1960

August 10.

THE COMMISSIONER OF INCOME-TAX, BOMBAY

v.

S. K. F. BALL BEARING CO., LTD.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income-tax—Agent selling goods manufactured by principal—Remittances of sale proceeds made to the principal before and after the recovery of price of goods—Profits—Whether include remittances made before recovery of price by the Agent—The Indian Income-tax Act, 1922 (11 of 1922), s. 4(1)(a).

A Swedish company manufacturing ball bearing equipment entered into an agreement with the respondent, S. K. F. Ball Bearing Co. Ltd. registered under the Indian Companies Act, 1913, appointing the latter as its sole selling agent in India. The material portion of the Agreement ran thus :—

"Clause 23 :— The Agent shall pay to S. K. F. net sales value of the said products that are sold each month, after deduction of the Commission that has been agreed upon and the import expenses that have been paid. Payment shall be made in Sweden thirty days at the latest following the last day of the month in which the sales have been effected."

During the second world war a corporation known as the Panrope Corporation was incorporated in the Republic of Panama to take over the assets and business of the Swedish company and the said Panrope Corporation in its turn conveyed the property and business to the Swedish company. Thereafter the respondent company sold in India as the agent of the foreign Corporations goods manufactured by them, and in a majority of the sales the respondent company remitted the "sale value" to the foreign corporations after the goods were sold but before the sale proceeds were recovered from the buyers. In some cases remittances were made even before the goods were sold and in others remittances were made after the sale proceeds were realised from the buyers. The Income-tax Officer assessed the foreign corporations under s. 4(1)(a) of the Indian Income-tax Act for payment of tax on the profit included in the price realised by the respondent company without making any distinction between remittances made before recovery of the sale proceeds and remittances made after recovery of the sale proceeds. This order was confirmed by the higher income-tax authorities. On a reference made at the instance of the respondent company the High Court came to the conclusion that the foreign corporations had a business connection in the taxable territories in the years of account and the respondent company was liable to pay tax on their behalf only with regard to remittances made after the sale proceeds were recovered. On appeal by the Commissioner of Income-tax by special leave,

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Held, that the liability to pay income-tax under s. 4(1)(a) arose on the receipt of the income and the question whether the income was received in the taxable territory was determined by the place where the price was received.

Profits were received by the respondent company on behalf of the foreign corporations in the taxable territory in respect of all sales of consigned goods irrespective of whether the remittances were made either before or after the price was received.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9 of 1958.

Appeal by special leave from the judgment and order dated February 24, 1955, of the former Bombay High Court in Income-tax Reference No. 50/X of 1954.

K. N. Rajagopal Sastri and *D. Gupta*, for the appellant.

R. J. Kolah, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and *P. L. Vohra*, for the respondent.

1960. August 10. The Judgment of the Court was delivered by

Shah J.

SHAH, J.—Aktiebolaget Svenska Kullakerfabriken of Gothenburg is a company incorporated under the laws of Sweden, and is engaged in the manufacture of ball bearing equipment. S. K. F. Ball Bearing Co., Ltd., which will hereinafter be referred to as "the S. K. F." is a company registered under the Indian Companies Act, 1913. By an agreement dated January 1, 1939, the S. K. F. was appointed by the Swedish company as its sole selling agent in India. On account of the commencement of hostilities in the second world war, a corporation known as the Panrope Corporation was incorporated in the Republic of Panama in 1940, to take over as a war-time arrangement the assets and business of that Swedish company. With effect from July 1, 1947, the Panrope Corporation conveyed the property and business to the Swedish company. In the years 1947, 1948, 1949 and 1950 the S. K. F. sold in India as the agent of the Swedish and Panamian companies—which will hereinafter be collectively referred to as the "foreign corporations" the goods manufactured by them. A small quantity of goods was bought by the S. K. F.

and sold by it in India, but no question arises in this appeal about the liability to pay income-tax in respect of sale of those goods and no reference is made herein in respect of those sales. The Income-tax Officer, Companies Circle II(3), Bombay, exercising powers vested in him by s. 43 of the Indian Income-tax Act, 1922, having appointed the S. K. F. as the statutory agent of the foreign corporations for the assessment year 1948-49, and of the Swedish company for the assessment years 1949-50, 1950-51 and 1951-52, the S. K. F. submitted returns of income for these years in the taxable territory on behalf of the foreign corporations.

Clauses 13, 22 and 23 of the agreement dated January 1, 1939, between the S. K. F. and the Swedish company which are material for the purpose of this appeal are as follows :—

Clause 13 :—The Agent shall render before the tenth day of each month a true and detailed statement of the said Products that have been sold by him or his Sub-Agents during the preceding month. This statement is to be prepared in accordance with instructions that are to be given by S. K. F. and it shall contain the names and addresses of the parties to whom the said Products have been supplied, together with a description of the Products and the prices at which they have been sold.

Clause 22 :—The Agent shall sell the said Products either for cash or on credit. Notwithstanding the fact that permission is hereby granted by S. K. F. to the Agent to sell on credit any credit given by the Agent to the buyer of the said Products shall be deemed to have been given by the Agent for his own account and on his own responsibility. If the buyer has not paid the Agent the amount that is owing by the date on which the Agent is to render a statement and make payment to S. K. F. for such sales that have been made on credit, the Agent shall nevertheless be liable to effect payment to S. K. F. in accordance with the terms and conditions that are defined in this Agreement.

Clause 23 :—The Agent shall pay to S. K. F. the

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net sales value of the said Products that are sold each month, after deduction of the commission that has been agreed upon (cf. 20) and the import expenses that have been paid (cf. 21). Payment shall be made in Sweden thirty (30) days, at the latest, following the last day of the month in which the sales have been effected.

The Income-tax Appellate Tribunal has found that for rendering accounts of the net sales and also for making payments according to the terms of cl. 13 of the agreement, the S. K. F. maintained for the relevant periods a current account in the names of the foreign corporations in respect of goods "received on consignment". When goods were sold by the S. K. F., the account of the principal was credited with the price and the account of the buyers to whom the goods were sold on credit was debited. In a majority of cases of sales, remittances of "sale value" after deducting commission were made after sale of the goods to the buyers but before the sale proceeds were recovered. In a few cases, remittances were made even before the goods were sold, and in the remaining, remittances were made after the sale proceeds were realized from the buyers.

The Income-tax Officer assessed the foreign corporations under s. 4(1)(a) of the Indian Income-tax Act for payment of tax on the profits included in the price realized by the S. K. F. by sale of goods "received on consignment" without making any distinction between sales in respect of which the remittances were made after recovery of sale proceeds and sales in respect of which remittances were made before recovery of the sale proceeds. The order passed by the Income-tax Officer was confirmed by the Appellate Assistant Commissioner and also by the Income-tax Appellate Tribunal. At the instance of the S. K. F., the following questions were referred to the High Court of Judicature at Bombay under s. 66(1) of the Indian Income-tax Act, 1922:

(1) Whether there was evidence on which the Tribunal could have held that the Panrope Corporation and the non-resident company had a business

connection in the taxable territories in the years of account?

(2) Whether the profits of the Panrope Corporation and the non-resident company in respect of the consignment goods were received in the taxable territories on their behalf?

At the hearing of the reference before the High Court, counsel for the assessee having conceded that the S. K. F. was not a purchaser of the goods "received on consignment" from the foreign corporations, but was their agent for sale of the goods, an answer in the affirmative was recorded on the first question. On the second question, the High Court opined that as the remittances by the S. K. F. pursuant to the terms of cl. 23 of the agreement before the sale proceeds were realized from the buyers were received by the foreign corporations outside the taxable territory, the same could not be taken into account under s. 4(1)(a) of the Indian Income-tax Act in assessing the taxable income of the foreign corporations. The High Court observed that the S. K. F. was liable to pay tax on behalf of the foreign corporations under s. 4(1)(a) only if the taxing authority established that the foreign corporations had received the sale proceeds within the taxable territories; that the sale proceeds were received by the foreign corporations when the S. K. F. made remittances under cl. 23 of the agreement, but somewhat inconsistently the High Court observed that the remittances made by the S. K. F. before the sale proceeds were realized, were remittances not of sale proceeds, but in discharge of its obligation under cl. 23 of the agreement; and that the realizations by the S. K. F. from the buyers of the goods subsequent to the remittances were not of sale proceeds on behalf of the foreign corporations but were receipts on its own behalf and in its own right, and in recoupment of the amounts remitted to the foreign corporations. The High Court accordingly answered the second question in the affirmative "to the extent that the remittances were made after the sale proceeds were received by the assessee company".

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We are unable to agree with the reasoning and the conclusion of the High Court. The terms of the agreement make it abundantly clear that the goods "received on consignment" from the foreign corporations were received by the S. K. F. as their selling agent and not as purchaser. The goods, it is true, were sold by the S. K. F. in its own name and not in the name of the foreign corporations, but the goods were still sold for and on behalf of the foreign corporations and the sale proceeds received by the S. K. F. were received not on its own behalf but for and on behalf of its principals. Clauses 9, 12, 13, 14, 17, 18 and 20 of the agreement clearly show that the goods received by the S. K. F. continued to remain the property of the foreign corporations till they were sold to the buyers. In the price received for sale of the goods, the profit of the owner was in truth embedded and that profit was liable to be taxed under s. 4(1)(a) of the Indian Income-tax Act if it was received in the taxable territory. It is not disputed that the sale proceeds realized by the S. K. F. in the taxable territory as agent of the foreign corporations before remittances under the terms of the agreement were liable to be taxed. Does the circumstance that the S. K. F. had in discharge of an obligation undertaken by it made remittances under the terms of the agreement before it realized the price of the goods sold alter the nature of the realizations? The remittances made by the S. K. F. indisputably reached the foreign corporations in respect of all sales outside the taxable territory. But the S. K. F. was their agent for sale of the goods, and for receiving the price in the taxable territory. The relation between the S. K. F. and the foreign corporations was not altered because before realizing the price from the buyers remittances were made to the foreign corporations. The price of goods sold by the S. K. F. whether before or after remittance was realized as the agent of the foreign corporations. If remittance in respect of a sale was made before the price was realized, the S. K. F. became entitled to adjust the account and to take credit for the amount paid out of the realization. What the foreign corporations received under remittances

made before or after realization of the price was not the sale proceeds in respect of sales, but amounts due by the S. K. F. under an obligation expressly undertaken by it under cl. 23 of the agreement. The price of goods sold by the S. K. F. were in all cases received by it within the taxable territory; and the S. K. F. being the agent for sale, and for receiving the price, the income embedded in the sale proceeds must be deemed to be received by the foreign corporations also within the taxable territory. It is the receipt of income which gives rise under s. 4(1)(a) of the Indian Income-tax Act to liability to pay tax: and the place where the price is received is determinative of the question whether the income is received in the taxable territory.

The price for the goods sold was received only when the buyer paid it and not before, and when the price was received by the S. K. F., the income was received. The remittances by the S. K. F. to the foreign corporations before the price was received did not include income, because income in fact was never received till the price was realized. Again we are unable to agree with the contention of counsel for the S. K. F. that there was a contract of suretyship between the foreign corporations and the S. K. F. and the receipt by the former of the remittances amounted to receipt of the price of the goods. It is not pretended that there was a tripartite contract and the foreign corporations sold the goods directly to the purchasers in India, the S. K. F. having guaranteed payment of the price by the buyers to whom the goods had been sold.

The price received by the S. K. F. being received within the taxable territory for and on behalf of the foreign corporations in respect of goods sold, we are unable to hold that the realization of the price in which is embedded the profit is not liable to tax under s. 4(1)(a) as income received, merely because under an independent obligation, the S. K. F. has rendered itself liable to pay the amount equivalent to the price (less commission) even before the price has been realized and has discharged that obligation.

In the view taken by us, the second question will be

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answered in the affirmative in respect of sale of all goods where the price has been received by the S.K.F. in the taxable territory, and irrespective of whether the remittance has been made in respect of the goods sold before or after the price was received.

The appeal is accordingly allowed to the extent indicated. The appellant will be entitled to his costs in this court and also the costs of the reference in the High Court.

Appeal partly allowed.

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August 12.

THE STATE OF MADRAS AND ANOTHER

v.

M/s. M. A. NOOR MOHAMMED AND CO.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Sales Tax—Sale of hides and skins—Exemption from 'multiple taxation—Unlicensed dealers—Whether can claim single point taxation—Validity of rules providing for multiple taxation—Madras General Sales Tax (Turnover and Assessment) Rules, 1939, r. 16(5)—Madras General Sales Tax Act, 1939 (9 of 1939), ss. 3, 5(vi), 6A.

The respondent, a firm carrying on tannery business, used to take out licences under the provisions of the Madras General Sales Tax Act, 1939, but did not renew the licence for the assessment year, 1952-1953, and was assessed to sales tax on the sale value of tanned hides and skins during the year. It challenged the validity of the order of assessment by filing a petition before the High Court under Art. 226 of the Constitution of India, on the grounds that under s. 5(vi) of the Act the liability to pay sales tax in respect of hides and skins could only be at a single point, that r. 16(5) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, which limited the operation of this mode of taxation to licensed dealers was *ultra vires* as it contravened s. 5(vi) and had been so held in *V. M. Syed Mohammed & Co.* v. *The State of Madras*, [1954] S.C.R. 1117, and that s. 6A was not applicable to the case of a dealer which did not take out a licence.

Held, that s. 3 of the Madras General Sales Tax Act, 1939, envisages multipoint taxation on the total turnover of a dealer,