

SUPREME COURT OF INDIA

V. O. Vakkan

Vs.

State of Madras

C.A.No.1 of 1955

(S. R. Das, ACTG., C.J.I., N. H. Bhagwati, B. Jagannadhadas, S. J. Imam and N. Chandrasekhara Aiyar, JJ.)

19.09.1955

JUDGEMENT

CHANDRASEKHARA AIYAR J.:

1. This appeal comes before us on leave granted by the High Court of Madras. The appellants 2 to 6 are the legal representatives of V. O. Vakkan who was the plaintiff in the Subordinate Judge's Court and the appellant before the High Court of Madras.

2. V. O. Vakkan was a resident of Palluruthy in the Cochin State and was trading in coir yarn. He was assessed by the Deputy Commercial Tax Officers Chowghat (Madras State) to a sales tax of Rs.12,301/4/- on a net turnover of Rs. 12,30,124/- for the year ending 31-3-1946, under the Madras General Sales Tax Act. He objected to this assessment on the ground that he was non-resident foreigner so far as the Madras State was concerned and that he did not carry on any business either personally or through any agent within that State.

His objections were overruled by the Deputy Commercial Tax Officer the Commercial Tax Officer of Malabar and the Board of Revenue. Thereupon, he filed a suit O. S. No. 25 of 1948 in the subordinate Judge's Court, Cochin, for a declaration that the assessment was unauthorised, illegal and 'ultra vires'. The Subordinate Judge dismissed this suit, and on appeal, the High Court of Madras upheld the dismissal but gave the plaintiff leave to appeal on the ground that the appeal involved a substantial question of law concerning the interpretation of the Madras General Sales Tax Act.

3. It is admitted that Vakkan was residing in Palluruthy and had his factory and place of business in that place. He was not a resident of the Madras State and had not place of business within that State and had no agent there. It was found however, by the courts below that many, if not all of the contracts of Sale of Coir Yarn were entered into by him with European firms in Fort Cochin which is part of the Madras State and the goods were deliverable and delivered in the yards of the purchases in the said place.

It was held on these facts that Vakkan, the plaintiff, was a "dealer" within the definition of the term found in the Madras General Sales Tax Act and he was properly assessed.

4. Mr. K. S. Krishnswamy Iyengar, the learned counsel for the appellant, challenged firstly the

finding that the contracts of sale were entered into in Fort Cochin and he contended that there was no evidence to justify it. There is the evidence of the 3rd witness for the defendant in support of the finding Further, the plaintiff did not set out any such plea in his reply to the demand notice of the Deputy Commercial Tax Officer or even in his plaint; and the Subordinate Judge observes : "It is not denied that some of the contracts were executed in Fort Cochin."

5. The second point taken was that the plaintiff was a non-resident foreigner who had no place of business in the Madras State and that he was not therefore liable to sales tax. If for executing the contracts or delivering the goods he came into Fort Cochin, he may not be regarded as a non-resident foreigner. But the question of his residence is really immaterial. We have to see whether he is a "dealer" within the meaning of the Act; and he is undoubtedly so, as he is a person who carried on the business of selling goods within the State of Madras. Explanation (2) to S. 2 makes the agent (if any) also a "dealer" and is not intended to take the principal outside the scope of liability.

6. Therefore the appeal fails and is dismissed with costs.

Appeal dismissed.

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