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hardly necessary in this case to show how far a Magistrate can go to find that there is no ground for committing the accused to stand his trial in a Court of Session. We see no reason to interfere with the order of the High Court, and dismiss the appeal.

It is a matter of regret that much delay has taken place in this case, and it may harm the case on the one side or the other. We hope that now the case will be heard from day to day, and disposed of, as expeditiously as possible. We further make it clear to the Court or Courts dealing with this case that any expression of opinion on the merits of the case whether by us or by the High Court or the Magistrate, who first heard it, or else where, in this order or the orders preceding this, is to be completely ignored, and the case shall be decided without being influenced in any way by such expression of opinion.

Appeal dismissed.

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February 1.

RAMALINGAM & CO.

v.

THE STATE OF MADRAS

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

Sales Tax—Contract for sale of goods by correspondence—C. I. F. or C. F. contracts—Bill of lading handed over to bankers to part with only on payment—Whether property in goods passed in Madras—Position of bankers Vis-a-Vis seller and foreign buyer—Intermediary banker if agent of seller—Madras General Sales Tax Act (Mad. 9 of 1939).

The assessees were doing business principally as exporters of vegetable fibres to foreign countries. The contracts of sale were C.I.F. or C.F. and were made by correspondence on approval of samples sent by the assessees to the foreign buyers. The price was payable by draft upon bank credit to be opened by the buyer; who opened with his own bankers

an irrevocable letter of credit in favour of the assessees for 95% of the net invoice value. Intimation of the opening of the letter of credit was then given to the assessees by the local bankers in India who were the agents of the foreign bankers. The local bankers, however, did not by intimating the opening of the letter of credit undertake any liability, and the assessees were expressly informed that they would not be released from their liability under the Bill of Exchange drawn by them. On receipt of the information about opening of the letter of credit the assessees shipped the goods, obtained bills of lading in their own names and lodged the shipping documents endorsed in blank with their own bankers together with the invoice and Bill of Exchange for 95% of the invoice value. Bills of lading were handed over to the assessees bankers with the definite instructions to pass on the shipping documents to the buyers only on payment. The assessees then discounted the Bills through their own bankers. The shipping documents were forwarded to the foreign bankers who on presentation paid 95% of the invoice amount. The Bill of lading was then delivered by the foreign banker to the buyer and goods were unloaded.

For the year 1945-46 the Commercial Tax Officer taxed the assessees under the Madras General Sales Tax Act, 1930. The Commercial Tax Officer rejected the claim of the assessees that the amounts in respect of overseas transactions was exempt from liability to tax, because in his view the export transactions were sales within the province of Madras. The Board of Revenue confirmed the order and held that the property in the goods passed to the buyers in a large majority of the export transaction when the goods were shipped.

The assessees contended that the export sales were at the material time totally outside the provisions of the Madras General Sales Tax Act and the order of the assessment was *ultra vires* and beyond the powers of the Authority. The plea of the State of Madras was that the foreign bank opening the letter of credit is an agent of the buyer, and that the bank authorises its own branch to pay the price to the shippers and by the arrangements made by opening the letter of credit, price is paid to the vendor in his own country against the Bill of lading endorsed in blank.

Held, that the price in respect of the goods was not received in the Province of Madras and the property in the goods also did not pass to the buyer within the province. Therefore tax in respect of the sale ttansactions was not exigible under the Madras General Sales Tax Act 1939.

The expansion of international trade involving overseas transactions has raised problems of peculiar difficulty. The

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parties to a contract (which is as a result of correspondence) are generally unknown to each other; often neither the seller nor the buyer is prepared to trust the other and the seller is reluctant to tie up his funds and the buyer is also unwilling to make payment in advance. To tide over the problem created by this reluctance of the seller and the buyer, bankers of international repute and credit interpose. They for small commission undertake by opening letters of credit to honour the bill of exchange drawn by the seller accompanied by the insurance policy and the invoice relating to goods forming the subject matter of the contract. At the instance of the buyers the bank issues a letter of credit which is addressed to the world at large or more frequently to specified person or persons thereby the bank undertakes to honour the Bills of Exchange drawn on the faith of that letter. Invariably the bills are payable in future but the exporters as the beneficiaries under the contract, have the guarantee of the banker that payment will be forthcoming and are also entitled to discount the Bills with any party cognisant of the undertaking of the original banker.

The relation between the buyer and his issuing banker was not of principal and agent, nor was the relation between the issuing banker and the intermediary banker that of principal and agent. The two bankers were interposed for the protection of the seller as well as the buyer. The issuing banker did not purport to act as agent of the buyer and the intermediary bankers accepted the general offer of the issuing banker negotiating the draft. By so accepting the offer and by taking over the Bill of Lading, the insurance certificate and the invoice which represented title to the goods the intermediary banker did not act as an agent of the seller.

CIVIL APPELLATE JURISDICTION: C.A. No. 10 of 1961.

Appeal from the judgment and decree dated March 5, 1956 of the Madras High Court in A.S. No. 256 of 1951.

R. Ramamurthi Aiyar and *R. Gopalakrishnan*, for the appellants.

R. Ganapathy Iyer and *D. Gupta*, for the Respondent.

1962. February 1. The Judgment of the Court was delivered by

SHAH, J.—Messrs. Ramalingam & Co.—hereinafter called the assessees—are a firm doing business principally as exporters of vegetable fibres to foreign countries. They have their place of business at Tuticorin in the district of Tirunelveli in the State of Madras.

The contracts of sale are made by correspondence on approval of samples sent by the assessees to the foreign buyers. The contracts are C.I.F. or C.F. and the price is payable by draft upon bank credit to be opened by the buyer. The course of dealing between the assessees and the foreign buyers was as follows :—

After the contract for a quantity of goods was finalised by correspondence and the price ascertained the foreign buyer opened with his own bankers an irrevokable Letter of Credit in favour of the assessees for 95% of the net invoice value. Intimation of the opening of the Letter of Credit was then given to the assessees through a bank operating in the Province of Madras. The assessees then shipped the goods, obtained Bills of Lading in their own names and lodged the shipping documents endorsed in blank with their own bankers together with the invoice and Bill of Exchange for 95% of the invoice value. The assessees then discounted the Bills through their own bankers. The shipping documents were forwarded to the foreign banker who on presentation paid 95% of the invoice amount. The Bill of Lading was then delivered by the foreign banker to the buyer and the goods were unloaded.

For the year 1945-46 the Commercial Tax Officer, Tirunelveli determined for the purpose of computing tax liability under the Madras General Sales Tax Act, 1939, the turnover of the assessees at Rs. 15,61,200/-. The Commercial Tax Officer rejected the claim of the assessees that the amount of Rs. 15,22,000/- in respect of overseas transactions

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was exempt from liability to tax. He held that the export transactions in respect of which the exemption was claimed were sales within the province of Madras and subject to sales-tax under the Madras General Sales Tax Act, 1939. The order of the Sales-tax Officer was confirmed by the Board of Revenue, Madras, except as to the amount of freight. The Board of Revenue held that the property in the goods passed to the buyers in a large majority of the export transactions when the goods were shipped. On remand, the Commercial Tax Officer recomputed the turnover at Rs.11,23,603/8/8 inclusive of the local sales of the value of Rs. 75,082/14/0. After paying the tax the assessees sued the Province of Madras in the Court of the Subordinate Judge, Tuticorin for a decree for Rs. 10,485/- being the amount of tax paid by them on export sales pursuant to the order of assessment and interest thereon at 6% until realisation. The assessees contended that the export sales were at the material time "totally outside the provisions of the Madras General Sales Tax Act, and the order of assessment was *ultra vires* and beyond the powers of the authorities". The Subordinate Judge decreed the claim for Rs. 10,323/- with interest at 6% till realization. In appeal, the High Court of Madras reversed the decree and dismissed the suit filed by the assessees. With certificate granted by the High Court this appeal is preferred by the assessees.

It is common ground that in the year 1945-46, under the Madras General Sales Tax Act; 1939, the taxing authorities had no power to levy sales-tax on sales which took place outside the Province. The decision of the appeal, therefore, depends upon the determination of the question whether the export sales took place within the Province. If they took place within the Province, the sales were properly taxed.

We may observe that the plea that a suit for a decree for refund of tax paid in pursuance of

an order of assessment passed by the taxing authorities on the basis that the sales took place within the Province did not lie in the civil court, was not raised in the Court of First Instance, nor in the High Court. Counsel for the State of Madras has also stated before us that he does not desire to contend in this case that the suit was, in view of the adjudication by the taxing authorities, not maintainable. We therefore proceed to deal with the only question which was debated before us at the Bar : whether the export sales which are the subject matter of dispute in this appeal were completed within the Province of Madras.

The dispute relates to turnover in respect of seventeen export transactions with merchants in different destinations overseas. As typical of the transactions the files relating to the shipments to Messrs Begbie Philips and Haylay, London and Messrs Hindley and Company, London were tendered in evidence and the case proceeded to trial on the footing that those transactions were typical of all other transactions.

On April 16, 1945, the Mercantile Bank of India wrote a letter in connection with the shipment to Messrs Begbie Philips and Hayley, London about a contract of sale of five tons palmyra fibre. The letter is in the following terms :—

"Dear Sirs,

Without any responsibility on the part of this bank we beg to advice receipt of a telegram from our London office reading :—

"We open irrevocable credit favour Ramalingam Company, Tuticorin, £400 (four hundred pounds) drafts on Mercantile Bank of India Limited, 60 d/st. invoices, full set shipped bills of lading order bank endorsed certificate of origin insurance covered in London about 5 tons palmyra fibre at £80 (eighty pounds) not per ton C and F. Shipment soonest India to

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United Kingdom by approved ship. Part shipments allowed expiry 6th October, 1945 a/c Bagbie Phillips Hayley, Limited, licence No. 198281."

When submitting documents under this credit we would emphasise the fact that the goods must be described both in the bill of lading and invoice identically as advised above and the relative bill marked "Drawn under telegraphic credit No. 88-A/36 of 12th April 1945".

We shall furnish you with further particulars on receipt of written confirmation.

Owing to frequent mutiliations in coded telegrams the above message is subject to any necessary corrections on receipt of confirmation by mail.

Kindly note that the negotiation of bills under this credit is entirely optional on our part and this advice does not release you from the liability attaching to the drawer of a Bill of Exchange.

This letter must be produced with all bills drawn under this credit.

Yours faithfully

(signed)...

Manager".

On May 28, 1945, the National Bank of India, Tuticorin wrote a letter to the assessees in regard to a sale of a quantity of fibre, which is as follows:—

"Dear Sirs,

We beg to inform you that we are in receipt of advice by cable of 24th instant

from our London office that they have received from Messrs Hindley and Company, Limited, No.35, Crutched Friars, London, E. C. 3 an undertaking to honour your bills on Messrs. Hindley and Company, Limited No. 35 Crutched Friars, London E. C. to the extent of £370 (three hundred and seventy pounds) sterling being 95 per cent of invoice value on the following conditions :—

Bill to be drawn payable 90 days after sight and to be accompanied by —

Invoices.

Full sets of on board bills of lading made out to order and blank endorsed representing shipments of :—

Five tons Tuticorin medium cut and dyed bassine 7 inches and 7-1/2 inches equally at £78 per ton in 1 Cwt. (ballots) C and F United Kingdom post Shipment June/July from Cochin freight paid of deducted and credit reduced accordingly — Freight basis 22nd May, 1945.

Insurance including was risk with unlimited transhipment covered in London.

Such shipping documents are to be delivered on payment of the bills which should bear the clause — "Drawn under N.S.I. credit number 83 cabled 24th May 1945".

Bills fulfilling the above-mentioned conditions must be negotiated on or before-Extended till 30th April 1946.

Please note that the bank accepts no liability for the above undertaking and this advice does not release you from the liability attaching to the drawer of a Bill of Exchange.

The above message is continued by us on behalf of the opening bank for your information but without any responsibility on our

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part except for the correctness of this copy of the telegram as received by us.

When negotiating bills please produce this letter to have the amounts recorded on the back hereof.

I am, Dear Sirs,
Yours faithfully
(Signed).....
Manager."

On receipt of intimation the assessees shipped the goods and handed over the Bill of Lading and the invoice to their own bankers, accompanied by a Bill of exchange for the amount for which the Letter of Credit was opened by the foreign banker. The assessees then discounted the bills for the amount for which credit was opened. The taxing authorities taxed these transactions, because, in their view, the sales were effected in the Province of Madras and not outside. The assessees in the plaint in paragraph IV cl. (e) stated that one of the salient features of the business was that "The bills of lading are handed over to the Plaintiffs bankers with the clear and definite instructions to pass on the shipping documents to the buyers only on payment. They are what is styled in commercial paralance as D/P bills, *i.e.*, documents to be handed over on payment". This averment in the plaint was not traversed in their written statement by the defendants. The only witness examined at the trial was A.V. Samuel, one of the partners of the assessees' firm. He deposed to the practice which was followed by the assessees. He stated :—

"After shipment we obtain Bill of lading made out in our name as shipper. We draw a bill of Exchange and along with bill of lading and invoice. These documents are deposited with National Bank. We endorse in Bank on the Bill of Lading. It is only after payment of

the Bill of exchange by the foreign Bank on behalf of the purchaser, the Bill of Lading is handed over. Till the bill is paid for no title in the goods pass and the goods are at our disposal. If the bill is not honoured the Bank will ask us for directions as regards the disposal of goods. Under instruction from the buyers foreign banks give instruction to any local Bank to give credit up to a certain limit. Inspite of letter of credit as drawers we are responsible under the bill of exchange. We can discount in any bank and not merely in the credit opening bank."

In cross-examination he stated that the "credit opening bank opens credit on behalf of the purchasers. Those banks are not known to us before."

It is clear from the terms of the two letters dated April 16, 1945, and May 28, 1945, that the foreign buyers had opened letters of credit for the benefit of the assessees, for the amounts set out therein. These, it appears, were general credits and intimation thereof was given by the local bankers in India who were agents of the foreign bankers. The local bankers, however, did not undertake any liability by intimating the opening of the letter of credit and the assessees were expressly informed that they (the assessees) would not be released from their liability under the Bills of Exchange drawn by them. The assessees negotiated the Bills through their bankers after receiving an intimation of the opening of credit.

Counsel for the State of Madras submits that the property in the goods which were the subject matter of sale passed in Tuticorin when the assesees received an amount which represented the price f the goods against delivery of the Bills of Lading ndorsed in blank with authority to complete the ndorsement. In substance, the plea is that the oreign bank opening the letter of credit is an agent

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of the buyer, and that bank authorizes its own branch to pay the price to the shippers and by the arrangements made by opening the letter of credit, price is paid to the vendor in his own country against the bill of Lading endorsed in blank.

It is necessary to appreciate the true nature of the commercial letter of credit extensively used in foreign trade. During the last few decades, expansion of international trade involving overseas transactions has raised problems of peculiar difficulty. The parties to a contract to supply goods are generally unknown to each other and the contract is the result of correspondence between the parties. Often neither the seller nor the buyer is prepared to trust the other. Again, between the delivery of the goods in such trade on board the ship and its ultimate delivery at the destination, the seller is reluctant to tie up his funds. The seller himself is generally a purchaser of goods from the local market and has invested funds in purchasing the goods. The buyer is also unwilling to make payment in advance. To tide over the problem created by this reluctance of the seller and the buyer, bankers of international repute and credit interpose. They for a small commission undertake by opinion letters of credit to honour the Bill of Exchange drawn by the seller accompanied by the insurance policy and the invoice relating to the goods forming the subject matter of the contract. At the instance of the buyer the banker issues a letter of credit which is addressed to the world at large or more frequently to specified person or persons : thereby the banker undertakes to honour the Bills of Exchange drawn on the faith of that letter. Invariably, the Bills are payable in future but the exporters as the beneficiaries under the contract, have the guarantee of the banker that payment will be forthcoming and are also entitled to discount the bills with any party cognisant of the undertaking of the original

banker. There are generally four parties to such a transaction—the buyer, the seller, the banker who issues the letter of credit, called the issuing banker and the intermediary or the negotiating banker who allows credit to the seller on the bills lodged with him. Between the buyer and the issuing banker, the contract is that he will pay bills drawn by the seller of the goods against delivery of the Bill of Lading, insurance certificate and invoice. The buyer undertakes to put the banker in funds to enable him to make payment if the documents are presented. The relation between the buyer and the banker is not of pricipal and agent. The contract between the issuing banker and the negotiating banker may be of a dual character. Where the issuing banker's instructions are merely to advise the credit, and the credit calls for bills to be drawn either on the issuing banker or on the buyer, the intermediary banker may negotiate the beneficiary's bills. In such a case he stands *qua* the issuing banker as principal to principal, for either he succeeds to the rights of the beneficiary under the credit or, if he negotiates relying on the credit alone, as acceptor of the offer it contains. If the instructions call upon the intermediary banker to pay or to negotiate the beneficiary's bills, the intermediary banker is the issuing banker's agent.

Under the terms of the contract between the assessees and the foreign buyer the price was to be paid "by draft after 90 days under bank credit to be opened by the buyer for 95% of the net invoice amount." By the letter of credit the foreign banker guaranteed to pay the amount in London. The issuing bank intimated the opening of the letter of credit, but there is no evidence of any express directions to its agent in India to pay or negotiate the draft. The letter of credit was general; and it was open to any bank on the faith

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thereof to negotiate the bill issued by the assessees. The payment made by the intermediary bank was not and could not therefore be on behalf of the issuing bank much less on behalf of the buyer. By negotiating the bill, the banker of the assessees became the acceptor of the offer contained in the letter of credit of the issuing bank, and as such acceptor obtained the Bill of Lading, the invoice and the Bill of Exchange and presented them for payment. This arrangement was not an arrangement for payment of price on behalf of the buyer.

It appears clear from the two letters dated April 4, 1945, and May 28, 1945, that the banks accepted no liability by intimating the opening of the letter of credit and the liability attaching to the assessees by drawing Bills of Exchange was not discharged. If the liability of the assessees, as drawers of the Bills of Exchange continued, the arrangement made by the buyer could not be regarded as one to pay the price through his banker in India. As stated hereinbefore, the relation between the buyer and his issuing banker was not of principal and agent, nor was the relation between the issuing banker and the intermediary banker that of principal and agent. The two bankers were interposed for the protection of the seller as well as the buyer. The issuing banker did not purport to act as agent of the buyer and the intermediary banker accepted the general offer of the issuing banker by negotiating the draft. By so accepting the offer and by taking over the Bill of Lading, the insurance certificate and the invoice which represented title to the goods the intermediary banker did not act as an agent of the seller.

The price in respect of the goods was not received in the Province of Madras, and the property in the goods also did not pass to the buyer

within the Province. Tax in respect of the sale of fibre by the assessees under tne disputed transactions was therefore not exigible under the Madras General Sales Tax Act.

The appeal is therefore allowed : the decree of the High Court is set aside, and the decree of the trial Court is restored with costs in this Court and the High Court.

Appeal allowed.

M/S. BALLABHDAS AGARWAL

v.

THE STATE OF BIHAR

(J.L. KAPUR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Sales Tax—Appeal from order of Board of Revenue—No Appeal from order of High Court—Assessee if can agitate the correctness of decision of Board by Special Leave—Remedy open to assessee when question asked for, not replied by the Board to High Court—Appeal not maintainable where breach of Rule of Natural Justice or violation of principle of law not shown—Bihar Sales Tax Act, 1947 (Bihar 19 of 1947), ss. 6,24,25,28.

The appellant, a Railway contractor, having Refreshment Rooms and Tea Stalls at various stations, was registered as a dealer under the Bihar Sales Tax Act, 1947. He being aggrieved by the assessment for the year 1950-51 made by the Sales Tax Officer took the usual appeals to the Sales Tax Authorities and after the appeals were rejected he took a revision under s. 24 of the Act before the Board of Revenue Bihar which was dismissed. He then applied under s. 25 of the Act to refer six questions of law to the High Court. The Board referred only one question to the High Court. The High Court after reframing the question answered it in the negative against him. Against the order of the Board of Revenue the appellant brought an appeal by special leave to the Supreme Court but he did not appeal against the judgment and order of the High Court.