale of Goods Act as well as within the meaning of the Sales-tax Act in Fort Cochin itself.

For some, reason, not clear from the record, the learned Sessions Judge having been informed of the decision in : AIR1953 Mad91 (A), referred to above, embarked upon an enquiry as to the place of contract of sale. Since there was no evidence that the contracts of sale were entered into in Fort Cochin, following the decision referred to above, he held that in the absence of the proof of contract of sale at Fort Cochin, the assesses cannot be held liable to pay sales-tax.

2. This decision in : AIR1953 Mad91 (A), went up to the Supreme Court and their Lordships have held, disagreeing with the decision of this Court, that the sales must be considered to have been effected at the place where the property in the goods passed and not merely at the place where the contract of sale is entered into. 'Poppatlal Shah v. State of Madras', : 1953 CriLJ1105 (B). In short, the decision of the Supreme Court is that the State within which the property in the goods has passed to the buyer has the right to levy tax and not the State where the contract of sale has been merely entered into.

As already stated, in these cases there is no evidence as to where the contracts of sale were entered into. We have only the positive evidence that the goods were delivered at Fort Cochin and the price was paid at Fort Cochin. There can be no doubt that the property in the goods had passed at Fort Cochin and the sales were effected at Fort Cochin. The respondents are therefore liable to pay the assessments levied on them.

If really the respondents, wanted to establish the case that the sales did not take place within Fort Cochin and that not only the contracts of sale were entered into outside Fort Cochin but that as a matter of fact the property in the goods had passed to the buyer outside Fort Cochin, then the onus lies on them to prove it. They have not discharged that onus in these cases. It is not disputed that in all these cases the goods were delivered at Fort Cochin and were paid for there.

The prosecution therefore has proved its case and the guilt of the accused in each of these cases has been established beyond all reasonable doubt.

3. The appeals are allowed and the convictions given by the first Court are restored- But with regard to the sentence, the tax leviable from each of these respondents is confirmed and the fine which is imposed is reduced to Rs. 100 in each case that is to say, in C. A. No. 490 of 1953 it is reduced from Rs. 600 to Rs. 100, in C. A. No. 491 of 1953 it is reduced from Rs. 1000 to Rs. 100, in C. A. No. 492 of 1953 it is reduced from Rs. 200 to Rs. 100, in C. A. No. 493 of 1953 the fine being only Rs. 100 it is confirmed, in C. A. No. 494 of 1953 it is reduced from Rs. 200 to Rs. 100, in C. A. No. 495 of 1953 it is reduced from Rs. 600 to Rs. 100, in C. A. No. 496 of 1953 it is reduced from Rs. 300 to Rs. 100 and in C. A. No. 497 of

1953 it is reduced from Rs. 200 to Rs. 100.

The excess fine wherever it has been paid will be refunded to the respective accused. But the tax which has been ordered to be paid by the first Court will remain in all these cases. Two months' time is granted for payment of the tax and the fine.

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