

Arthur Import Export Co. Vs. State of Madras

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Court : Chennai

Decided On : Feb-16-1962

Reported in : [1963]14STC1022(Mad)

Judge : Srinivasan and ;Venkataraman, JJ.

Appeal No. : Tax Case No. 100 of 1959

Appellant : Arthur Import Export Co.

Respondent : State of Madras

Advocate for Def. : G. Ramanujam, Adv. for ;Government Pleader

Advocate for Pet/Ap. : V. Thyagarajan and T.V. Balakrishnan, Advs.

Disposition : Suit dismissed

Judgement :

Venkataraman, J.

1. This revision petition filed by Messrs Arthur Import Export Co., questions the assessment of the petitioners to sales tax under the Madras General Sales Tax Act, 1939, for the year 1953-54. The petitioners have their head office at Bombay and a branch at Coimbatore. The assessment proceeded on the footing that they imported staple fibre yarn from various countries into India and thereafter sold the

yarn to several mills in Coimbatore. The claim was resisted by the petitioners firstly on the ground that they were not themselves the importers, that they merely acted as agents of the several mills, who alone had the requisite permit under the Import and Export Control Act of 1947 to import the yarn from abroad, and that consequently there was no sale by them at all to the several mills. Alternatively it was contended before the authorities below, the Commercial Tax Officer and the Sales Tax Appellate Tribunal, that even if it should be held that they were not mere agents of the mills but vendors of the yarn to the mills, the sales were effected in the course of import and were therefore exempt from sales tax because of the provisions of Article 286(1)(b) of the Constitution. Both these contentions were rejected by the Commercial Tax Officer, and on appeal, by the Sales Tax Appellate Tribunal. Hence this revision petition.

2. Before us Sri V. Thyagarajan, learned counsel for the petitioners, has pressed only the question of agency. The facts as found by the Commercial Tax Officer and which have been accepted by the Sales Tax Appellate Tribunal are thus stated by the Commercial Tax Officer:-

The appellant-firm placed orders with foreign firm for purchase of staple fibre yarn. In order to find a market for the goods purchased, the representatives of the local branch contacted the mills in the State and canvassed orders for the sale of staple fibre yarn. As there was trade restriction then requiring mills to take out permits for import of staple fibre yarn from foreign countries, the mills obtained permits for import under the Trade Control Order. Then on the strength of the permits, the mills in the State placed orders with the appellant-firm for supply of staple fibre required by them. Contracts were then entered into between the mills requiring staple fibre yarn for supply of yarn F.O.R. destination at specified prices. Then the foreign seller sent the goods ordered by the appellant-firm to Indian ports in the name of the appellant-firm. These transactions were with the appellant-firm and the foreign buyers (sic). As soon as the goods arrived in the Indian ports, the appellant-firm arranged with its bankers (the Indian Overseas Bank) to clear the shipping documents, take delivery of the goods and despatch them to various destinations as per the contracts already entered into. The bankers cleared the goods from the Indian ports through their clearing agents and despatched the

goods to various destinations booking to self, endorsing the railway receipts and recovering the amounts through banks. Then regular invoices are sent to the mill for the sales effected. The purchasing mills cleared the railway receipts from the bankers by paying 90 per cent. of the value of the goods from the railway stations and consumed them in the mills. Then after the weighment was done in the mill premises, probably in the presence of the local agent, the balance of ten per cent. of the sale amount was paid. Thus except taking out an import licence for import of goods and handing over them to the appellants to facilitate import, the purchasing mills were out of the picture till they cleared the railway receipts from the banks.

3. We asked Mr. Thyagarajan to submit to us a complete set of documents from the beginning to the end in respect of any one transaction between the petitioners and the particular mills. He has not done so. Even the papers filed by him in respect of Dhanalakshmi Mills are not complete, but it will be seen that this really does not matter and the facts do not seem to be much in dispute. One modification was suggested by Mr. Thyagarajan to the above facts, and that is, that before the petitioners placed orders with the foreign firm, the petitioners had contacted the mills in Coimbatore, and ascertained their requirements and only on that basis orders were placed. Another modification which is necessary to the above statement of the facts is that when the permit was issued by the Joint Chief Controller of Imports in the name of a particular mills, a letter of authority was also issued permitting Arthur Import Export Co., Bombay to import the goods as stated in the licence, open a letter of credit and make remittances of foreign exchange. The letter of authority, for example, in the case of Dhanalakshmi Mills further stated :

The imports made under the letter of authority will be imports of the licensee who alone will be entitled to any quota licences on these imports.

4. Sri Thyagarajan lays great stress on the fact that without the licence and the letter of authority, the yarn could not have been imported, that the licence was granted only to the particular mills because they were expected to consume the yarn in their mills, that the application for the actual user's licence itself mentioned in column 12 that the goods were to be imported through Arthur Import Export Co.,

that Arthur Import Export Co. could not divert the goods to anybody else and had therefore no dominion over the goods which alone could be the index of ownership necessary to bring about the relationship of vendor and purchaser as between the petitioners and the mills. He urged that the fact that the price charged by the foreign supplier to the petitioners was not communicated to the mills and that a specific price was quoted by the petitioners in their invoice to the mills F.O.R., Coimbatore would not really militate against the case of agency, because the mills themselves were thoroughly satisfied with the bargain and this manner of effecting it and contacted the petitioners merely because they had experience in the line and contracts with the foreign suppliers. Mr. Thyagarajan urged that both on the facts and on a true construction of the Imports and Exports Control Act, 1947, and the relevant notification (which for our purposes may be taken to be that dated 6th March, 1948, printed at pages 73-74 of the Madras Law Journal Supplement 1948 under the heading Central Rules and Notifications) the goods could not have been owned at any time by the petitioners and were only the property of the mills.

5. In our opinion, however, these submissions cannot be accepted. There are a number of factors which, taken cumulatively, disprove the case of agency. In the first place, the contract between the petitioners and the mills purports to be one for sale of yarn by the petitioners to the mills at a particular price and the purchase thereof by the mills. Take for instance the contract dated 5th January, 1953, between the petitioners and the Dhanalakshmi Mills which we extract below:

Arthur Import Export Co. Ref. : SNP/6134 Bombay, 5th January, 1953. Dept.: Fibre. Messrs Dhanalakshmi Mills, Tirupur. Dear Sirs, Re.: Staple fibre. With reference to the above, we confirm having sold to your mills the following staple fibre : Description ... Italian staple fibre, 1.5 Denier 1 1/2 staple length bright bleached. Brand ... 'Snia' Quantity ... Fifty thousand pounds approximately (shippers weight) Rate ... Rs. 2 (Rupees two only) per lb. nett. Delivery ... February-March shipment from the country of origin (25,000 lbs. each month). Other terms ... Subject to the availability of the import licence by the consumer and subject to the final confirmation our foreign shippers at the time of producing the above import licence. Payment ... 90 per cent. against railway receipt through bank. Please arrange to send us the duplicate copy of the letter duly signed by you, and in the

meantime, please write a letter to the Joint Chief Controller of Imports, Ghulam Mohamed Building, 'Nicol Road, Ballard Estate, Bombay, to this effect and request them to issue the necessary import licence. Thanking you, Yours faithfully, Partner We confirm the above purchase For Dhanalakshmi Mills Ltd. M. Nanjappa Chettiar and Sons By Seller. Sd. Managing Agents and Secretaries, Buyer

6. There is a similar contract dated 26th September, 1953, between the petitioners and the Premier Mills, Udamalpet (page 59 of the papers given by the learned Additional Government Pleader). It is an elaborate form between the buyer and the seller and totally inapplicable to the case of agency. The petitioners as well as the mills are persons with expert legal assistance and we cannot therefore minimise the importance of the actual form in which they chose to embody the bargain, especially since they should have known that if the petitioners merely figured and acted as agents of the mills, there would have been only one sale, namely, from the foreign suppliers to the local mills and sales tax could have been avoided altogether by virtue of Article 286(1)(b) of the Constitution. Secondly, it is very significant that the contract quotes only a specific price F.O.R. destination and the invoice drawn by the petitioners on the mills quotes only that price (F.O.R. destination). As pertinently pointed out by the Tribunal 'the mills were not let into the secret of the price paid by the appellant (petitioners) to the foreign sellers, other incidental charges, customs duty and so on.' This is inconsistent with agency and consistent only with the relationship of vendor and purchaser between the petitioners and the mills (see *Johnson v. Kearly* [1908] 2K.B. 514 cited by the Additional Government Pleader). The submission of Sri Thyagarajan that the mills had no objection to this manner of the bargain is really beside the point. It only means that the mills were content to continue their transaction of purchase of the yarn from the petitioners. The presence of the words 'order and for account of Dhanalakshmi Mills Ltd., Tirupur' (to quote a sample) in the invoice drawn by the petitioners on Dhanalakshmi Mills is not by itself sufficient to prove agency.

7. The third important circumstance is that this is not a case where, after securing an order from the local mills, the petitioners contacted the foreign suppliers and placed an order just for the specific quantity required by the mills, but is a case where in advance of the contracts between the petitioners and the several mills

the petitioners placed bulk orders with foreign suppliers. The Commercial Tax Officer makes a point of this and observes:-

It is seen from the copy of the reference received from one of the foreign sellers under date 23rd May, 1958, that the goods were supplied against orders:-

No. 650236 dated 3rd July, 1953 ;

No. 65023 dated 17th July, 1953 ;

No. 650246 dated 30th July, 1953.

Taking a particular instance of the Premier Mills, Udamalpet, though the order was placed in July, the import permit was taken only in September, 1953, and the contract between the mills and the appellant-firm was only on 26th September, 1953. Thus it is seen that irrespective of the purchasers, the appellant-firm placed its bulk orders with the foreign firms for purchase of staple fibre yarn. Then as and when import licences were taken the goods were imported and sold to the mills.

It is thus clear from the records available that the appellant-firm purchased the goods and sold them to the mills as per the contract.

8. Sri V. Thyagarajan made a faint attempt to explain away the circumstance by stating that, even before the written contract between the petitioners and the Premier Mills, Udamalpet, there had been oral instructions from the Premier Mills and other such mills mentioning the quantity which they would be requiring and it was on the strength of such oral instructions that the petitioners placed the orders with the foreign suppliers. In a matter of this kind we are reluctant to accept such a submission, but even assuming that there were such oral instructions, it could not be contended that they would have sufficient legal efficacy to make the petitioners mere agents of the mills concerned when the petitioners placed bulk orders with the foreign suppliers. We may make it clear that this third circumstance which has been mentioned by us would have relevancy not merely as a question of fact to disprove agency, but would also have relevancy as constituting a legal impediment to the petitioners being agents of the concerned mills. So far as the foreign suppliers were concerned their transactions were only with the petitioners. That by

itself would not prevent the petitioners contending that they were in fact acting as agents of principals who had not been disclosed to the foreign suppliers. But this, the petitioners could contend only, if in point of fact, they were agents of the mills in Coimbatore at the time of their (petitioners) contracts with the foreign suppliers. If in point of fact the petitioners were not agents of the local mills at the time, in law, the local mills could not even subsequently ratify the transactions between the petitioners and the foreign suppliers. The legal substitution of the local mills in the place of the petitioners in the contract which *eo nomine* existed between the petitioners and the foreign principals is not possible for the simple reason that in point of fact the petitioners were not agents of the local mills. This is not disputed by Sri Thyagarajan. As stated already, his attempt to get out of this situation was by stating that the petitioners had oral instructions from the local mills.

9. Besides the above three circumstances, there are the further facts, namely, that it was the petitioners who opened the letters of credit, that it was the petitioners who arranged with their bankers for the clearance of the goods through the customs barrier and for the despatch of the goods to the mills and that they delivered the railway receipts to the local mills only after payment of 90 per cent. of the price.

10. The facts that the import licence was issued to the particular mills, that under the letter of authority granted to Arthur Import Export Co., the imports should be considered only to be imports of the licensee who alone would be entitled to any quota licence on the imports and that the petitioners could not have disposed of the goods otherwise than to the particular licensee do not militate against the above relationship of vendor and purchaser as between the petitioners and the mills. It is essential to remember that the Controller himself who issued the licence also issued the letter of authority permitting Arthur Import Export Co. to import and that authorization is itself sufficient to protect and preserve the ownership in the goods which otherwise the petitioners had. It was sufficient compliance with the Act, notification, the terms of the licence and letter of authority, that the petitioners did, after importing the goods, sell them to the particular mills concerned. So long as that compliance was ensured, there was nothing to prevent the petitioners being the purchasers of the goods from the foreign suppliers and sellers thereof to

the mills. The point need not be laboured further, because there is the authority of the Supreme Court on this point. The question arose in *Gokal and Co. (Private) Ltd. v. Assistant Collector of Sales Tax* [1960] 11 S.T.C. 186. There, the Government of India agreed to buy two consignments of foreign sugar from Gokal and Co. To enable Gokal and Co. to import the sugar, the Government ensured that the necessary licence was issued to Gokal and Co. It was Gokal and Co. who figured in the transaction with the foreign supplier and opened letters of credit and paid for the sugar to the foreign supplier. The bills of lading were transferred by Gokal and Co. to the Government against payment when the goods were on the high seas. Thereafter the Government cleared the goods across the customs frontier in India. On these facts Gokal and Co. claimed that the sales to the Government of India were in the course of import and therefore were exempt from sales tax under Article 286(1)(b) of the Constitution. This contention which prevailed with the primary authority did not prevail with the Assistant Collector of Sales Tax and hence Gokal and Co. came up before the Supreme Court. It was held on the facts that the sale was in the course of import. As militating against that conclusion the Government relied on the fact that the import licence by the Government was made not transferable and therefore it was impossible in law for a sale to take place during the course of import covered by the licence. In repelling this contention, their Lordships observed at page 206:-

The fact that the licence was non-transferable has no relation to the property in the goods passing to the Government. The licence issued by the Government is an exercise of the statutory power under the relevant Act. Whether the petitioner sold the goods to the Government or to a third party, he had to obtain a licence. Indeed in the present case, the licence was given to the seller with the express object of fulfilling the contracts with the Government and was issued several days after the contracts were executed, and indeed the Government took the licence from the seller and cleared the goods through their officer.

11. Just as in that case the fact that the licence stood in the name of Gokal and Co. did not constitute a legal impediment to the passing of property to the Government, here also the fact that the licence stood in the name of the local mills could not constitute a legal impediment to ownership vesting in the petitioners and

thereafter passing to the local mills, particularly since the letter of authority permitted the petitioners to import.

12. For these reasons the petition fails and is dismissed with costs. Counsel's fee Rs. 100.

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